SENATE

Tuesday, September 11, 2007

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Martin Joseph who is ill and Sen. The Hon. Arnold Piggott, who is out of the country.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. MAGNA WILLIAMS-SMITH

WHEREAS Senator Martin Joseph is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Martin Joseph.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 10th day of September, 2007."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Arnold Piggott is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with effect from 11th September, 2007 and continuing during the absence from Trinidad and Tobago of the said Senator Arnold Piggott.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 10th day of September, 2007."

OATH OF ALLEGIANCE

Senators Magna Williams-Smith and Joan Hackshaw-Marslin subscribed the Oath of Allegiance as required by law.

BANKRUPTCY AND INSOLVENCY (NO. 2) BILL

Bill to revise the law relating to bankruptcy and insolvency; to make provision for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor and to create the office of Supervisor of Insolvency, brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made, That the next stage be taken at a sitting of the Senate to be held on Tuesday, September 18, 2007. [*Hon. J. Jeremie S.C.*]

Question put and agreed to.

PAPERS LAID

1. The annual audited financial statements of the Estate Management and Business Development Company Limited for the year ended September 30, 2006. [*The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo*)]

2. Administrative Report of the Tunapuna/Piarco Regional Corporation for the period October 01, 2005 to September 30, 2006. [*The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith)*]

JOINT SELECT COMMITTEE REPORT

Municipal Corporations and Service Commissions
(San Fernando City Corporation)
(Presentation)

Sen. Prof. Ramesh Deosaran: Madam President, I have the honour to lay on the table the Fourth Report of the Joint Select Committee of the Parliament appointed to enquire into and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission on the San Fernando City Corporation.

ORAL ANSWERS TO QUESTIONS

Customs House
(Details of)

76. Sen. Wade Mark asked the hon. Minister of Finance:

With respect to the construction of the new Customs House in Port of Spain, could the Minister inform the Senate:

(i) what was the original estimated cost;

(ii) how much money has been expended to date;

(iii) what is the new estimated total cost;

(iv) what was the original scheduled completion date; and

(v) what is the new scheduled completion date?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I regret that the answer is not yet ready and I request one week's deferral of the answer.

Sen. Mark: Madam President—

Madam President: I know, it has been deferred for two weeks. Can we then move to the other questions?

Question, by leave, deferred.

T&TEC Light Poles
(Details of)

77. Sen. Wade Mark asked the hon. Minister of Public Utilities and the Environment:

With respect to the new galvanize type of light poles being used by the Trinidad and Tobago Electricity Commission (T&TEC), could the Minister inform the Senate:

(i) whether these poles are being imported and if so by whom;

(ii) whether the contract to purchase these poles was subject to:

(a) public competitive tendering or

(b) sole selective tendering;

(iii) if the answer to (ii) is (a), could the Minister provide the relevant information outlining in detail the procedure involved in the public tendering process; and

(iv) if the answer to (ii) is (b), could the Minister explain the rationale for such an arrangement?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, again I am advised by the Minister that the answer to Questions Nos. 77, 79 and 81 are still not ready and I seek one week's deferral.

Question, by leave, deferred.

The following questions stood on the Order Paper:

Trinidad and Tobago Electricity Commission (T&TEC)
(Details of Importation)

79. With respect to the new street lights/lamps being installed by the Trinidad and Tobago Electricity Commission (T&TEC), could the hon. Minister of Public Utilities and the Environment inform the Senate:

(i) if these lights/lamps are being imported and if so by whom;

(ii) whether the contract to purchase these lights/lamps was subject to (a) public competitive tendering or (b) sole selective tendering;

(iii) if the answer to (ii) is (a), could the Minister provide the details of the procedure involved; and

(iv) if the answer to (ii) is (b), could the Minister explain the rationale for such an arrangement? [*Sen. W. Mark*]

Water and Sewerage Authority (WASA)
(Details of)

81. With respect to the operations of the Water and Sewerage Authority (WASA), could the hon. Minister of Public Utilities and the Environment advise the Senate:

(i) What percentage of the population receive water in their homes on a twenty-four hour basis?

(ii) What new water production or water distribution programme has WASA undertaken during the period 2002 to 2006?

(iii) The number of new employees hired by WASA during the period 2002 to 2006?

(iv) The total cost to WASA for these new employees? [*Sen. Dr. T. Gopeesingh*]

Questions, by leave, deferred.

Madam President: All right, then let us go to question No. 82.

Sen. Mark: Madam President, as you will recall, questions 77 and 79 have already been deferred by you and a commitment was given by the Leader of Government Business, now we are being asked for another week. Could we ask the hon. Leader to get these answers in a week?

Madam President: I think he will do his best.

Sen. Mark: His best is not good enough, Ma'am.

Madam President: Okay, let us move on to Question No. 82 please.

Road Paving Programme
(Details of)

82. **Sen. Dr. Tim Gopeesingh** asked the hon. Minister of Works and Transport:

With respect to the proposed road paving programme being undertaken by the Ministry of Works and Transport, could the hon. Minister inform the Senate:

(i) which roads are scheduled to be paved;

(ii) the process utilized in determining which roads needed to be paved; and

(iii) the cost per kilometre of paving?

The Minister of Works and Transport (Hon. Colm Imbert): Madam President, the question involves a lot of work. It is also a moving target because there is no date, for example, which roads are scheduled to be paved, it does not say when. So I would respectfully request a postponement of a further two weeks.

Sen. Dr. Gopeesingh: When you were here, you indicated that you would be able to give it in two weeks. What has happened?

Sen. Mark: Is that a deliberate strategy on your part now?

Hon. C. Imbert: We are paving roads every day.

Madam President: All right, the Minister has asked for two weeks and I trust that we will have the answer in two weeks. Can we move on to Question No. 83?

Hon. C. Imbert: Certainly.

Sen. Mark: Is that a strategy on your part, Minister Imbert?

Question, by leave, deferred.

Road Paving Programme
(Contract Details)

83. Sen. Dr. Tim Gopeesingh asked the hon. Minister of Works and Transport:

With respect to the proposed road paving programme being undertaken by the Ministry of Works and Transport, could the hon. Minister advise the Senate of:

(i) the tendering procedure involved in awarding contracts;

(ii) the names of the firms/contractors that have been awarded contracts; and

(iii) the cost of each contract awarded?

The Minister of Works and Transport (Hon. Colm Imbert): Madam President, again this question asks about contracts being awarded and those are being awarded almost every day, but I guarantee, Madam President, that an answer would be provided within two weeks.

Question, by leave, deferred.

Brian Lara Stadium
(Details of)

84. Sen. Dr. Tim Gopeesingh asked the hon. Minister of Sport and Youth Affairs:

A. With respect to the award of the contracts for the construction of the Brian Lara Stadium in Toruba, South Trinidad, could the hon. Minister indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individuals/firms that evaluated the tenders?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I am pleased that the Chairman of the Cabinet's sub-committee on questions, Mr. Imbert, is here; I request a deferral of two weeks.

Question, by leave, deferred.

Madam President: What about all the other questions, maybe I should ask?

Sen. The Hon. Dr. L. Saith: They are coming.

National Carnival Centre
(Details of)

85. Sen. Dr. Tim Gopeesingh asked the hon. Minister of Community Development, Culture and Gender Affairs:

A. With respect to the award of contracts for the construction of the National Carnival Centre in the Queen's Park Savannah, Port of Spain, could the hon. Minister indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individual/individuals/firms that evaluated the tenders?

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Thank you, Madam President. Work for the construction of the Carnival Entertainment Centre has not been formally brought to the market, however preconstruction work has been undertaken to provide for the demolition of the underside of the Grand Stand and outer office buildings and the dismantling of the Grand Stand.

In accordance with UdeCoTT's tender rules, a contract for the dismantling of the Grand Stand was awarded to Adams Project Management and Construction Limited in January 2007 at a cost of $789,000, plus VAT of 15 per cent. The dismantling works included tagging and removal of purlin, disconnection of electricity, removal of sheeting, removal of crosses, demolition of the underside of the Grand Stand and flooring, removal of columns, demolition of small office buildings and forecourt.

The entire dismantling was completed on August 19, 2007 and the dismantled materials are currently stored at Invaders Bay. May I say at this point, the reason it is being stored at this time is that this material will now be used to construct five amphitheatres around Trinidad and Tobago. So that nothing is lost from the Grand Stand.

Madam President, in accordance with UdeCoTT's tender rules, a contract for the demolition of the clubhouse in the paddock area of the Queen's Park Savannah was awarded to Don Ramdeen Transport Company at a contract price of $264,000 VAT inclusive. Work commenced on January 16, 2007 and was completed in seven days; accordingly, there is no tendered cost.

There are no cost overruns as construction works have not commenced except for preconstruction works relating to the dismantling of the Grand Stand and the

demolition of adjoining buildings, and the expected completion cost and date cannot be determined at this time as the works have not been tendered.

Sen. Dr. Gopeesingh: Supplemental to the hon. Minister, has there been any tendering for construction of the National Carnival Centre?

Sen. The Hon. J. Yuille-Williams: Sorry. There is a part B to the question as well. Works for the construction of the centre have not been formally brought to the market. Information of the names of companies that tendered and details of the evaluation process utilized is not applicable.

Performing Arts Centre
(Details of)

86. Sen. Dr. Tim Gopeesingh asked the hon. Minister of Community Development, Culture and Gender Affairs:

A. With respect to the award of contracts for the construction of the Performing Arts Centre on the Princes Building Grounds, Port of Spain, could the Minister indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individuals/firms that evaluated the tenders?

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, the cost of the design and construction of the uniquely designed National Academy for the Performing Arts on the Princes Building Ground, Port of Spain is TT $378 million.

The project is being undertaken on a design/build arrangement pursuant to the provisions of a concessional loan and a framework agreement between the Government and the People's Republic of China and the Republic of Trinidad and Tobago which agreement carries a fixed rate of 2 per cent, or 20 years with a five-year moratorium.

Under the funding arrangement for the design and construction of the facility, the Government of the People's Republic of China nominated a Chinese contractor subject to the meeting inter alia of prequalification requirements of UDeCoTT at international best practices regarding construction and quality.

The Shanghai Construction Group General Corporation was identified by the People's Republic of China as the most experienced in the construction of these types of facilities having constructed 11 such facilities and was nominated as the design construction contractor on the project.

The facility is being constructed as part of a fixed price design/build arrangement. There are therefore no cost overruns and it is anticipated that construction will remain on budget on completion at the cost previously mentioned. The expected completion date is August 2009.

With respect to the names of the companies that tendered for this project and their prices, the process used to evaluate the tenders and the names of individuals or firms that evaluated the tenders, this House is informed that as indicated earlier, pursuant to the provisions of the concessional loan and a framework agreement between the Government of the People's Republic of China and the Republic of Trinidad and Tobago, the Government of the People's Republic of China nominated the Shanghai Construction General Corporation to design and construct the academy subject to their meeting the criteria referred to previously. [*Interruption*]

Madam President: Sen. Mark, allow the Minister to continue please.

Sen. The Hon. J. Yuille-Williams: The Chinese firm was the most experienced in the construction of such facilities having previously constructed 11 such facilities.

Sen. Dr. Gopeesingh: The nomination of the Chinese group was nominated by whom? Was it UdeCoTT, and on what basis? Could you give us some explanations?

Sen. The Hon. J. Yuille-Williams: The Shanghai Construction General Corporation was identified by the People's Republic of China as the most experienced in the construction of these types of facilities having constructed 11 such facilities.

Thank you.

Sen. Dr. Gopeesingh: Madam President, the Minister has indicated that the Chinese group has been chosen based on their experience, but was there any other country or situation compared so as to make the evaluation that it was the best? China with what other country?

Sen. The Hon. J. Yuille-Williams: Madam President, as you recognize, there is a loan agreement between China and Trinidad and Tobago—a concessional loan. The project is being undertaken on a design/build basis pursuant to the provisions of a concessional loan and a framework agreement between the Governments of the People's Republic of China and the Republic of Trinidad and Tobago which carries a fixed rate of 2 per cent for 20 years and a five-year moratorium.

Sen. Dr. Gopeesingh: We are aware of the contribution and the answer, but were there any considerations given for any other country to have a joint arrangement? We know that Austria gives loans at 3 per cent and so forth, why was no one else considered?

Sen. The Hon. J. Yuille-Williams: Because it was a 2 per cent loan. I do not know if you can get it any better in the world.

Sen. Mark: Madam President, may I ask the hon. Minister if she could share with this Parliament, the percentage of local labour and contractors who would be employed in this particular project?

Sen. The Hon. J. Yuille-Williams: Clearly, that is another question and I can understand why that is asked. No, I cannot share that with you at the moment; it is something entirely different from what I am talking about here. I do not have the response to that, but I see where you are coming from.

Construction of the Waterfront Project (Award of Contracts)

87. Sen. Dr. Tim Gopeesingh asked the hon. Minister of Planning and Development:

A. With respect to the award of contracts for the construction of the Waterfront Project along Wrightson Road, Port of Spain, could the Minister indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individuals/firms that evaluated the tenders?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I ask for a deferral of two weeks for Questions Nos. 87 and 88.

While I am on my feet, may I deal with question No. 89 as well?

Madam President: For a deferral of two weeks?

Sen. Dr. Saith: Yes.

Question, by leave, deferred.

The following questions stood on the Order Paper:

Construction of the Government Campus
(Award of Contracts)

88. A. With respect to the award of contracts for the construction of the Government Campus on Richmond Street, Port of Spain, could the Minister of Planning and Development indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individuals/firms that evaluated the tenders?

[*Sen. Dr. T. Gopeesingh*]

Construction of the Prime Minister's Residence
(Award of Contracts)

89. A. With respect to the award of contracts for the construction of the Prime Minister's residence and Convention Centre and its furnishing, could the hon. Prime Minister indicate to the Senate:

(i) the tendered cost;

(ii) the cost overruns to date;

(iii) the expected completion costs; and

(iv) the expected completion date?

B. Could the Minister also indicate:

(i) the names of the companies that tendered for this project and their tender prices;

(ii) the process used to evaluate the tenders; and

(iii) the names of the individuals/firms that evaluated the tenders?

[*Sen. Dr. T. Gopeesingh*]

Questions, by leave, deferred.

Restoration of Increments (High Court Judgment)

91. Sen. Brother Noble Khan asked the hon. Minister of Public Administration and Information:

With respect to High Court Judgment regarding the restoration of increments, could the Minister inform the Senate when will gratuities and pensions of the affected public service retirees be adjusted?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, the response to the question is as follows:

As part of the general reduction in expenditure in 1987, the award of increments in the public service was suspended with effect from January 23, 1987 by various legal notices.

The suspension of increments was taken before the High Court by an officer of the civil service in High Court Action No. 3015 of 1987. The court ruled inter alia, that the legal notice suspending increments payable to the members of the civil service was null and void and of no effect. In giving his judgment, the Judge recommended that the matter could be settled by negotiation between the Chief Personnel Officer (CPO) and the Public Services Association (PSA).

An appeal by the State was subsequently withdrawn and by a consent order in 1995, the matter was settled in favour of the officer. Since the legal notice was

declared void by implication, all other legal notices suspending increments of all other public service employees would also be deemed to be null and void.

Following representations made by the PSA in 1996, public officers were paid the value of an increment and increments were subsequently reinstated with effect from January 01, 1997. In so doing, the salaries of public officers were adjusted from the incremental point at which they were placed as at January 23, 1987 when increments were suspended.

Thereafter, increments continued to be dealt with in accordance with existing arrangements. However, the PSA continued to make claims for the payment of the arrears of increments with effect from January 23, 1987 and for adjustment of the officers' salaries to the point in the salary scales at which they would have been paid had increments not been suspended. The UNC government did not deal with that.

In the meantime, Madam President, associated unions representing the teaching service, police service, fire service and daily rated employees accepted the offer of "buy-out" to be paid in bonds in full and final settlement of all issues relating to the suspension of increments over the period 1987 to 1995.

The sum of the "buy-out" was $2,125 in respect of monthly paid officers and $1,800 in respect of daily rated employees. Persons who left the civil service/statutory authorities had an option to accept the "buy-out" or await any settlement of the matter between the PSA and CPO. Some associations/unions including the PSA did not accept the offer of the "buy-out" and requested that a quantification of arrears owed be undertaken.

In accordance with the recommendation of the Judge in High Court Action No. 3015 of 1987, the CPO and the PSA engaged in consultation and negotiations which resulted in an agreement being reached in 2002 by this Government in relation to the payment of the arrears of increments. The Agreement stated as follows:

(i) The total sum calculated as being owed to officers and former officers in respect of the period January 23, 1987 to December 31, 1995 shall be paid in cash, in a lump sum, on or before November 30, 2002: all payments to be subject to deduction for tax purposes;

(ii) The sum equivalent to one month's basic salary already received by certain officers as an advance in respect of arrears owed shall be deducted from the total sum due to those officers. However, where the

sum received as an advance is in excess of the total amount due, arrangements shall be made for recovery of the excess in accordance with the provisions of the Financial Regulations, Chap. 69:01;

2.00 p.m.

(iii) The sum of $2,125 previously received by certain former officers as a buy-out in full and final settlement of all issues related to the arrears of increments, shall be deducted from the amount payable at (i) above.

Agreements settling the matter of the arrears of increments were also signed with the other Associations representing other public service employees. Consequently, all employees were paid in keeping with the terms of their respective agreements.

All of the agreements specifically stated that "sums paid in accordance with this agreement shall represent full and final settlement of all issues arising from the suspension of increments over the period January 23, 1987 to December 31, 1995."

Against this background, there is no further requirement to adjust the gratuities and pensions of public service retirees.

Thank you, Madam President.

Sen. Bro. Khan: Could the Minister state if this method of settlement, as he alluded to, really affected the retirement benefits which had nothing to do with a separate law which established, within the Constitution, that this be preserved—the question of pensions being a preservation by the Constitution when we became independent, and if this has been honoured.

Sen. The Hon. Dr. L. Saith: Madam President, the answer I have given states the legal position as I have been advised. Some Members in this House have raised the question of this matter and I have promised to ask our people to look at it, but as of now this is the legal position in respect of such payments. So I really cannot answer the question now because I do not have the information.

Sen. Bro. Khan: Could you give us the assurance then that shortly we will be having something further on that aspect which you referred to?

Sen. The Hon. Dr. L. Saith: Well, in the present context I do not know what "shortly" means. I have indicated that I have asked our people—there are some legal issues here; there are some issues of precedent that have to be dealt with. As I have indicated to another Senator who has raised the matter, I will seek to have it done as quickly as possible.

Sen. Mark: Through you, Madam President, I would like to ask the Minister, based on the legal position advanced, whether the workers as at 1987 would, and the time of the agreement—is the legal position suggesting that there would be no adjustment whatsoever to the pensions and gratuity of these public officers from the period 1987 to the time when the agreement was signed? Are you telling us that there was a buy-out virtually and as such, whatever was agreed upon was final and therefore their pensions will never be adjusted, as what is being advanced in the question by Sen. Bro. Noble Khan?

Sen. The Hon. Dr. L. Saith: I am very pleased that the Senator was able to follow the answer. As I have indicated to Sen. Bro. Khan, that is the sum total of the legal position, which included the buy-out, the adjustment and the full and final settlement. I have said a matter has been raised with me, and I am going to have our people look at it. I do not know what the answer is, and this was freely negotiated with the PSA in 2002.

Sen. Mark: Madam President, just one final question. Is there any intention on the part of the Government to address the cut by 10 per cent in public officers' salary, as you recall—whether, for instance, there is an intention on the part of the Government—

Madam President: Is this related to the question—

Sen. Mark: Yes, it is part of the question—whether there is any intention from the legal perspective to revisit that question of the 10 per cent cut in public servants and daily-rated salaries.

Sen. The Hon. Dr. L. Saith: Sen. Mark is well aware that that issue was dealt with during his term, of the lump-sum payment—the union payment—which the PSA did not accept, for some reason. My understanding is that this final agreement which we made in 2002 covered all issues related to that action taken by the Government in—what was it?—your government in 1987.

Sen. Mark: Not my government; my government was 1995.

Magistrates' Courts
(Backlog of Cases)

93. Sen. Dr. Glenn Ramadhar-Singh asked the hon. Attorney General:

Could the Attorney General state:

a. What is the exact state of the backlog of cases at the level of the Magistrates' Courts for the period January to May 2007?

b. What is the number of backlog of cases at the Magistrates' Courts for each year for the period 2002—2007?

c. What are the specific factors which contributed to this backlog? and

d. What detailed steps has the Government initiated to remedy the backlog of cases?

The Attorney General (Sen. The Hon. John Jeremie SC): Madam President, the answer to that question is not yet ready. The answer does not reside in the bosom of the Attorney General. It requires a great deal of information from the Judiciary. In the circumstances I request a deferral of three weeks.

Sen. Mark: Why you did not say two months, boy; say two months!

Madam President: If you can use your persuasion to get that answer—

Sen. The Hon. J. Jeremie SC: I will try my best, Madam President.

Question, by leave, deferred.

Dualling of the Churchill/Roosevelt Highway

94. Sen. Dr. Glenn Ramadhar-Singh asked the hon. Minister of Works and Transport:

With respect to the dualling of the Churchill/Roosevelt Highway from O'Meara to Wallerfield, could the Minister state:

a. The names of the main contractor(s) on the project?

b. The original cost of the project and the original completion date? and

c. Whether there has been any cost overruns on the project and, if so, by how much?

The Minister of Works and Transport (Hon. Colm Imbert): Madam President, I would ask for a deferral of one week for this question, please.

Question, by leave, deferred.

Petition No. CV 2007—01034

(Legal Service Rendered to the Attorney General)

97. Sen. Dr. Tim Gopeesingh on behalf of **Sen. Wade Mark** asked the hon. Attorney General:

With respect to the vacancy Petition re: High Court matter No. CV 2007—01034—Jacqueline Sampson and Basdeo Panday, could the Attorney General provide the Senate with:

(a) the names of each attorney-at-law who rendered legal service on behalf of the Attorney General;

(b) a breakdown of the service rendered by each attorney;

(c) the total amount of money paid to each attorney; and

(d) the total amount of money, if any, still to be paid to each attorney?

The Attorney General (Sen. The Hon. John Jeremie SC): [*Desk thumping*] Madam President, the attorneys-at-law who rendered legal service on behalf of the Attorney General are as follows:

(1) Mr. Ian Benjamin

(2) Miss Navita Sawh

(3) Miss Nirala Bansee

(4) Miss Trisha Bhagwandeen

The service rendered by each attorney was as follows:

Mr. Benjamin and Miss Sawh were advocate attorneys-at-law. Miss Nirala Bansee and Miss Trisha Bhagwandeen were instructing attorneys-at-law.

The total amount of money paid to each attorney, the answer to that part is as follows: Before any moneys can be paid to an attorney a requisition must be submitted to the State. No requisitions have been received from the aforementioned attorneys to date. Therefore, the answer to this part is not applicable.

The total amount of money still to be paid to each attorney is as follows: Requisitions to date have not been received from the attorneys so the answer to that part is not applicable.

Thank you.

Sen. Mark: Could the hon. Attorney General indicate to us whether it is the normal practice for attorneys, after rendering their services, to take so long to provide you with their requisition fees? Is that a normal practice?

Sen. The Hon. J. Jeremie SC: There is no standard practice. Some attorneys send requisitions in advance; some send in arrears; some send long in advance; some send long after the fact. So there is no standard practice. As long as I have not received a requisition, I cannot pay it; and as long as I cannot pay it, I am happy, because it means that I have more money.

Sen. Dr. Gopeesingh: Madam President, through you, hon. Attorney General, would not a cost factor be a determinant in the selection of the attorneys? Would that not have been a consideration of the cost for each attorney before selection of an attorney? You would, of course, want to know the cost before.

Sen. The Hon. J. Jeremie SC: The profession does not work like that. What you do is you look to see the skill set that is required for your particular matter and you look in the market; you say, "Well, that skill set is available here, I will go to this attorney for service." You might have an idea of what fees that attorney charges normally as a fee on brief; that might be a factor in terms of your choice as to where you go. Apart from that, it is not a case where you go and you ask an attorney: "What are you going to charge for this?" There is no touting. As a matter of fact, I think that sort of arrangement is outlawed in the profession under the Legal Profession Act.

Sen. Mark: Madam President, before you move on from questions, I would like to advise you—and if you can advise me—that in the particular instance of the hon. Minister of Community Development, Culture and Gender Affairs, in the Appendix, I think there are about six questions that are outstanding between six months to maybe a year. I would like to know if the Minister has any intention before the dissolution of this Parliament to answer these questions, or whether I should go public with these things—

Madam President: Senator! Hon. Senators, I think it will be to the credit of the Senate and to yourselves if we can have these answers—the ones that you have promised—in two weeks, please. Could we have them? [*Desk thumping*] Minister Yuille-Williams, I know your workload is heavy, but I do hope that you could maybe bring some of those written answers before the—[*Interruption*] I know. I know Sen. Mark is very sympathetic with you as far as that is concerned but I am certain he would like to get some of the answers.

Sen. Prof. Deosaran: Madam President, if you will allow me, on the number one question for written answers, the Attorney General promised to correspond with the Judiciary. I think it would be very useful if the Parliament could share in that correspondence and, particularly, the response from the Judiciary to question number one for written answer.

Sen. The Hon. J. Jeremie SC: Madam President, I did undertake to correspond with the Judiciary, but I have not yet done so, given the constraints of the budget debate and so on, when the issue was raised with me. So I will ensure that that is done this week.

STATEMENT BY MINISTER

Witness Protection

The Attorney General (Sen. The Hon. John Jeremie SC): Madam President, you may recall if you cast your mind back to the contribution of Sen.

Dr. Ramadhar-Singh during the budget debate last week, he made a reference to the State's culpability in having the main witness in the Vindra Naipaul-Coolman case not adequately protected. You may recall that I intervened to advise the Senator that the State had, in fact, made great efforts to have the minor in the case then, made a ward of the court and had gone to considerable lengths to ensure his protection. That was true and correct and is information the public ought to know.

The State went to considerable lengths to have the child protected and kept in a safe environment. But, Sen. Dr. Ramadhar-Singh, unlike me, had seen the news overnight and realized that the boy had turned 18 and, as such, was free to leave protective custody. So I spoke the truth to the Senate. The State went to considerable lengths to protect the child, once the child was a minor. But I rise to clarify the record in this matter out of an abundance of caution and given the sudden fondness of my friends on the other side for the Standing Orders and the Privileges Committee.

Thank you.

Sen. Mark: Madam President, may I just correct the Attorney General on one point? It was Sen. Anthony Sammy and not Sen. Dr. Glen Ramadhar-Singh who made the statement. So you made a second error. I just wanted to correct the record.

Sen. The Hon. J. Jeremie SC: I am ever so grateful to you, Sen. Mark.

DEOXYRIBONUCLEIC ACID (DNA) BILL

Order for second reading read.

The Minister of Works and Transport (Hon. Colm Imbert): Madam President, it is my privilege to be in this Senate today to present the report of the joint select committee appointed to consider and report on the Deoxyribonucleic Acid (DNA) Bill, 2006, and I beg to move,

> That a Bill to repeal and replace the Deoxyribonucleic Acid (DNA) Identification Act, 2000, be now read a second time.

At a sitting of the House of Representatives on Friday, February 09, 2007 and at a similar sitting of the Senate on Tuesday, February 13, 2007, the Deoxyribonucleic Acid (DNA) Bill was referred to a joint select committee of Parliament for consideration and report. The Members of the committee appointed to this joint select committee were as follows: myself; Mr. Hedwige Bereaux; Mr. Fitzgerald Hinds; Dr. Adesh Nanan; Miss Gillian Lucky; Mr. John Jeremie SC; Mr. Martin Joseph; Ms. Christine Kangaloo; Dr. Tim Gopeesingh and Ms. Angela Cropper.

In order to complete its mandate, the committee met successfully on five separate occasions. The committee examined the Bill clause by clause and upon completion reported that they identified issues and areas of the Bill which needed reworking and as a consequence, the Chief Parliamentary Counsel prepared a redrafted Bill, which is included in the printing of the committee's final report which, I presume, all Members of this Senate have received.

I should also like the Senate to note that having completed its work, a draft report of the committee's work was prepared and circulated to Members, to which all Members agreed. This is noteworthy. The deliberations of this committee were unanimous, whether persons came from the Opposition Benches, Independent Benches or Government Benches, and all Members, which is probably quite a record—I know we have a few people like Sen. Mark not always signing reports, but in this case, all Members of the committee signed the final report.

The report was laid in the House of Representatives on August 24 and in the Senate on September 03. I want to specially thank all Members of the joint select committee for their approach to the task that we were given. I also wish to thank all the technocrats from the Chief Parliamentary Counsel's office, from the Ministry of National Security, from the Forensic Science Centre and other technocrats who assisted the committee throughout its deliberations. In particular, I would like to thank the Secretary to the committee, Mrs. Maharaj, and the staff of the Parliament for their very hard work and assistance.

I am presenting this report today because at the first meeting of the committee I was elected as chairman of the committee, and chaired the committee to conclusion. I must say I was very impressed by the way in which Members conducted themselves in this committee and on some occasions I forgot that Members of the committee were Members of the Opposition, because of the manner in which they approached the task at hand. I want to thank Sen. Dr. Gopeesingh, in particular, who gave yeoman service, believe it or not—

Sen. Dr. Saith: Out of character.

Hon. C. Imbert: Out of character, yes. Sen. Dr. Gopeesingh, they say that is out of character. But be that as it may, Sen. Dr. Gopeesingh assisted us with his medical knowledge, as did Dr. Nanan. Dr. Nanan was a bit troublesome from time to time, as is his wont; he tends to be a bit troublesome. But, eventually, we were able to reach consensus. Miss Lucky, Ms. Cropper, Ms. Kangaloo and all the Members, really assisted us in terms of bringing the matter to conclusion, and it is a much better Bill now.

If I can just give some indication of the areas that were dealt with—this is where I can give you a little anecdote of how troublesome Dr. Nanan was. Dr. Nanan was very, very insistent in one of the clauses when we were dealing with parts of the body, in the definition of a non-intimate sample. He did not want us to leave it simply as the word, "nail". If you look at it carefully, in clause 4, you will see non-intimate sample refers to a number of things, including a nail. He was adamant that that should also include fingernail and toe. I am just saying that this is the kind of trouble that Dr. Nanan gave us. He was very meticulous and detailed.

Sen. Anmolsingh-Mahabir: And rightly so.

Hon. C. Imbert: Sen. Dr. Gopeesingh, as well as Dr. Nanan, insisted on the creation of a DNA board and we had quite a lot of discussion on this in terms of whether there should be a board; why should there be a board and what would be the duties, powers and functions of such a board. Eventually, the committee went along with the request coming from Sen. Dr. Gopeesingh, not just because we needed his support and a special majority, but because it made sense.

You would see there are new parts in the Bill—Parts X and XI, which speak to a DNA board, and if you look closely at the Bill itself and look at Parts X and XI, clauses 34, 35, 36, 37, 38, 39 and 40, what is instructive about this Part XI, is that—if you look at clause 35:

"The DNA Board shall —

(a) monitor the accreditation process of any laboratory which seeks accreditation and approval as a forensic DNA laboratory; and

(b) ensure that all approved forensic DNA laboratories maintain their accreditation status."

The reason we accepted this was that there was a compelling argument that the creature in the Bill called the custodian would merely be in charge of the custody of samples and the custody of the information. But something as technical as this, there was need for continuous accreditation and certification of the DNA laboratories which would be doing the testing, producing the results, and so on, and it was felt, therefore, that it would be wise to have a board that would continuously monitor laboratories and confirm that they maintained proper accreditation.

Because one of the points that came out most significantly during the deliberations of the committee was the accuracy of the results, because the

question of DNA testing for the purpose of criminal trials—forensic DNA testing—could make the difference between life or death. It could determine whether somebody who is charged for murder, for example, would be set free because testing would prove that they were not at the crime scene; they were not associated with the crime at all, or it could prove that they were there. Therefore, the accuracy of the testing was found, by the committee, to be very, very important. This is why, essentially, the DNA board now forms part of the Bill and the DNA board will have the responsibility to monitor the forensic DNA laboratories and ensure they maintain their accreditation status.

We have also included a provision, clause 37, that the DNA board would report to the responsible Minister who, in this case, would be the Minister of National Security, and report on its findings and its operations, and the Minister shall lay the reports of the DNA board twice annually in the Parliament. This is all part of ensuring the integrity of the process of sampling and of investigation.

But going to the report itself, if you look at page 5 of the report you will see some of the important issues that came out during the deliberations of the committee. The first one was the constitutional implications if DNA samples are to be obtained from all members of the protective services for the creation of a protective services DNA databank.

The second was the whole question of the board. Well, I have already given some information on that, by the office of a custodian. The third one is the accreditation of the existing Forensic Science Centre and other approved labs. The fourth issue is something that Sen. Cropper, Sen. Kangaloo and Miss Lucky were at pains to examine. It was the question about a victim, a child, an incapable person; the differentiation between a suspect and a victim, and so on. The fifth item that the committee looked at was the period which samples would be kept by the Forensic Science Centre. Again, another aspect of the legislation that the Senators looked at was the utilization of a Justice of the Peace to secure DNA samples from a minor or incapable person, in instances where a parent or guardian may refuse to give consent or cannot be found, and the differences between intimate and non-intimate samples.

Again, in that last one, Dr. Nanan gave us some trouble in terms of defining properly what an intimate sample was and what a non-intimate sample was. In fact, we had quite a lot of discussion about an oral swab; whether that was an intimate sample or a non-intimate sample. As far as I can recall, when we had finished with that discussion, we went down on the side of oral swab being a non-intimate sample, but I will just check the Bill itself to ensure that that is so—yes,

that is so—because there was a lot of discussion about whether that was an intimate sample or a non-intimate sample, and so on. It is a non-intimate sample.

In fact, if you go to the definition you will see:

"'intimate sample' means-

(a) a sample of venous blood;

(b) a urine sample;

(c) a sample of semen…

(d) pubic hair;

(e) a dental impression; or

(f) a swab taken from"—

various parts of the body, and:

"…other than the mouth;"

So that it was felt that samples like a hair follicle, piece of nail, piece of skin and an oral swab, could be deemed to be non-intimate samples. In fact, an oral swab is a very common type of swab that is used to obtain non-intimate samples. You will see the definition for non-intimate samples also in the definition section: a sample of hair; a fingernail or toenail; a swab from any part of the body other than a swab that would be an intimate sample; saliva; skin impression, and so on.

Now going back to the issues that we looked at, one of the issues again that we took some time on was the question of a protective services database. This had come up because of a commitment given by the hon. Prime Minister in the other place during the first debate on the DNA Bill. The Leader of the Opposition had asked that the DNA testing for members of the protective services be mandatory and we had to get an opinion from the Attorney General's office to establish whether, even if we pass this legislation with a special majority, requiring that DNA samples be obtained from members of the protective services, whether that would fall into the category of—I do not remember the precise words, but a law in a society that has respect for the rights and freedoms of persons. It is not reasonably required in a society—that particular section of the Constitution.

So we had to look at that very carefully because we did not want to fall into a situation where we would establish a protective services database and then a police officer or a member of the defence force, as the case may be, could challenge the constitutionality of that provision.

2.30 p.m.

We were advised that we could do it. I might add that this Bill requires a special majority because we are dealing with people's rights. The question of a protective services database now arises in clause 12(1) of the Bill which states:

"An officer of the Protective Services shall give a non-intimate sample."

Sen. Seetahal SC: That is not mandatory.

Hon. C. Imbert: I will leave that up to you, Sen. Seetahal. I regret to inform hon. Senators that I have another engagement later in the evening. Therefore, with your leave I will be presenting the Bill and my colleague, the Attorney General will wind up. I ask that you address matters of drafting to him. In any event he is more than qualified to deal with matters of drafting in addition to matters of policy.

Let us go back to the issues that were raised and considered relevant. There was a strong view that if you want to be a police officer or member of the defence force you will have to give a DNA sample. This is for the purpose of elimination. You are not doing it in a punitive way to try to catch someone. I do not think that when the Opposition proposed this that was their intention. You want to eliminate members of the protective services from the forensic analysis. If however, their samples turn up they would have to deal with that.

On the question of accreditation there was much discussion and trouble trying to establish how to accredit laboratories in Trinidad and Tobago that will be authorized to do forensic testing. Eventually, we decided that they will have to seek international accreditation for the time being until there is a suitable body or organization in Trinidad and Tobago with the competence to accredit forensic laboratories. If you go to Part X, clause 33(1) states:

> "A laboratory shall not conduct forensic DNA analysis unless it has been accredited by an international accrediting body listed in Part A of the Second Schedule and approved by the Minister in accordance with subsection (2)."

In addition, we decided that in order not to completely torpedo the work being done by the Trinidad and Tobago Forensic Science Centre—because we were given reasonable assurances during the deliberations of the committee that the Forensic Science Centre was subjecting itself to international accreditation. We were reasonably satisfied that they were doing so. We have given the Forensic Science Centre an exemption. Clause 33(3) states:

> "The Trinidad and Tobago Forensic Science Centre shall be deemed to be an approved forensic DNA laboratory for a period of three years after the commencement of this Act."

We decided by consensus that we will give the Forensic Science Centre a grace period of three years to obtain complete international accreditation. We have allowed an extension period in clause 33(5) that the grace period can be extended for a further period not exceeding one year. Let us assume that they apply and receive the one year, after the fourth year the Forensic Science Centre will not be permitted to do forensic DNA testing, or if they did, their results would not be acceptable unless they had been accredited by an international accredited body as listed in the Second Schedule.

I will give you an idea of what is in the Second Schedule. It states:

"(1) The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)

(2) Forensic Quality Services—International (FQS-I)

(3) The Standards Council of Canada (SCC)

(4) The United Kingdom Accreditation Service (UKAS)"

The Forensic Science Centre satisfied us that they were subjecting themselves to inspection by some of these agencies. We decided to give them a three-year period because if we did not, there would be no accredited forensic science centre and no DNA testing in Trinidad. It would have made the Bill useless. It is entirely up to a judicial officer to make up his mind as to whether the evidence presented is acceptable. We had that kind of discussion as well.

The other matter that we looked at very carefully was the office of the custodian. We introduced in the Bill a procedure for the removal of the custodian because this person will be charged with a very heavy responsibility. This person will ensure the integrity of the records. The DNA test will be done by the approved laboratory and then sent to the custodian who will keep the records. If the records are tampered with or not kept securely, you can have errors whether deliberate or otherwise which can lead to conviction or no conviction as the case may be, and have profound implications on the criminal justice system.

In the clause that deals with the forensic DNA databank—let me get the correct wording as amended in the House of Representatives. Part XII, clause 42(5) states:

"The President shall terminate the appointment of the Custodian where the Custodian—

(a) is found to be of unsound mind or is incapable of carrying on his duties;

(b) becomes bankrupt or...;

(c) is convicted of any offence which brings his office into disrepute;

(d) is guilty of misconduct in relation to his duties;..

(e) misbehaves in office;

(f) fails to carry out any of the duties or functions…;

(g) is incapable, for whatever reason, of performing his duties and functions under this Act."

We felt that it was necessary to put in this to allow for the removal of the custodian by the President if you had a wayward custodian interfering with records or producing inaccurate data which as I said, would have profound implications and could cause the life or death of a person.

The other issue we spent much time on was the question of obtaining a sample from a child. We were informed by the police authorities that in many cases—

Madam President: Minister, you should be speaking to me. Turn this way. I feel left out.

Hon. C. Imbert: Madam President, I forgot your expertise in this matter. I deeply apologize. I forgot this is a matter in which you have deep interest.

We were reliably informed by the police that some criminals utilize children to commit criminal offences and exploit loopholes in the law where you cannot treat with minors in the same way that you can treat with adults. The whole question of consent arose. If a child is suspected of having committed an offence—a gang of criminals employs a child to commit an offence and you want to take a DNA sample you will run into the problem of consent because a child is not deemed to be capable of giving consent. We are not talking about a 16–or 17–year–old. Clearly, that person can give consent but within the framework of the law you cannot obtain consent from a child. We had much discussion on this and how we will deal with it. It is known that these criminals use children to commit heinous offences. We eventually came up with this solution. I go to Part VI. Clause 19 states:

"(2) Where a child or an incapable person is detained, arrested or charged for an offence, no intimate sample shall be taken from that child or that incapable person except by an order of the court.

(4) Where an application is made under this section, an investigating officer shall cause a copy of the application to be served personally on the

person from whom the intimate sample is to be taken, or in the case of a child or an incapable person, on the parent or guardian of that child or that incapable person."

It goes on to give a series of conditions which will guide the court in terms of granting such an order. We had much discussion in terms of what the authorities should be allowed to do.

The other part of the legislation which deals with children is Part IV, clause 9. Madam President, I forgot that I have to look at you. I am sorry.

"(2) Where the victim is a child or an incapable person, a police officer shall obtain the consent of the parent or guardian of that child or incapable person before a non-intimate or intimate sample is taken.

(3) Where the person assisting in the investigation of an offence, other than a victim, is a child or an incapable person, a police officer shall request the parent or guardian of that child or incapable person to consent before a non-intimate or an intimate sample is taken."

The discussion we had was that this was perhaps setting the bar too high and creating difficulties. One of the problems with DNA evidence is time. That is very important. If you wait too long the sample or the integrity of the sample may be destroyed and you may not get an accurate reading to use in prosecution.

We were toying with the idea of allowing a Justice of the Peace to authorize the taking of a sample from a child rather than making an ex parte application to the court. On balance, based on knowledge of the situation not only with Justices of the Peace but the entire system, it was felt that notwithstanding the risk that evidence may deteriorate or be tampered with, in order to protect a person's rights it was far better to include the provision of an ex parte application to allow a judicial officer to make an order for a non-intimate or intimate sample.

Sen. Seetahal SC: The judicial authority is a judge in chambers. Why does it not include magistrate? Under the Act it says court means judge in chambers. Normally, if you want to get fingerprint samples taken you go to a magistrate if the accused refuses.

Hon. C. Imbert: I am advised by my honorary legal luminaries to the left and right of me, that it is a question of time. You may want to do it at 1 o'clock in the morning. That was the reason given for making it a judge in chambers.

Hon. Senator: Face the President.

Hon. C. Imbert: I like talking so.

Madam President: I do not know what you do in the Lower House, but you address the Chair.

Hon. C. Imbert: Yes, Madam President. In the other place we are accustomed with throwing words across the floor.

Sen. Seetahal SC, the reason was in the interest of time. A judge in chambers is available at 2 o'clock in the morning. I will leave those matters for the learned Attorney General to deal with. We thought about it for a long time and we felt that because of the urgency of the situation we would not want you to go looking for a magistrate and you could not find one, but you would find a judge immediately. Judges are scheduled every month to be available at a moment's notice. A judge in chambers is always available; just a phone call away. That was the intent and the committee is of the view that that was the correct approach.

Let me move on to some of the other issues. I will not call this a work in progress because we did much enhancement, refinement and improvement to the Bill. The Government will take on board suggestions as the one made by Sen. Seetahal SC. In terms of the time frame I ask that we leave that for another time. Most certainly, I will give a commitment that I will advise whoever the relevant Minister may be at the time that we need to address the question of whether we should amend the legislation to include a magistrate. I ask that we treat other issues in a similar way unless it is something that Senators consider to be critical. I am not trying to make any impositions on the Senate. If we amend this today we will have a little difficulty in going back to the Lower House to make further amendments and have this Bill proclaimed, enacted and put into effect within a short space of time. I do not want that to happen. I appeal to the milk of human kindness on the other side to let us go with what is here and we will take note of your suggestions and address them as best as we can.

I have dealt with the question of the custodian; DNA board; taking of a sample from a child and the protective services database.

The other thing we looked at that we thought was very important are post collection procedures. In all this there will be challenges. How will an accused person challenge this legislation and try to avoid prosecution or conviction? [*Interruption*] They could avoid prosecution too. Madam President, we will not go into that. Sen. Seetahal SC you are right. How they avoid conviction. If we go to clause 30 "Post collection procedures" states:

"(1) A police officer shall ensure that between the time when he takes a non-intimate sample or collects an intimate sample and the time of delivery to a forensic DNA laboratory, the package containing the sample is properly stored."

When a sample is taken it then has to be delivered to the laboratory for the analysis. During that process the sample can be destroyed or stored in a place with high temperature that might degrade it or it might be stored in a place with much moisture. It can be contaminated by other persons putting their hands on it. We put in between the time when the police officer takes the sample and the time that it is delivered to the DNA lab the package must be properly stored.

Clause 30(2) says:

"The police officer shall deliver the package to a forensic DNA laboratory immediately or as soon as reasonably practicable from the date on which he takes or collects it for the preparation of a report…"

That is delivery.

We go now to receipt. Clause 30(3) says:

"A person who receives the package at a forensic DNA laboratory, for analysis, shall ensure that the package is properly sealed, labelled and identifiable both by him and the police officer who delivers the package."

In clause 32 we have put in a provision that the DNA laboratory shall keep samples for a period of 10 years. They told us that they have the capability to do that. I think that previously, it was for three years. We saw no reason to leave it for three years. We thought that we will extend it to 10 years.

Sen. King: I am wondering if we have taken into account the fact that our judicial system takes an awful long time to bring some of these cases and maybe, 10 years is not enough. Should we not have a clause that will cover that kind of extended justice system that we have?

Hon. C. Imbert: I am advised by the Attorney General that 10 years should be adequate. This is not a work in progress but there is flexibility in due course to make amendments. The forensic laboratory will be keeping much data which they did not have before. There is a question of storage facilities. The samples will keep accumulating. If you have to keep samples for 10 years there will be 10 years worth of samples. In discussion with the Forensic Science Centre, we said reasonably, in the foreseeable future, how long can you manage and maintain

samples? That is how the 10–year period came. I take your point. I want to make the point that we have 10 years to amend this provision. From the commencement of this Act they will have to keep the samples for 10 years and that is long enough for us to think about it and determine whether we should keep it for 20 or 30 years.

If you go to clause 32 we put a caveat. It states:

> "(2) Notwithstanding subsection (1), a court may order that an intimate sample or a non-intimate sample…shall not be destroyed if the court is satisfied that the sample might reasonably be required in an investigation or prosecution of that person for an offence or any other person for the same offence…"

In the next Part we included a provision for other laboratories to be accredited because we did not want to leave it to the Forensic Science Centre. The other labs that may wish to come on the system have to be accredited by an international accrediting body and we have listed the more well–known accreditation bodies. We have also listed foreign accredited labs. If you look at Part B of the Second Schedule you will see Broward County Sheriff's Office Crime Lab; Florida Department Law Enforcement, Orlando Regional Crime Lab; FBI Lab, Washington; Miami-Dade and others.

We have listed a number of labs. This will allow the local Forensic Science Centre to send samples overseas and utilize the services of an accredited laboratory in the United States, Canada or the United Kingdom to do analysis. For one reason or the other if the Forensic Science Centre in Trinidad and Tobago feels that it is better to send it overseas, or they want a second analysis if it is a very delicate matter, we have listed a number of foreign accredited labs. This is covered in clause 33(4) which states:

> "A forensic DNA laboratory may enter into an agreement with a foreign accredited laboratory…"

The provisions are self-explanatory. The purpose of the board is to monitor the accreditation and ensure that approved labs maintain their accreditation status.

There was also the creation of the databank. The forensic DNA databank will comprise a crime scene database; a volunteer database—somebody might volunteer to give DNA to prove his or her innocence—protective services database which is covered by clause 12 and a non-intimate and intimate sample database. This is where the custodian comes in. Clause 42(1) states:

"There shall be a Custodian of the Forensic DNA Databank who shall be responsible for receiving and storing all DNA profiles…"

Let me explain. The DNA profiles are not the actual samples; they are the analysis. The DNA laboratory will do the analysis of the physical sample and then the printout or the electronic data that comes out will be sent to the custodian who will store the results. The custodian is not storing physical samples. The custodian will store the results of the analysis. In this particular legislation it is called a DNA profile. On everybody who is tested there will be a DNA profile which will be stored at the forensic DNA databank.

It goes on to indicate that the remuneration of the custodian will be a charge on the Consolidated Fund to ensure that the custodian gets his salary so that he will not be under any pressure. The custodian shall be provided with adequate staff.

The duties of the custodian are in clause 43. The custodian shall maintain the databank; conduct searches against the databank and ensure that the data is securely stored and remains confidential.

Another clause that we had much discussion on is the disclosure of DNA data. Clause 44(1) states:

"…the custodian shall not disclose any DNA data and where he discloses such DNA data, he commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years."

We gave exceptions. Clause 44(2) states:

"…the custodian shall disclose DNA data to—

(a) an officer of the First Division, to be used in the course of a criminal investigation or proceeding;

(b) the person from whom the intimate or non-intimate sample was taken or his representative and the person from whom a request was made;

(c) a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters;

(d) a tester making a request for a profile from the protective services database; and

(e) a person who has obtained an Order of the court for disclosure of DNA data.

The judicial officer is also given the flexibility to require that the custodian will disclose DNA data based on an order or request from the court.

The custodian has to report to the Minister and the Minister will cause the report to be laid in Parliament on an annual basis within three months of receiving it.

The other clauses that come after that are typical. No proceedings shall be brought against a person in respect of taking a sample using reasonable force unless there is negligence, which is covered in clause 46(2).

The following clauses deal with protection of persons' rights. In clause 48:

"…no evidence obtained as a result of an intimate sample taken from a person under this Act shall be inadmissible in any proceedings merely because a person…was not present during the taking of the sample, if all reasonable steps have been taken to ensure that the person so chosen was notified—

(a) that the person from whom the intimate sample was taken wished him to be present…;

(b) of the date on which, and the time and place at which the intimate sample was taken."

Clause 50(1) states:

"A person who wilfully and without authorization—

(a) takes a non-intimate or an intimate sample without consent or an order of the court,…

(b) gives false information…;

(c) discloses or obtains DNA data…;

(d) breaks the seal of …any DNA package;

(e) …tampers with the container…;

(f) adds, deletes or modifies any information…;

(g) provides false information…;

(h) …attempts to gain access to the Forensic DNA Databank;

(i) gains or gives access to a non-intimate or an intimate sample or sample;

(j) uses a non-intimate or an intimate sample; or

(k) omits to submit DNA profiles to the Forensic DNA Databank,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years."

3.00 p.m.

We also sought to deal with persons who were convicted of an offence prior to the coming into force of this Act, trying to protect the rights of persons who may be in prison at this time. That is in clause 51, which states:

"(1) Where, before the coming into force of this Act, a person—

(a) was convicted of an offence; or…

(b) …and has filed an appeal…

he may make a request, in writing, to the Commissioner of Police for forensic DNA analysis."

Of course, this could only be carried out where the evidence still exists and the person consents to give the sample.

In clause 52:

"(1) In any criminal proceedings a document purporting to contain information required to be recorded under this Act is admissible as evidence of the facts…without proof of the signature or appointment of the person who recorded the information…"

unless that person is called by the court to be a witness.

Basically that is it. Clause 53 deals with regulations. We sought, as far as possible, to make this legislation operate without regulations. There will be the need for regulations eventually, but the committee sought to cover every possible thing and include it in the legislation. If you look at the schedule, you will see the forms. These would normally be found in the regulations, but we have put them in the legislation itself. There are notification forms for the taking of samples, a volunteer form and waiver of rights form and so on. We put a series of forms into the legislation and we have also the consent form and a schedule of the list of accrediting bodies and foreign accredited laboratories.

Madam President, I think the Parliament should congratulate itself for the manner in which all members of the committee addressed themselves to this very important legislation. Everybody took it seriously and I am satisfied as chairman of the committee that everybody wanted to make sure that we were able to enact the legislation as soon as possible to protect people's rights. It was truly an example of the Parliament at its best.

I congratulate all members of the committee. It was a pleasure to be chairman and to present the legislation to this Senate today. Unfortunately, I will not be here to complete the legislation. The Attorney General will wind up and I am sure he is more than adequate to the task.

I beg to move.

Question proposed.

Sen. Dr. Tim Gopeesingh: Madam President, I had the privilege and pleasure of being a member of this Joint Select Committee of Parliament, looking at the DNA Bill. This country has been asking for this Bill for a very long time. Prosecuting and defence attorneys have been looking forward to its proclamation.

The management of the work that went on in the preparation of this Bill is a direct example of how Parliament can work when there is cooperation on both sides in important pieces of legislation. We saw examples of that in the Breathalyser Bill, the Pharmaceutical Bill and the Police Reform Bills. I echo the sentiments of the hon. Minister that the manner in which the committee worked was exemplary and I am happy to have been a part of the work done on this important piece of legislation.

There are certain things that need to be said. You may say it is political, but they need to be mentioned. I congratulate the Minister on the way he conducted the meetings. [*Desk thumping*] There are many times he had to go back to his administration about issues we brought up, for example, the issue of the custodian, the presence of the board and the accreditation of the forensic laboratory. Obviously, he was strong in his approach because they supported him based on the recommendations we made.

We in this Senate would remember that we had a Deoxyribonucleic Acid (DNA) Act in 2000, which came under the UNC legislation. We thought that would have been important enough for us to continue working with subsequent to the enactment of this piece of legislation. I do not know why this administration sought to repeal the Act. What they wanted to change was the question of no board being on the DNA Bill and one or two other issues. There was no necessity for a fundamental repeal of the Act and taking six years to bring it back to Parliament. When you examine what has been brought back, the same thing to which they agreed was in the original Act.

It is unfortunate that the repeal of this Act has cost the country, possibly, thousands of lives, with thousands of crimes being committed by people who might have been caught if the Act had continued. Many criminals would have

been apprehended and many crimes detected if the Act had been allowed to continue during the six years. We would not have had this plethora of criminal activity. A significant number of these murders and kidnappings are committed by the same people over a period of time. If the Bill had been allowed to work subsequent to 2000, we believe that we would not have had the number of serious crimes, kidnappings and murders being committed.

Madam President, this committee worked very hard from February 23 to June 29. There were about 11 meetings. The Minister worked very hard and a number of members of the committee were present at almost all those meetings.

This brings another aspect of parliamentary work. You will find that Ministers of Government are heavily overworked and, for some reason, they are not able to attend meetings like this. If we compare what is happening in the Westminster system where a number of Bills are brought before Parliament, particularly in Britain, much of the work is done behind the scenes with the agreement of both the opposition and the government. It is then brought for ratification to the general Parliament.

This is where we are having some degree of difficulty. It is affecting not only this type of work, the joint select committees, but committees of Parliament where you are trying to have a quorum. I felt the pain for the hon. Minister when he was trying to have a quorum for the work of this committee to continue. It brings out an important aspect of the work of Parliament that we have to develop another mechanism. Some sort of constitutional change needs to be undertaken so that there will be more cooperation and collaboration between the Opposition and Government in terms of important pieces of legislation.

It is important that not only these pieces of legislation be looked at in that manner, but many others can be sorted out and work done by both sides when the interest of the country is at heart. We have to take into consideration the lives of people on a daily basis. In that context, we need some degree of change in the functioning of work for important pieces of legislation. This was a good example of cooperation and collaboration on both sides. It is similar to the Breathalyser Bill, the Pharmacy Bill, the Police Reform Bills and a few others.

It took too long for this administration to bring back this Bill. People have been calling for it for a long time now. I do not need to go back to cases where the public needed to have the Act, particularly in one case that had gained notoriety, the Akiel Chambers case. There are many other cases like that, but this gained much media analysis.

Madam President, this Bill has a number of clauses that are well put together, but it touches on some important issues. I will go through a few of these. There is the Forensic Science Centre. If a crime is committed and we take a specimen from a particular crime scene or we need intimate and non-intimate samples, these have to be taken to the Forensic Science Centre. That brought up the question of whether the Centre is competent, with international standards, capability and recognition.

You have heard that the Centre is short of, to some extent, expertise and infrastructure in its proper functioning. In the deliberation of the work for this Bill, the whole question of accreditation came up; whether the Centre is properly accredited. For the enactment of this Bill, it has to be the centre where DNA samples are stored. If not properly accredited, it can be questioned in the court.

For a period of time, we looked at the whole question of how it could be accredited and we went back to whether the Trinidad and Tobago Bureau of Standards under the Standards Act would accredit the Forensic Science Centre. What came out, on page 36 of the report, someone stated that:

> "her concern was with the definition of the term 'forensic DNA laboratory' as it means a place, approved by the Trinidad and Tobago Bureau of Standards under the Standards Act, in which the DNA analysis is conducted. The problem was two fold. Firstly, the Trinidad and Tobago Laboratory Accreditation Service established under Regulation 39 of the Standards Regulation 2004, which falls under the Bureau, has not accredited any laboratories to date and secondly, it is not in a position to accredit a forensic laboratory."

It is important for the Government to note that we have a Bureau of Standards with a Trinidad and Tobago Laboratory Accreditation Service established under Regulation 39, which has not accredited any laboratories to date. Also, it is not in a position to accredit a forensic laboratory.

While we were looking at this, we realized that there are many things taking place in this country that are not acceptable. If the Bureau had been functioning very well and the Trinidad and Tobago Laboratory Accreditation Service had been operating, we would have found that many laboratories would have been closed.

In Trinidad and Tobago, we are not speaking about the forensic laboratory alone, but a number of laboratories throughout Trinidad and Tobago. I cannot help because I am a medical professional, Madam President, and so are you and many of my colleagues. There are a number of laboratories operating that do not

have quality control and I make a plea today for the Minister of Legal Affairs to take on very actively the pursuit of the operation of the Bureau of Standards in terms of the accreditation of laboratories. There are blood laboratories, ultrasound laboratories and a number of X-ray departments—I am speaking from the medical perspective—and the results are atrocious.

Recently I had to call one of the important laboratories with offices throughout Trinidad and Tobago, which is supposed to be good. I said to the head guy: What is happening with your results? You are throwing people's lives into chaos. Your laboratory values are erroneous. I am not the type of person to call the name, but he knows about whom I speak. I can give the Government the reasons why I make this statement.

The medical laboratories' values alone are wrong. There are ultrasound departments flying up through the country—I am sorry I have to get into this, but it is akin to the forensic lab—giving people wrong information and the poor mothers, parents and patients are distraught as to what their problems are. Many times there are people trained locally for two or three months and they become experts—you know about what I speak, Madam President—give wrong information and the lives of citizens are affected very badly as a result of the malfunctioning of these laboratories. To close that point, I re-emphasize that the Bureau of Standards go to work as early as possible to ensure this type of irregularity and wrongdoing to the society does not continue.

This team had to allow a period of three years to facilitate the enactment of this legislation. If we were waiting for accreditation from an international accreditation authority, they would have to see the work of the laboratory before doing that and it would have stymied the enactment of this piece of legislation. We therefore indicated that we would allow a grace period of three years to ensue. The work of the Forensic Science Centre would continue and then the international accreditation authority would look at the work, which would facilitate the enactment of this Bill and make it into an Act.

The other part is that the Government has to be very cognizant of the fact that you have to take a direct responsibility for the operations of the forensic laboratory, providing enough infrastructure, human resource personnel and technology that would go to making the lab very successful. We cannot pass or enact a DNA Bill, have samples carried there and they are not taken care of properly. The criminal justice system will fall down because the laboratory is not functioning. We have had the pleasure of meeting some of the people at the forensic lab; they are competent, but there must be a strengthening of the lab.

I had to draw to the attention of the members that the board is not less than three or more than five. Clause 34 states:

"(1) There shall be a board…whose members shall be appointed by the President.

(2) The DNA Board shall be comprised of not less than three and no more than five members including:

(a) a forensic scientist with specialization in the discipline of DNA analysis with not less than five years experience;"

I believe it is important for the administration to ensure that that person is on board.

"(b) a human geneticist with not less than five years experience or a person with similar qualifications, skills or competence;"

Madam President, you are aware, being a medical person of long standing, that we do not have a clinical geneticist in the Caribbean. Nobody is qualified in that field. That is why we were forced to put "a person with similar qualifications, skills or competence". If we are to be a trail blazer in this field of DNA testing—this Government has a lot of money—obtain such a skill and bring the person to work in this forensic lab.

The other person is a representative of Trinidad and Tobago Laboratory Accreditation Service. Obviously that service has not been working well, so I do not know where we will find personnel for that. In terms of the composition of the board, the Government will have to do a lot of work to get the right people to be on that board. It was this administration that said it did not want the board. They turned around and accepted the board and we are very happy they have made that decision. Without a board monitoring and evaluating the performance of the laboratories and the work of the DNA analysis, standards will fall and we will not be able to get the correct type of work.

On the issue of custodian, we appeal to the administration that, in selecting this custodian, the person be a man of impeccable integrity. He will be the one to store all the data for every criminal case that is analyzed, for every crime where DNA samples are taken. If we do not have a person with impeccable character and integrity holding the information and giving it out only when ordered by the courts of law—if he decides to do what someone did when they gave out the information on Mr. Panday, which they were not supposed to have done—people's lives will be involved as a result. That is of fundamental importance.

In terms of taking of samples, just like the Breathalyser Bill, we have to train people nationally—the police officers and the technicians—on how to use the apparatus. The taking of samples for DNA analysis is critical. I will give an example.

Just yesterday after doing surgery at Westshore Medical Centre, a young doctor spoke to me. She indicated to me that her husband, a pediatrician at the Eric Williams Medical Centre, sees, almost on a daily basis, sexual abuse of children. Boys are being buggered by teenagers and young adults and girls under the age of 12 are being raped. There is incest and rape by strangers and for some reason they find that some of these children are going with strangers and sexual acts are being committed against them.

This pediatrician does not know what to do to assist in apprehending the perpetrators. There is the buggery of young boys, seven years old. She related to me that one child had a fractured collar bone as a result of a criminal act committed on him. He knows the child was buggered; the child was lying on the bed for almost three days. They did not know what to do. There is a paucity of Medical Social Workers in Trinidad and Tobago. When this Government speaks about social problems, it knows it is dancing top in mud. We do not have clinical psychologists. These children's lives are affected for the future.

I have to deal sometimes with female patients who have been raped and their whole life turns into a nightmare. They end up in marital problems because the act of just being loved by a man is frightening and they are traumatized for life. Imagine a child being traumatized at age five, six or seven. They do remember and it haunts them for life.

The doctor was telling me that he cannot take samples to apprehend. He does not know what to do or what samples to take. He knows that for a female he has to take a peri-vaginal swab, an intimate sample, and on young boys, an anal swab to determine DNA analysis.

3.30 p.m.

I am appealing to this Government—in the midst of this great deal of uncertainty at the moment and the inability to deal with the situations—the DMO is unable. The functions of District Medical Officers are to deal with it because they do not have the facilities to deal with the situation. When we speak of the DNA Bill, this is only the beginning of something that will relate to the reduction in crime. It is one of the things that would help, not only in the reduction but with detection.

We need to train people, medical professionals, dental professionals, midwives and nurses. Midwives and the nurses will be doing the intimate samples under medical supervision. It necessitates a massive training programme nationally. With all the people involved, particularly the district medical officers and doctors working in communities and the government doctors, who would be able to do this?

A child abuse problem exists in Trinidad and Tobago. My younger colleagues are telling me, as pediatricians, that they are appalled about the vicious criminal activities against our young children. I was asking Sen. Mark the name of the legislation which would ensure that the children are protected in Trinidad and Tobago. [*Interruption*] The Children's Authority Act has to be enacted as early as possible. The Government has to move expeditiously to ensure that this moves on. We cannot allow the lowering of the sanity of our young children. It would affect them for the rest of their lives, to be marauded like that. We must protect these children.

After the acts have been committed you cannot do very much again, but at least you would be able to apprehend the person by taking the samples, storing them, transporting them and analyzing them properly. Give the facilities and the tools.

The police officers would be able to deal with non-intimate samples such as under the nails, as my colleague said, the toes and the hair. Those are non-intimate samples. There are intimate samples such a buccal smear in the mouth. You can take a scraping and get a DNA analysis. Seminal fluid, sweat, blood, anal and vaginal swabs are intimate samples. People have to be trained. Police officers would not be doing the intimate samples. They would be doing the non-intimate samples. Therefore, it needs a massive training programme.

If there is someone affected by a criminal activity and you want to take a sample from somebody whom you suspect is a perpetrator of the crime, and that person does not give consent, the police would have to go to a superior officer from the First Division, get that superior officer to sign a warrant for the person, to ensure that they comply with giving that sample and the sample has to be taken in. The person is then allowed to call a lawyer or somebody. That person must be present. The First Division officer and the police officer must be present. Where do we go? There is a scarcity of First Division officers. If a First Division officer has to be present when that sample is taken, we would be utilizing almost the whole cadre of First Division officers for this piece of legislation alone.

Hon. Attorney and Ministers of Legal Affairs and National Security, this Act calls for a lot of work from First Division police officers, in addition to the police officers, in addition to the medical personnel, the nursing personnel, the police officers and the First Division police officers. This Act is a mammoth task before this Government, to ensure that this legislation works effectively and very well to apprehend criminals and for their detection and conviction. It is important. We spoke about it during discussions on this Bill.

The training that is needed has to be actively undertaken as early as possible. To make this successful, a lot of work must be done with respect to training, collection of samples, how they are collected, how they are transported, analyzed and stored.

The Minister said 10 years. I know that Sen. Mary King asked what would happen if cases go beyond 10 years. The judge has the ability to indicate that there should be no destruction. In normal medicine, when we do an analysis of a specimen of a tumour that we removed from a patient, that pathological analysis or slide is stored for five years. Beyond that, it is destroyed because the laboratories will then be filled with these slides over a period of time. Ten years is an adequate time, because you cannot store all these analyses, the labs will be overcrowded. Certain ones would have to be kept back. I think originally, it was three years for it to be stored.

That brings a fundamental issue. This DNA Bill alone is not the panacea to solving crime and early detection. There are a number of other issues which this administration has to take significant cognizance of, in terms of if we want detection. This DNA Bill alone will not help it. Hon. Attorney General, Sen. Prof. Deosaran asked a question about statistics, which has been lingering on the Order Paper for a long time. But, how is it that the UNC is able to get statistics on serious crimes, minor crimes, kidnappings and criminal activities and you are unable to get them? I can give you. Here are15 pages that the UNC was able to get on crime statistics for 2002—2005. It gives the number of kidnappings for ransom, children kidnapped and rescued by police. We got it from the Central Statistical Office. You can get it there.

Sen. Jeremie SC: I have been asked to provide information in relation to the Judiciary.

Sen. Dr. T. Gopeesingh: You may mean well, but there are certain things as well. The Minister of National Security as well had not been—it was debated in the Senate and we have been asking for certain statistics. This shows the report of murders committed for 2002—2006 and the probable causes of death. It involves

gang-related, drug-related altercations, robbery, domestic violence, revenge, state witness, line of duty and rape. The information is available. Do not try to—It is not a nice thing for you to come to the Senate and try to evade answers. Come to the Senate and level with the Senate and say: "We are trying to get the information." If we were there—when we come there—and you asked, we would have given the answers—we will be in government pretty shortly.

Sen. Jeremie SC: I look forward to that day. The point about me seeking to evade answering questions, I think that is unfortunate. I have given an explanation as to why I have not been able to answer the question posed by Sen. Prof. Deosaran, which is specific to the operations of the Magistracy. I gave that explanation and I would like it to be accepted at face value.

Sen. Dr. T. Gopeesingh: I believe that sometimes you try your best but, sometimes you mislead the Senate, whether knowingly or unknowingly.

Madam President: Be careful of what you are saying. You cannot impute improper motives.

Sen. Dr. T. Gopeesingh: I was bringing the point that the DNA Bill alone will not be able to deal with the issue of detection. There are many other areas that need to be brought in. For instance, we have reports of serious crimes committed for different years. We have woundings, shootings, rapes, serious indecency, kidnappings, burglaries and break-ins. The DNA Bill would apply to all these areas such as robberies, fraud offences and larceny of dwelling houses. The statistics revealed that almost every year 17,000 serious crimes—

In 2003, there were 16,890 and detection was 4,005, which is 25 per cent. In certain areas like Port of Spain, the detection rate is only 14.8 per cent. I am quoting statistics from the CSO, the detection rate from January 01 to May 31, 2006 for Port of Spain. The number of serious crimes was 1,424, detection 211, or 14.8 per cent; Northeastern, 16.5 per cent; and Tobago, 17.5 per cent detection. The serious crimes averaged at 17,000 or 18,000 per year and minor crimes were 16,000 per year. We have a situation between minor crimes and serious crimes, 33,000 to 34,000 cases per year.

How far will this DNA Bill work to ameliorate, prevent or detect these when particularly we see low detection rates of 16 per cent, far less conviction? We have always said that many murderers are walking free under this administration. The chance of a murderer getting caught is minuscule. The likelihood of them being convicted is even smaller, approximately 5 per cent. Of those caught and convicted, 90 per cent of them would be released after appeal.

We spoke of the country's murders being 30 per 100,000. That is higher than Haiti and Guyana combined, which is 11.5 per 100,000 murders and 15.7 per 100,000 murders, respectively. Our murder rate is 19 times higher than the rate of England and 1,600 per cent higher than the murder rate of Canada. Of the 1,500 murders that were committed under this administration, the analysis suggests that only one to two of these persons would have been convicted and made to serve the sentence after appeals.

We want to see how they would work with the DNA Act, which, hopefully would be enacted and proclaimed pretty shortly, to ensure that the detection, as far as these criminal activities are concerned, improves. If we begin to detect these cases and convict criminals, the criminal rate will fall.

It is a well-known fact that the relationship between the murder rate, budget and expenditure, has been climbing exponentially. As the Government spends more money on crime, the murder rate still climbs.

This is a graph that we produced to show the Minister of National Security. [*Sen. Dr. T. Gopeesingh shows map*] Here, murders are climbing and the budget was climbing as well. We spend more money. [*Interruption*] We are not saying that. We need to do a lot more things. For instance, in addition to the DNA Bill, which will go towards early detection—

I want to quote for my learned colleague, Sen. The Hon. Dr. Lenny Saith, that the newspapers on Saturday, December 16, 2006 indicated that absent cops derailed prosecution, 1,000 cases were thrown out. The Police Service Commission's Chairman, Christopher Thomas revealed:

> "'The Commission held discussions with the Chief Justice to have police prosecutors removed from the courtroom and replaced with attorneys.' Mr. Thomas made this revelation during yesterday's public meeting with Members of the parliamentary Joint Select Committee."

It was right here.

> "In his opening remarks, Sen. Prof. Deosaran expressed concern over the dismissal of court cases because of the high absenteeism rate of police officers. Sen. Prof. Deosaran said: 'Within the past five months 1,000 cases were dismissed because of the non-appearance of police officers.'"

Police officers would be involved in the DNA Bill as well. If you have police officers taking intimate samples and non-intimate samples and having to go to court now, with the plethora of cases, you are putting more load on the police

service. With 1,000 cases thrown out in five months, what would happen when the DNA Bill is enacted and the police officers have to go to court?

Hon. Attorney General, this comes under your jurisdiction. You have to staff the Director of Public Prosecution's office competently, adequately, improve the staff and the numbers and pay them well. You need to get—there are more than 1,500 young lawyers in Trinidad and Tobago. They are graduating by the hundreds per year. Give them the proper financial remuneration and the proper conditions of work. Staff the Director of Public Prosecution's department and make sure that it is functioning, so that we would have attorneys prosecuting in court matters, rather than police officers. Let the police officers go on the beat. Move them away from administration and staff the DPP's office sufficiently, so that the 43 Magistrates' Courts would be staffed with court prosecutors.

The DNA Bill alone will not help this. What about the gun trade that is going on? How will the DNA Bill affect the gun trade? We have heard the police success rate into the interdiction of the flow of arms is abysmal. There have been networks organized for the purpose of smuggling guns. We do not know what the authorities have done, in terms of making attempts to target them. We have not heard about the Firearms Interdiction Unit and the performance of this unit. The coast guard and other national security units in stemming illegal gun import are woefully disastrous. A concerted, international effort, involving the coast guard, the Customs Division, the Ministry of Foreign Affairs and the Trinidad and Tobago Diplomatic Mission is necessary.

The DNA Bill comes into all of this. We spoke about a senior member of the police service being involved. There was money from a kidnapping attempt found in his presence and still nothing has been done about that particular police officer.

My life will be threatened. I walk around the Savannah by myself. I know my life could be snuffed out in a minute, but I have lived my life. It is important that I say what is in my heart and what is morally and fundamentally wrong.

No police officer, no matter now high he is in the service and close to whichever politician—he must be apprehended. The Commissioner of Police must not evade what he is responsible for. He must not say: "Mr. Gopeesingh, I want to see you now." He must deal with the matter and apprehend the senior officer.

Madam President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. W. Mark*]

Question put and agreed to.

Madam President: Senator, come back to the DNA Bill.

Sen. Dr. T. Gopeesingh: I would touch other areas. You have allowed me some flexibility. I have accepted that and am grateful for it. I want to touch on the other areas which they need to bring in conjunction with the DNA Bill. For instance things like—I want to quote an article of the Director of Public Prosecutions, Mr. Henderson:

> "You only have to look at the statistics to realize that many witnesses seem to be intimidated to the point where they refuse to come to court. It is a serious cause for concern. There are even police officers who are afraid to give evidence."

That is the witness protection system, which the hon. Attorney General came to defend. Again, he made a fundamental mistake. I tend to be very kind at times. I would not go back to that because you would want to pull me up if I said that he tried to mislead the Senate sometimes. I would not go back there. He knows full well that the witness protection system is not working well. The Government knows that. People are walking out.

The DNA Bill—no matter how much we apprehend people and get enough DNA sampling, testing and analysis and detect certain crimes—will not help because the police witness programme is not working.

I want to touch on the police vehicles. That is another area you need to look at, in terms of—a senior police officer told the PAC at a public meeting at the Red House that only 450 of the police service 972 vehicles are currently working. Asked of the operational status of this service vehicular fleet by—[*Interruption*]

Madam President: Senator, you are now being irrelevant. You were going really well in the beginning.

Sen. Dr. T. Gopeesingh: I will come back to your pleasing. When we talk about crime, the DNA Bill is supposed to prevent crime, to some extent, because criminals would be a little more fearful because there is the legal and technical know-how to detect them early. We hope that it will work.

This Government must not forget the fact that they have a weak police management unit, the vehicles are not in order, the police officers are not

supposed to be prosecuting in court and the police witness system needs to be improved. There are many other areas which have to be looked at over a period of time, by this Government, which they have not been doing to help in the early detection and prevention of crime.

There is one more area before I close. It is the question of the protective services. We are happy that we have pushed the Government's back against the wall, to ensure that all members of the protective services have a database on the analysis of DNA.

During the discussions, there was a thought process that only the new recruits would have a database. We said that people have lost confidence in a significant part of the police service and, therefore, every member of the protective services, whether it is the defence force or the coast guard, should be analyzed and that database kept for every officer. When a crime scene is being investigated and a police officer goes on that scene, he is fingerprinted or analyzed. There would have to be a comparison database on that scene to see what is happening. That alone would not help.

What is the technology that is available to officers on the road? Where is the technology that would be available if they are driving along the road and suspect a criminal and wish to fingerprint that criminal? They can compare it on an existing database. That technology has to be there. If there is a suspect who gives you that fingerprint, it is matched against the database. The technology that has to go in keeping with all these officers on the streets, particularly the mobile vehicles, has to be improved. Give some increased technology to mobile vehicles.

We are very happy that the Government decided that it would include the protective services in its database analysis. There are many other areas I can touch on, in terms of the criminal justice system, which so many of us have spoken about.

There is also the delay. This is why Sen. Mary King indicated that she was concerned about the storage of database analysis for 10 years, because our judicial system is way behind time.

We heard of the cries of parents who have been through the court system approximately 50 times and nothing has happened. One of our very distinguished colleagues in the Senate—we empathize with her plight—was brought through the judicial system to give evidence and to assist in the prosecution of the criminal over a period of time. She was frustrated. We empathize with her. The criminal justice system has to be improved considerably. You are woefully short on work, in terms of the criminal justice system. Something has to be done about it.

The Judiciary has gone into chaos and things have fallen apart. These are the dark ages of the Judiciary.

In concluding, we are very happy that we have been able to participate and give support to the Government on this important piece of legislation. We are proud that we have asked the Government to put certain things in the legislation and they have acceded. We are very sad that they repealed the Act in 2000, which they should not have done, but amended it over a period of time and allowed the Act to continue. During these last six years, a number of the criminal activities would have been reduced.

There is the necessity for a tremendous amount of training and information for the general public and all the people involved in the whole DNA training programme. We look forward to the day when the proclamation of this Act will redound to the benefit of citizens of Trinidad and Tobago considerably and there would be a significant reduction in the criminal activity, an increase in the detection rate and an increase in the conviction rate.

I thank you.

Sen. Dana Seetahal SC: Thank you, Madam President. It is with pleasure that I greet the DNA Bill in the Senate, although it is three years and five months since it was promised, by the Minister of National Security, that it would be passed. I guess eventually good things do come if we wait.

The public perception, as displayed in yesterday's newspapers, to the DNA legislation is such that the public appears to think that the DNA test will solve everything, according to one citizen. Another says that it will solve the case. They were talking about a particular case. Another person said: "With the DNA testing, you could pinpoint exactly who is the culprit. The criminal will be caught." The perception from the men and women in the street is that this legislation is going to make sure that all criminals are caught or crimes would be solved.

It would be nice if that could be the case. However, one can only have that evidence, of course, if there is a sample on the scene against which one can compare a suspect or another person. That is the kind of situation you are looking at. That is why it is called genetic fingerprinting. If you have a real fingerprint on the scene of a burglary, you compare that to a suspect, then you have evidence. This is the way it can be used because of the variety of samples. The Minister of Works and Transport was itemizing the list of samples that makes it probably more available. In other words, the likelihood of getting a DNA sample is greater than a fingerprint on a scene.

Having said that, I wish to draw to the attention of this Senate a case from the Privy Council in which DNA was used in a murder case in Jamaica, what happened and what was said in that case. It is vital. If we are looking towards this DNA legislation as almost a panacea, in terms of crime investigation and crime-solving detection, we must be aware, first of all, of what it is about. It is not a simple case of taking a sample and comparing it against the suspect and your saying: Yes, that is the person. In fact, it has been held that if an expert says just that, that is not right. That is something that is wrong evidence for an expert to give and that the sample is the sample of the person who committed the act. I want to say that at the outset.

In the case of Pringle—an accused person who later appealed, who was convicted of murder of a woman in Jamaica, who had been raped—a semen sample was taken from her body. That sample was compared against the appellant, who was a suspect. The appellant's sample of blood, compared as well as that of her husband. Both the husband and the deceased had been out drinking. They had gone back home and she left to go and "lime" again. The next morning her body was found dead and raped. They took these samples from her husband and a suspect. The husband's sample showed this in one test. There were two tests done: an HLADWA test and a DISAD test. These are two types of tests within the whole DNA type of tests. The husband showed 2:3, the accused showed 2:4 and the swab, that is the sample, showed 2:4. That is in the first test.

In the second test, the husband showed 29:34, the accused showed 20:20 and the swab showed 20:21. The opinion was given that there was a probability that the accused was the person who had deposited that sample; the stain on the scene. That sounds well and good. If that happened in the Akiel Chambers case, which people are talking about so much, then one would say: case solved. That was not so.

The reason I would give to you. It is important for us to understand first of all what this is about. We all think we know, because we looked at television and we know that since 1986 there was the Yorkshire Ripper case in the United Kingdom and DNA has been available.

Just for the elucidation of some of us who may not be as clear, including myself, I learnt something when I was doing research for this Bill: The DNA is an acid, DNA, found in nearly every cell of the body. It can be extracted from bodily fluids such as blood, semen or from the cells contained in hair, fingernails or other nails. It can then be subjected to examination after it has been cut up into sections. You get the DNA from these cells then you cut it up into sections. A DNA profile

can then be compiled by examining these sections as they have different characteristics and can vary from one person to another, except, of course, in the case of identical twins. The profile can provide a genetic blueprint for each individual, but the characteristics of one section of DNA are not unique to that person. That is the point.

If you get the sample and cut it up into different sections and you check one section, it is not that that is going to be unique to you like a fingerprint. Many other persons may have it. It could be four out of 1,000. If you check another section and that is four or five out of 1,000 and you compare the two, for one person having both sections, it might then be one in 1,000.

According to the case in which the Privy Council described the whole process, if you have many sections, the more sections you test the less likelihood you would find a match that it could be another person other than the accused who deposited that sample on the scene. That is the point. The power of DNA profiling to discriminate, depends on the number of sections that are subjected to analysis. In our laboratories, if we do not have enough staff, equipment and everything, and we take a limited number of sections and test probably one or two, then it means that evidence will be less reliable. This is what happened in Jamaica in 1996.

The case went to the Privy Council in 2003 and the appeal was allowed because what happened in this case was that only two sections were used. According to the case, markers are used to identify specific DNA sequences. In the present case, only two markers were used. That was the DIS80 and the HLDAQ. This means that the DNA evidence was less strong than it might well have been if further markers were used on the relevant material. You have the same material but from that you can do different things. It takes time, expertise and a lot, but if you want to have satisfactory evidence, it means that you need to take a lot of sections and use a lot of markers.

What happened in this case is that there was an expert who gave evidence and she said that the statistical possibility was two out of 10,000 and she eliminated the female population. When more expertise was called, it was said that you could not do that even though you were talking about a sperm. You had to give a general sample. It should have been four out of 10,000.

Further to that, what she said in her evidence was that she came to the conclusion that the sperm in the sample came from the accused and that the accused had sexual intercourse with the deceased. What was held as the evidence, that ought to be given by an expert, is that the defendant had the profile, which

told us that he was one of perhaps 50,000 persons who shared that characteristic. One can say, having regard to the population of the area, that the statistical possibility was that he was the perpetrator. You put before the jury the probability and leave them to make up their mind.

Consequently, despite this evidence in the Jamaican case of Pringle—because of the fact that only two markers had been used and because of the type of evidence that was given in this case— the conviction for murder was struck down. That is the issue, in my view. That is what we in Trinidad and Tobago have to guard against, that we pass this Bill which everyone is saying will solve crime and do all these marvellous things.

How do we go about avoiding errors like that? We know what can happen. If it is that we use evidence in one big case, that kind of evidence, we do not use enough markers or testing of sections, the expert does not give the evidence in the right way, and the evidence is said not to be reliable or is said because of the way the evidence was given there was an error and a conviction is struck down, do you know what would happen? People will lose faith in it. Jurors will lose faith and everyone would say DNA is no good. The police will stop using it. All of this will come to naught, despite the expense. It is a very expensive procedure.

At the outset, we have to be careful. We have to know what we are doing. The first thing—this is what the case law states after 20 years—is that DNA testing must be rigorously conducted to obviate the risk of lab error. That is the first requirement.

I heard two speakers before me talk about storage. It is not only that, we must have a chain of custody established of that exhibit to make sure that there is no contamination. In the OJ Simpson case, many of us would remember that case in which, surprising to many, there was a not-guilty verdict. How the defence achieved this, at least creating reasonable doubt, in my view, was to attack the DNA evidence. Because of the chain of custody breaches, it was suggested that those samples were contaminated. That is the first thing we have to ensure, that the whole process up to testing, is rigorously conducted.

The second thing is the method of the analysis, that is the match. How do we arrive at the match and the basis for the calculation? If we are saying that we are using so many markers, like what I talked about, 23:24, where one person has that and another person has the same, we must say how this is. This must be made transparent to the jury and to the defence. Those things are very important in order to ensure that this legislation is given good effect.

What must the scientists do? Principles have been laid down and the persons we have at the Forensic Science Centre ought to be aware of this. Oftentimes the legislation goes to the police and magistrate and nobody knows what is expected, they probably have not looked at the case on that point or the legislation, so they go along the normal way. The courts have said that the scientists must adduce the evidence of the comparison, plus the calculation. It is very important and vital.

This case fell down because the scientist—who actually was the head of the Forensic Centre in Jamaica—did not give proper evidence of the calculation of what is termed "the random occurrence ratio". What is that ratio? It is really the ratio, according to the cases, of how likely—this is the statistical likelihood of an individual section being found in another person of the same race. In other words, if you match the sample that you take from the person, with the sample on the scene, in more than one section, say five sections, what is the statistical likelihood of any person out there having the same as the suspect. If the suspect has matched, how many other persons will match? That is what is called "the random occurrence ratio".

Then the cases all talk about what the experts must do and so on. The point is, and I think everyone should know this, DNA is valuable, not only to the prosecution but to the defence. If it is that the DNA evidence taken from a crime scene does not match the accused, this is powerful evidence in his favour. There are many samples taken and not one is that of the accused. You are saying that the accused is the person who either committed the kidnapping, robbery or burglary, if it is a scene where people eat. Many people commit burglary, eat your food and spill things in our home. I do not know why, but apparently it is some kind of signature crime. If it is rape or any of these and it does not match the accused, then the likelihood of it being him is lessened and that would, of course, raise the question of the benefit of the doubt. He would be given the benefit of reasonable doubt.

Sen. Dr. T. Gopeesingh talked about something that I want to touch on. He alluded to sexual offences in Trinidad and Tobago and the value that this kind of evidence will be to rape, incest and buggery. In my view, the value of that evidence is really to the defence or to innocent persons who might very well be charged with offences. I say that because—first of all, let us look at the detection rate. The detection rate for rape is approximately 66 per cent. Already, serious indecency is more than that. Those kinds of offences, such as rape and incest, have high detection rates because it is often persons that you know. That is the classic thing. The persons to get close to you to commit this intimate offence,

would have to be someone that you know. It is oftentimes that kind of person. Often, the defence, in a lot of situations is consent. If it is that the defence is consent, then DNA is really of no benefit, because you are admitting you had intercourse. If, of course, you are dealing with a situation with unlawful carnal knowledge and incest, it would be of benefit.

Oftentimes, incest would be reported months afterwards, so DNA really is not of that tremendous value. There is a point that one cannot look at this evidence as any kind of universal panacea for all crime investigations. It could, however, assist accused persons or wrongly accused. It has happened that a young girl might have had a boyfriend whom the parents do not approve of and she goes off with him and when they come back, she cries rape. It is not common, but it has happened. In such circumstances, if an accused person agrees to a test, he may be able to be shown to be innocent.

Every day I get emails from a place called StandDown in the United States. This is a group that checks out persons in prison and they present new evidence. Almost every day, especially in Texas—I do not know why Texas—the courts have to free someone because of DNA evidence. Now that there is DNA evidence from rapes or murders years ago, it shows that the statistical probability is that it was not the accused. In other words, when they look at the samples which were taken, which were samples from a normal court, there was sexual intercourse. At that time they could not say whether or not that sample was the sample of the accused. Now that they can, it showed that it was not.

Remember what I said about how that kind of evidence is being used in his favour. You are saying the samples, but it is not the accused. It means it probably was not he who did it. That is happening a lot. But, again, you are dealing with southern states in which, many years ago, not so long, there was a tendency to discriminate. It is useful in that regard. DNA is definitely a valuable tool.

Having said that, and having realized that it is not going to solve everything, one has to take into account the current situation in Trinidad and Tobago, as related by Sen. Dr. T. Gopeesingh, in relation to witnesses. Nothing can happen, because DNA is a supportive tool, unless witnesses give evidence. You must have someone there to whom you can connect all of this. I do not blame the Witness Protection Programme, unlike Sen. Dr. T. Gopeesingh. No witness protection programme can keep someone who wants to leave. It is voluntary and you cannot make it, by law, mandatory.

A witness gives evidence. There is nothing—except for extremely rare provisions such as in the Kidnapping for Ransom Act—that requires a person to

give evidence. It is from his own moral and spiritual conscience that the person would agree to give the evidence. If he chooses to walk, what would the police officer do, arrest him and say: "Stay and give that evidence"? It is because, having seen the incident, oftentimes, the witness knows that his life is threatened. He would give the evidence. If a witness is an accomplice, or the least of the accomplice, he might be a bit turned off by what happened and want to give the evidence, or if he is an accomplice and is likely to be convicted, he would give the evidence. In those circumstances, that is where we have witnesses staying in protection. If a witness wants to walk, that is it.

Many people in this country who are saying that the DNA will solve everything, have to wise up and wake up and realize that it will not solve everything. It is the people in the country who have to give evidence; those who cannot stop saying: "I do not want to give evidence, suppose somebody comes and gets me." I hate to put it bluntly, but we all have to die some time. That is the worst case scenario. The point is that you have to take that chance, because what kind of country are we going to make for the children and all of us, if we say that we would let these people go because my life is at risk? The whole country and system is at risk because witnesses are just cowing and bowing to these criminals. To blame a witness protection programme is ludicrous. I do not mean Sen. Dr. T. Gopeesingh. I meant generally. To rely on a piece of legislation is ridiculous.

All of these things assist but, at the end of the day, it is the citizens of this country who will have to come forward and give that evidence, even if they feel threatened. I am sure there are prosecutors, Ministers and judicial officers who feel threatened. I am sure some jurors are braver than others and they will feel threatened. What is the choice you have? If you feel so threatened then you take the protection and give the evidence, because you have to live in this country. That is my feeling, in terms of this whole thing about witness protection and over-reliance. No legislation is going to even solve 25 per cent of the crime we have.

We also need additional bits of evidence, in a combination with everything, to get us somewhere. Telephone tapping legislation is necessary. That is something that we need to press for. We need to do—[*Interruption*] We are talking about doing it officially, under the Telecommunications Act. Under the current law, illegally obtained evidence can be used, but there are too many challenges to that and people do not like to admit that they are doing it, if they are doing it. I am sure that can happen. The point I am making is about officially going there and getting an order from a judge in chambers—I know that person is ordering a hit on somebody and I want the evidence against him. We have to be proactive. In the whole criminal process, we are reactive. We do not seem to know how to be proactive.

With respect to undercover police officers, we have some, but there are not many and many times I have seen those undercover police officers in the courts. How undercover can they be? We need that and also telephone tapping. We need sting operations and, we have the DNA, after the crime has been committed. That is really what I want to say.

You can understand how DNA is used, how you put it before the court and that it is not the be-all and end-all. It can be challenged as well. At the end of the day, it is the citizenry who have to stand up and help get people to be convicted of offences. Help put those criminals that they are talking about behind closed doors.

Thank you very much.

Madam President: Is there anybody else on this side? If not, somebody from here or up there. Who wants to go on that side next? We have six minutes before tea. I could let somebody start.

Sen. Basharat Ali: Thank you, Madam President. I am very pleased that we have the DNA legislation before us. It has been long in coming. I know my colleague, Sen. Dana Seetahal SC, has always been talking about it. We are on the verge of getting there.

I have some comments, but I know most of them will not be taken into account. I agree with hon. Colm Imbert who said if we have anything, then we should leave it for later because no law is perfect and if there are amendments, let us pass the law and then we can always correct it. Experience always shows up the imperfections in the law.

I have a few comments and quite a few questions. The first question is that of what is an intimate sample and what is not. With respect to swabs, I note that the only non-intimate sample from swabs is the mouth sample or oral sample. I thought the one that has been missed is a nasal sample; a sample from the nostrils. It is less intrusive and I do not see why we have not included that as a non-intimate sample. If you look through the literature, you will see mention of samples taken from nostrils.

I remember vividly when Saddam Hussein was captured that was one of the samples they took and it is the easiest sample to take from your nostrils.

Sen. Seetahal SC: It states "any part".

Sen. B. Ali: It is covered, but it is an intimate sample other than mouth. The only non-intimate sample is mouth. That is how I read it, unless I am mistaken. It states any other sample taken from a bodily orifice. I do not know. That is how I read it.

Sen. Jeremie SC: It is on page 16 of the report. It is for that particular section, under "Interpretation".

Sen. B. Ali: I have it tagged. That is why I raised it. It relates to a swab. Let us take a non-intimate sample.

Sen. Kangaloo: If I could just point out to the Senator—a non-intimate sample means a swab taken from any part of a person's body other than a part from which a swab is taken. That would be an intimate sample. Eliminate the swabs for intimate sample and it could be from any part of the body. That would include from the nostril.

Sen. B. Ali: If you look at the definition for "intimate sample" it is a swab taken from—

"(i) any part of a person's genitals; or.

(ii) a person's bodily orifice other than the mouth;"

It is an orifice. I have checked with a doctor. I am sure the medical people can tell me whether your nostrils are orifices also. I asked a doctor yesterday whether the nostrils are orifices. Your ear is an orifice also. Madam President, you can make a judgment on that. That is why I am saying that we should clarify it. That is why I brought it up. Reading this, it means a sample taken from the nostrils is considered an intimate sample. This is why I brought it up. I do not expect it to be corrected now. I read through the report and it was never brought up. It is easier. If there is an unwilling person, I am sure it is easier to take a sample from your nostrils than your mouth, because you cannot make a person open his mouth. [*Interruption*] Not necessarily. He might bite your finger.

Madam President: You will continue when we return. We will now suspend for tea and return at 5.00 p.m.

4.30 p.m: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. B. Ali: Madam President, thank you. It seems that I have raised a little controversy as to whether the nostrils are an orifice or not, but that is left for more competent persons to decide. I did consult with a doctor and he told me, yes your nostrils are an orifice, and this is why I brought the subject up. I feel the Bill could have been amended. I would just like it to be on the record, so the next time around when there is an amendment to this Bill it would be looked at. I did have some words that I wanted to put in, but I would reserve what they should be.

I think there is a tendency where we have schedules, which are really intended for notification to a layperson, are not very clear. In this particular case, the First Schedule which is the consent form for non-intimate samples—Form 1 of the First Schedule—really could have been much clearer if item "(c)" was elaborated on to say what kind of swab was a non-intimate swab as against what would be considered an intimate swab. Again, that is something that we should look at, because the person who has to explain this would be a police officer in most instances, and he will have to go back to the Act, because what is given here was taken out of the interpretation in clause 4. Again, I will leave that as another item.

Similarly, on Form 3 it is incomplete from the point of view of who should be present or who should be taking the sample—a nurse takes the sample, but the nurse takes the sample under supervision of a medical practitioner. Similarly, a dental auxiliary takes the sample under the supervision of a dentist. Those things need to be reflected to make these schedules and forms complete so that they do not become a problem later on when they are produced as evidence.

I had a query on clause 5 and this is for my own clarification. It says:

"Grounds for obtaining a non-intimate sample without consent

A non-intimate sample may be taken from a person without his consent where…

(d) he has been convicted of an offence and is serving a term of imprisonment."

I was a little unclear as to whether anybody who has committed an offence and is convicted can be asked to take a sample and, of course, if he is in prison. So, there are two matters there under that same clause. So, is it then that this is not referring to what may be an offence then committed, but any offence for which he has been convicted for which he is in prison? I would like an explanation on that matter.

Madam President, a number of times I have seen reference to a DNA register, but I do not know what form this register takes; whether it is one register that is kept for each case, where it is kept and who has control over it. That should be looked at. A police officer fills out the details and makes sure that it gets into a register. Who is keeping this register in safekeeping? There are one or two occasions where this term came up. There is a definition under clause 5 for a DNA Register. It says:

"'DNA Register'" means the register in which all information that is required to be documented by a police officer under this Act, is so recorded;"

Is there one register for all samples? I am not too sure.

Madam President, under clause 33 "Forensic DNA laboratories", I have noted two things: the accreditation which is in the Second Schedule for the international accreditation and, indeed, the foreign forensic laboratories all come from three countries from outside Trinidad and Tobago. The international accreditation bodies; that is from Part A of the Second Schedule and there are four bodies there for accreditation: Canada, the United Kingdom and the United States. There is one there which says international, but I am not sure what that means.

All the foreign accredited laboratories are from the United States of America, Canada or the United Kingdom. Why has Europe been excluded from having accredited foreign laboratories? I wonder whether these are only countries that have a treaty with us under the Mutual Assistance in Criminal Matters Act like the United States of America, Great Britain and Canada. What procedure will be used if we do have a case which involves any of the countries like say somebody from the Netherlands or Germany who may have had a fugitive from Trinidad and Tobago there and we want to access any DNA information from there, to whom do we go? This Bill does not address that subject. I would like to find out a little more about that. Why only those three countries?

Finally, the DNA board. When I first read this I was wondering whether we would have a board, because one of the inclusions is for "a human geneticist with not less than five years experience…". That is the basic qualification. I think what has been stuck in afterwards is "a person with similar qualifications, skills or competence". I do not know who will decide on those qualities or which alternatives in order to appoint that one member of the board.

I think we might have watered down that board to a certain extent by what we have here. The important thing is that we need to get a national, a Caricom person who is a human geneticist and who might meet the qualifications and experience required. In fact, there is a minimum of five years experience required to be on that board.

The final item is the remuneration for these board members. It is not said who fixes it. For the custodian, basically, the terms and conditions are agreed by the President, but for the board members there is no mention of it except that it comes from the Consolidated Fund.

Sen. Jeremie SC: Sorry, are you just allowing me to respond to that point? With respect to the remuneration for board members that is done according to a grading schedule, the Corporation Sole. So, if it is a grade A board, it will attract a

certain level of remuneration. That is how this will be dealt with, but it would come from the Consolidated Fund. That is the formula that we used.

Sen. B. Ali: Thank you, Mr. Attorney General. I thought those grades applied only to private sector boards or state corporations, et cetera. If that is what it is intended to do fine, but the custodian's terms and conditions are offered by the President, because the President appoints him.

Madam President, those are the points that I wish to make, except for one item and that is under clause 33(4). I heard today that the local forensic laboratory may enter into an agreement with a foreign laboratory, but it does not say for what. From what I heard today, it may be an agreement for them to perform certain DNA analyses, but it does not say in here specifically that and I could not determine what it was. Clause 33(4) says:

> "A forensic DNA laboratory may enter into an agreement with a foreign accredited laboratory listed in Part B of the Second Schedule."

That is all it says. It does not say what the agreement is for; whether it is for joint-training, cooperation or whether it is in fact for contracting out work. I thought that should have been more explicit under this particular clause.

Madam President, I fully support the bringing into force of this Bill, and I hope that it would have the desired effect. I hope too that everybody would have taken into account what Sen. Dana Seetahal SC has said, and would not have built up their hopes that DNAs will be the be-all and end-all and will solve all our crime detection problems. Thank you. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Madam President, I want to support Sen. Seetahal's assertion that DNA is not a panacea. It will not solve crimes, but I want to put the emphasis on the fact that it can deter crimes. It can deter crimes through the existence of the databank and, therefore, much of what I have to say would relate to the databank we are proposing.

As far as I understand it, our databank will include intimate and non-intimate samples. Let us begin with clause 3 and it says:

> "This Act applies to the investigation and prosecution of offences committed on or after the coming into operation of this Act."

It is very clear that what we are dealing with is establishing a bank which will allow us to go backwards and a bank that will allow us to deal with future crimes.

The databank that is proposed is set out in such a way that confuses me slightly. Clause 41 says:

"There shall be a Forensic DNA Databank which shall comprise the following databases:

(a) crime scene database;

(b) volunteer database;"

Madam President, when you go and look at volunteers which are a very small proportion—these are persons who will come up and say: "I want to volunteer a sample, because I want to help in this investigation." There may be people who would be naïve enough to say: "Well, I believe there should be a universal databank and I am giving you mine now. This is my contribution." Whatever it is, I think the number of volunteers is not going to be very large.

The second issue is the protective services database. I presume that is not like the police database in the United Kingdom where the police have their own databank concerning criminals, et cetera. These are members of the protective services who are obliged to supply their DNAs.

The third matter is non-intimate and intimate samples database. I take it that those would be DNA profiles derived from intimate and non-intimate samples got either by consent or by court order.

Now, as a layman, I would have liked to see—in the same way we have crime scene database—DNA profiles. I do not know if that means samples or the analysis of the samples. I do not know if the Attorney General could clear that matter up. Is it the samples themselves or is it the analysis of the samples creating the profile?

Sen. Jeremie SC: What clause are you on? Is it 3(d)?

Sen. Prof. K. Ramchand: Clause 41. I am just looking at the four components in the databank. I would have liked to see DNA profiles stated there. I do not think that there is any doubt that for instance in the United Kingdom, the databank has helped with the investigation and identification in relation to many crimes that have been regarded as unsolved. Many cold cases have been warmed up and people have been convicted.

Madam President, following up Sen. Seetahal SC discussion on DNA, the Forensic Science Service in the United Kingdom has stated that the chance of finding two full DNA profiles which appear the same, but are not actually from the same person is possible but very slim.

Professor Jefferys who is credited with having been the inventor of DNA fingerprinting has declared that DNA testing is not an infallible proof of identity. While Jefferys' original technique compared scores of markers to create an individual fingerprint, it has been pointed out that modern commercial DNA profiling compares only about between five and 10.

They have used that to calculate a likelihood, and Jefferys estimates that the probability of two individuals' DNA profiles matching in the most commonly used commercial test is one in a billion or one in a trillion, and that looks very good. He says that when you come to an actual database it is a little frightening that you cannot assume that it is infallible. So, he would have liked more rigorous testing as Sen. Seetahal SC is advocating.

I would have liked the legislation to indicate, very clearly, what are tests that are being used so that we could be assured beforehand that there is not a probability of wrong identification. We need to be accurate. One of the things that we have to do is decide on the test and let the public know what the test is and let people discuss it.

With respect to the whole question of accuracy, I think the way in which the board has been set up and the mandate of the board to make sure that the different labs are up to scratch gives a kind of assurance that we would not be getting a lot of bogus information.

I approve of the custodian, although I would be very explicit that when anybody, including the police, wants to run a check, they should just give it to the custodian and he will run the check and give them the results. I do not want the police going in there and interfering with anything. "You tell me what you want and I will give it to you". So, the custodian must have a staff that would allow him to run the programmes and give them the information that is being sought. The police cannot be accused of going in there and tampering with the equipment. The custodian and his team are almost mechanical. They do not know who or what it is all about. They have these samples to deal with and they are dealing with them.

Madam President, the concerns about accuracy, the concerns about independence and the concerns about not being tampered with are in people's minds and a number of privacy questions and victimization questions have been raised in different places.

Recently, Lord Justice Sedley, one of the most experienced Appeal Court judges in the United Kingdom declared that the entire United Kingdom population

and every visitor to the United Kingdom should be put on the national database; not only that, but every visitor to the country should also be put on the national database, he argued.

We have a situation where if you happen to have been in the hands of the police then your DNA is on permanent record. If you have not then it is not. It also means that a great many people who are walking the streets on whose DNA would show them guilty of crimes, go free.

He said that expanding the existing database to cover the whole population had serious but manageable implications. Well, everybody said logistically it is impossible; you cannot do it, and by 2015 you will need 133 million people on the database. So, if you only discuss this theoretically, it is just not practicable.

However, he warned—I think this is the point where Jefferys agrees with him—that putting everybody's DNA on file should be for the absolutely rigorously restricted purpose of crime detection and prevention.

Now, the reason for that is DNA samples can be used for different things—my DNA sample could tell you a lot about my family, about my diseases, about cancer, about HIV and all kinds of things—and to have those samples stored somewhere—those samples which have been used simply for identification—

Madam President: Just check your cellphone, please.

Sen. Prof. K. Ramchand: The DNA sample can be used for many different things other than for detection and identification. This leads to my most serious misgiving about the Bill. If I read it correctly, we are going to be storing samples for 10 years.

All the liberal groups and all the concerned citizens who have privacy fears about the DNA databank point out that with increasing technology or increasing ability to read the DNA, the DNA may reveal things about ourselves that we hardly know or suspect and, therefore, it is a very dangerous thing to store those samples.

If you have taken the sample in order to assist in detection and identification, once you have done the profile, destroy the samples. That gets around the problem of storage space. If you have taken my sample because you are investigating a crime, I do not see why—having done the analysis and having got the profile—you need to keep the sample. You may wish to keep the sample because you think just in case a mistake was made in the first analysis. Well, then, decide to destroy the sample. Do the analysis and decide to destroy the sample and then send the sample for independent testing elsewhere.

So, you now have two profiles coming from the same sample. If they do not coincide then you will have to find out why and who was wrong. Once you have the original profile and the second one before you is destroyed, I can see absolutely no need to retain those samples. If it was not the Government's determination to finish this Bill today, and not carry it back to the other place, I really would have stuck to my "guns" and say that I am not voting if you are storing the samples. That is how strongly I feel about the keeping of the samples.

I have to report that the judge who proposed that everybody shall have their profile taken, the judge was really dealing with an issue that concerned him and that was, that it was very clear to him that certain groups were being targeted in the profiling.

If you look at percentages of the population, there was a higher percentage of DNA profiling for black people than for Caucasians and other ethnicities showed a similar higher proportion. The assumption behind it was that these people are more likely to be criminals than others and it is, therefore, discriminatory. So, his suggestion, although not practicable, was addressing a very serious problem. I feel that we should be concerned about the question of certain groups being targeted or certain groups or individuals being victimized in some way. If we can eliminate the storing of the samples, we could eliminate one part of that.

I might add that Jefferys did not think that justice Sedley was mad. What he said is that we need a truly national database including every individual with strict restrictions on what information should be stored. Again, he is saying that it has to be very strictly and rigorously for the purpose of crime investigations and identifications.

Madam President, looking at Part 11 which deals with "Grounds for obtaining a non-intimate sample without consent", we are quite different from the United Kingdom. If a person has been charged; a stain derived from a crime scene and there are reasonable grounds for suspecting that person was involved; if he had already given a non-intimate sample that was deemed unsatisfactory; and if you have been convicted of an offence and are serving a term of imprisonment, we can take it from you without your consent.

Well, in the United Kingdom, once you have been detained by the police, your DNA can be taken. If you have been charged and acquitted they still take it. I must say that I am draconian enough to be attracted by that. Once the police hold you and bring you into a police station—I am saying that our legislation is saying that you have to be convicted. [*Interruption*] If I am bringing you in for

questioning and if you are assisting me in my investigations, I am saying that in the United Kingdom it is very frightening to many people that as soon as the police pick you up and once you go with them to the police station, even if you are not charged, your DNA can be taken. Why are people who have not been convicted on the database? The law was changed in 2001 and, again, in 2004 so that DNA samples could be taken from anyone arrested for a recordable offence and detained in a police station.

I am really concerned about how do we get around if our witnesses refuse not to speak; that our witnesses can be intimidated; that police sometimes can be incompetent and the whole prosecution process can be flawed—mistakes are made; and there are attorneys whose main objective is to win and not make sure that justice is delivered, but get people off. We have seen it. Again, people who to all appearances have some responsibility for what they have been charged have been released on a technicality and they are out there free.

The reason I am in favour of a draconian DNA database; just the profile—I have selected the profile only for identifying and investigating—is that we seem to be suffering—the other evidence that we need is being taken away from us by incompetence, greed and intimidation. We really need to have evidence. If we can get DNA evidence to throw into the pile, then I would take my chances.

Of course, the police could just pick you up on suspicion and take your DNA. That is a big problem, but I really wish we could find a way of getting a larger databank than we are presently catering for with the caveat that the bank is strictly and rigorously to do with crime investigation, and with a further caveat that the samples are destroyed immediately they are analysed.

Madam President, I want to come now to the samples. I have a problem with the difference between intimate and non-intimate samples. The problem is not what should be deemed intimate or not, but the problem has to do with—are there special circumstances where you must have an intimate sample? What can an intimate sample provide that a non-intimate sample cannot? [*Interruption*] What I am leading up to is that there must be special cases where intimate samples are required.

I would like to see rape and different kinds of sexual crimes, et cetera—where those offences exist and where we know that we need intimate samples—specified so that you only take an intimate sample in the following instances where intimate samples are necessary and where a non-intimate sample would not do.

I know that the skin and not the fingernail prove that you were there, but it did not prove that you did it. A lot of DNA evidence proves that you were there, but it does not prove that you did it.

As Sen. Seetahal SC was saying, you need evidence and the DNA is not the evidence. In the case of the intimate sample like in cases of rape and various sexual offences, I can see where the intimate samples are crucial. I just do not like people to have a choice about whether to take the intimate sample. Let it be legislated that you take it in the following instances. [*Interruption*]

I asked Sen. Dr. Gopeesingh if it is really true that the samples are going to be kept and he said no. Am I wrong? Clause 32 says:

> "Subject to subsection (2), where a sample is not destroyed…the forensic DNA laboratory shall keep the sample for a period of ten years from the date on which the analysis was completed and thereafter it shall be destroyed."

So, I have said what I have to say about the sample.

The other issue that worries me is that although I want the profiles to be retained, and I want them to be retained for a considerable period, if everybody's profile is going to be on, should there be a moment when, let us say 10 or 15 years later, you say that we can remove certain profiles from the bank? Should they be kept in perpetuity? Should the profile be kept forever and ever or should there come a time when the legislation says that we keep the profile for so many years, and if you have not been convicted or charged for anything we would remove it? [*Interruption*]

Madam President, I have raised the questions that concern me about storing the samples; about keeping people's profiles forever and ever; the privacy concerns about making sure that the profile collected only has to do with the crime that is being investigated—and this is why I want the sample destroyed after you get it; and the fending against error—20 years later somebody would come and say that the sample was not read properly and we want to reread it. We can get around that by taking another independent sample and doing another independent analysis before you destroy the sample.

Madam President, I welcome the creation of the DNA databank. We are not as bad as we would be if Justice Sedley had come here and said that all visitors should be on it, but I have some very serious questions about whether we have the personnel, the equipment, the expertise and the space to establish a databank that would win the confidence of the people.

I do not know what resources we have at the present time. If we pass this legislation, when can we have the confidence that our databank is adequately staffed, technically competent, has enough space and is free from interference of any sort and so forth? With all those caveats and recognizing that there are things called teething problems, I just want to congratulate the Government for bringing this legislation at last to Parliament. Thank you. [*Desk thumping*]

Sen. Angela Cropper: Madam President, thank you. I rise in support of the DNA Bill 2007. I had the opportunity to serve on the joint select committee as has been pointed out, to consider the Bill and to share in the discussion that has resulted in the conclusions and measures that are now represented in the Bill.

I would like to echo the sentiments of the Minister in his introduction of the Bill about the quality of the exchange in the committee and the openness of the give and take that there was—deep sincerity in analysing the proposals in such a way that we could arrive at the best possible solution in the public interest.

In my view, it is a very complex Bill in anticipating the range of legal and legal rights issues that could arise within such legislation. I would like to very highly compliment and commend the drafting team of the Chief Parliamentary Counsel's office that supported the committee as well as the team that has produced this final draft of the Bill. I think it is—while being very complex and detailed—exceedingly clear, except, of course, for Sen. Ali's "nasal orifice" that hopefully we can clarify at some stage. I think we really ought to say to them thank you for a job well done. [*Desk thumping*]

Having been part of the committee, I feel satisfied that the Bill has made the kinds of provisions for safeguarding citizens' rights and privacy as far as is reasonably possible, consistent with the overall purpose of the legislation.

Here in this Chamber we have repeatedly criticized the Government for not doing enough to improve capability and performance in the detection of crime, and this Bill seeks to help in that direction. So, I look forward to its rapid application and to its effectiveness. We need to recognize that it has to be seen to be effective in detection and prosecution before it could serve as an effective deterrent.

There are only two areas in which I have a little reservation. The first is one that I had raised and engaged in the context of the committee's work, and that is the constitutional implications of requiring DNA samples from all members of the protective services as a class. The question is whether this provision would be deemed to be reasonably required. This is a question for the Judiciary and I think we simply have to wait to see what happens when that is put to the test.

The second area that gives me a little concern is the remit of the board. It seems to have come out to be quite narrow, as specified in clause 35; but as the Minister indicated in his introduction, the proposal for a board is an item on which there has been compromise. I think we really do need to keep the board under scrutiny, and make sure that over time we make the best possible use of it as an agency; looking at technology, personnel and procedures and so forth, along the lines that Sen. Dr. Gopeesingh has already outlined.

Madam President, in terms of effectiveness of this piece of legislation, I do not think we can emphasize enough the need for adequate training of police officers to make use of these provisions. Now, this is something we repeatedly say here when commenting on and debating legislation, but it is never clear if and how those recommendations are ever put into effect.

Given the technicalities that are inherent in this piece of legislation as has been indicated in the contribution of Sen. Seetahal SC, I think we really need to make a special effort here in mounting the kind of training programme for police officers, as well as for medical workers and technicians, who are actually going to implement the provisions.

Again, we often emphasize in the debate on Bills like this that affect the public in such a deep and fundamental way, especially for Bills that are not easy to understand and equally easy to misconstrue, I want to emphasize again the need for education of the public. I wish to emphasize this again—the need for public education about the rationale for this piece of legislation; its provisions; and about the measures that are contained within the Bill to protect them and their rights and their privacy.

As Sen. Prof. Ramchand said, we really need to find a way to give the public confidence that this piece of legislation would help, although it cannot be expected to solve all the problems that we have.

It is clear that the Bill itself will not meet the deficiencies that we have in management, administration and in the competencies we have to confront the task. The use of DNA legislation is just one aspect, perhaps a small one, of crime scene investigation, and in practice it may not be as easy as it is made out to be on television. I think we really do need to put in the effort to make sure that all of the agencies, individuals and officers who are concerned to implement this legislation have the right quality of training.

Finally, I hope that the Government and the society as a whole would persist in its efforts to put more of the pieces in place to address the phenomenon of crime. In this context, I would like to again emphasize the need for more creative interventions that would contribute to the preventative side. Thank you. [*Desk thumping*]

Sen. Wade Mark: Madam President, I am grateful to you to make a very limited contribution this afternoon. But before doing so, allow me to say that today marks the anniversary of the 9/11 tragedy which, as you know, led to the unfortunate deaths of thousands of innocent citizens, including 14 of our own nationals. Our hearts go out to their families on this occasion.

I would also like to take this opportunity to congratulate the Acting Foreign Affairs Minister, Sen. The Hon. Howard Chin Lee. I saw him participating in a very important ceremony today. In fact, I thought it was Sen. The Hon. Danny Montano, but when I looked I saw it was a Chinee, Sen. The Hon. Howard Chin Lee. I was wondering what had happened to Sen. The Hon. Danny Montano, but I saw him in the room by himself, lonely. Anyway, I want to congratulate my friend, Minister Howard Chin Lee, on being elevated to the position of Acting Minister of Foreign Affairs.

Madam President, this is a very historic and progressive piece of legislation which if properly implemented, enforced and regularly updated would redound to the ultimate benefit of this society which is currently under siege by criminal elements, as you are well aware.

I would also like to take this opportunity to extend my profound congratulations to the committee Members, particularly our own Sen. Dr. Tim Gopeesingh, Dr. Adesh Nanan and the rest. I understand they did an excellent job which has made my task somewhat easier today.

Madam President, I have a few concerns and maybe the Attorney General in his winding up would be able to address these concerns. I would like to know whether there is any intention on the part of the Government to establish a forensic science department at the University of the West Indies.

Madam President, I think that the time has come, particularly in the light of this new piece of legislation, to really focus our attention on the production of our own homegrown forensic personnel rather than we have to be sending our people to other lands. Because of the small numbers that are now on land here, it is very challenging for the authorities to speedily execute many matters. So, I want to ask the Attorney General in winding up whether it is the intention of his Government to look toward establishing a department at the University of the West Indies for forensic science.

6.00 p.m.

Madam President, I also would like to make an appeal to the hon. Attorney General and the Government, that the time has come when we must not only have

our Forensic Science Centre in Federation Park, Port of Spain, but we should also extend our forensic science centre in terms of branches to Tobago. I think one is needed in Central, as well as South Trinidad. Now, I know it would come incrementally but I believe that Tobago should have a branch of the forensic centre and we should also have a branch in San Fernando and Central Trinidad. I want to ask the Attorney General to look at that issue.

Another area I would like to deal with is the question of the regulations. I do not know to what extent—if you look at clause 53(1)—the Minister has the responsibility of making regulations and the regulations would be subject to an affirmative resolution of Parliament. I did not see any accompanying regulations and I do not know if the Attorney General could advise me on this particular matter.

Sen. Jeremie SC: Thank you, Sen. Mark. I am particularly happy that you gave way because the comments have been widespread this afternoon. So, just on that last point, so that I would not have to remember it when I am winding up, clause 53(1) provides that the Minister may make regulations for the purpose of giving effect to this Act. Whenever that formula is used in legislation what it seeks to do is to make the Act speak, going forward. So that making of regulations are not a condition precedent to the validity of the Act. No regulations beyond those which are contained in the forms, are required to make the Act efficacious, but if at some point in time in the future, regulations are required then this is the procedure by which the Minister may—

Sen. W. Mark: I am guided, Madam President. I also would like to get from the hon. Attorney General and the Government whether they are satisfied that the necessary infrastructure has been established to ensure that with the passage of this particular piece of legislation, the Forensic Science Centre is up, equipped and ready to roll, virtually. I would like us to be brought up-to-date with the infrastructure at the Forensic Science Centre.

In fact, our Joint Select Committee was supposed to visit the Forensic Science Centre on two occasions and on the two occasions we had to postpone or cancel for lack of a quorum, otherwise I would have been able to report to you today the state of the readiness of the Forensic Science Centre. But not being able to be on that particular tour to witness what is taking place at the centre, I would now have to rely on the Attorney General to let us know what is the current state of play at that centre.

I am also very concerned and sad over the fact that outside of some fundamental changes that we were able to advance and the Government was able to agree to:

the DNA database; the fingerprints for security forces; the establishment of the board rather than the custodian, which was in the original piece of legislation, I did not really get from this legislation any major fundamental departures from the original Act. You know what, Madam President? Maybe there are, but it has taken this Parliament around six years, roughly, to finalize the DNA legislation. You must never forget that the DNA legislation was passed, assented to and proclaimed but it was never effected; it was never operationalized by the Government that took office subsequent to our removal, as you would recall.

I just ask the question whether this DNA Act of 2000 could not have been effected, implemented, amended rather than six years later being replaced and repealed, because during that period of six years a lot of water has flowed under the bridge. Had we had this legislation in place, even an amended version of it, maybe the killers of the Member of Parliament for Naparima's son would have been brought to justice today. The killers are still on the loose in this country and a Member of Parliament's son is dead. I ask the question, if this legislation were in existence in 2002, the killers of Akiel Chambers would have been behind bars today. Let us hope that with the passage of this piece of legislation and the upgrading of the Forensic Science Centre, justice would be finally met for the families of Akiel Chambers, Nizam Baksh's son and others.

I also want to indicate that the point was advanced earlier that this particular piece of legislation would require a psychological shift in the mental model or the mindset of our police officers, who have grown so accustomed to raw brutality in extracting information from citizens of this country. Shock treatment, some of our citizens have been subjected to in order to sign a statement that was literally dragged out of them; forced out of them by the police.

So, it means that with the DNA legislation these police officers who have grown accustomed to the application of brute force in order to condemn citizens in this country, will need to take or make a psychological shift, because there is a modernization process that is on the way, and therefore the police have to undergo change—psychological, mental and otherwise. I saw in the newspapers some time today that the motto had changed from "Protect and Serve" to "Protect and Serve with Pride".

I do not know if words are going to change the mentality of some of our officers, but I think it is a start and I do not know if we had to spend $18 million to bring down a professor called Mastrofski to tell us we must change our slogan to "Protect and Serve with Pride". I do not know, I just ask.

So, Madam President, I would hope that the officers, as I said, and the police are ready for this piece of legislation. I am hopeful that the Ministry of National Security and the Attorney General would have done the necessary homework in training, retraining and preparing our officers for the psychological shift as a result of this new piece of legislation. I would only hope that these things are happening.

We have given this Government a lot of qualitative support over the last few years. Although they have found new friends—they like to sleep with the dead, so they are always sleeping with the dead. So, they found new friends, but they realize whenever they deal with the Opposition, the legitimate Opposition; the official Opposition of the Republic of Trinidad and Tobago—you heard the accolades that were showered on the Opposition today by the hon. Minister of Works and Transport. So, it is a lesson to our colleague, the hon. Attorney General, stop sleeping with the dead, start sleeping with the living. [*Interruption*] Not the devil; we do not sleep with the devil. No, we do not sleep with the devil; not at all.

Madam President, as far as we are concerned, this is good legislation; it got our total support—[*Desk thumping*]—we participated fully; we contributed richly to the process and today we have quality legislation that all of us can be justly proud of. I think it did not happen with only this piece of legislation, the DNA; we had the police service package—[*Interruption*] We had that too—that came as a result of collaboration between the Government and the Opposition. The Breathalyzer, the Bail Bill, which we are getting sometime in the next 48 hours, but that we will deal with at the appropriate time. [*Interruption*] Joan, do not be panicky, please, "oh gawd". I know you are out of favour with the Prime Minister. [*Interruption*] I understand she "fall out" with—I am going good, Madam President, why is she disturbing me. I just told the media I do not know what the Minister is hiding; $5 million, staying in Hilton Hotel; I do not know what she is hiding.

Madam President: Senator.

Sen. W. Mark: Okay, all right; I just told the media that.

Sen. Jeremie SC: Senator, Senator. Madam President, I think that was the precise point that carried my friend before the Privileges Committee—

Sen. Yuille-Williams: And he is doing it again.

Sen. Jeremie SC:—and he is doing it again.

Sen. W. Mark: No, you are supposed to go, you know.

Madam President: Senator, why do you have to spoil a good contribution by attacking the Minister; just leave—[*Interruption*] This lady is a Minister, so you should know better than that. [*Interruption*] So, please. That was the same thing, according to the Attorney General, which had to come before me, similarly. Please, just keep where you are going.

Sen. W. Mark: I have the right, Madam President, to say what I have to say, once I do it within the Standing Orders of this Parliament, within the Constitution and within May's *Parliamentary Practice* and nobody will silence me, including you. [*Crosstalk*]

Madam President: Sen. Mark.

Sen. Kangaloo: Say it outside Parliament.

Sen. W. Mark: Anyway, Madam President, let me continue, please. I want to just make a brief limited and sweet intervention; why are you disturbing me. Madam President, I will pause and tell you that we are happy in the Opposition on this occasion to be associated with this piece of legislation. [*Desk thumping*] We shall not be withholding our support on this measure. We shall give support to this measure today. [*Desk thumping*] And I just hope that it is a lesson for the Government, as to how to perform in Opposition, because I want to let them know that very shortly when we assume power; when we assume office, we would look forward to the same kind of cooperation that we have given them, they would give to us when the UNC Alliance assumes power very shortly.

I want to thank you, Madam President, very short and sweet, thank you very much.

Sen. Yuille-Williams: Madam President, Sen. Wade Mark has a way of saying things in this Parliament because you know sometimes it is picked up by the media. And again, he is just throwing things across about five, whatever it is and Hilton. He did that already to me, talking about some money in the bank and always—[*Interruption*] Wait—Thank God, wait, wait, wait—

Sen. Mark: Madam President, on a point of order; on a point of order. Madam President, on a point of order. The hon. Minister is telling an untruth. You have ruled on this matter already. You sat on a committee and you cleared my name. She is imputing improper motives.

Madam President: All right. I did not—

Sen. Mark: She is imputing improper motives.

Madam President: Sit. Please, Senator; please Senator, I am on my feet. The Committee—

Sen. Mark: Well, of course and you were the Chair; you cleared me, so tell that lady do not—

Madam President: That lady is a Minister.

Sen. Mark: The hon. Minister.

Madam President: Sen. Mark!

Sen. Mark: Madam President, you cleared me!

Madam President: Just say—

Sen. Yuille-Williams: That incident with Mr. Larry Howai, the Chairman of the bank. [*Desk thumping*] Nobody else, but Mr. Howai, to whom I am eternally grateful. What the Senator has just said about moneys at a hotel is not true and I want to stand and deny it here for the record. He consistently does these silly things all the time, pretending that it is in crosstalk, but he knows why he is doing it; trying to damage people, but he cannot.

Sen. Mark: Why you do not answer the question so there would be no speculation?

The Attorney General (Sen. The Hon. John Jeremie SC): Thank you, Madam President. We have had a good afternoon, it is going into evening now. I would like us to see if we can recapture some of the spirit of accommodation, which has guided us through this process and which has brought us here this afternoon. It should not be forgotten that the DNA—

PROCEDURAL MOTION

The Minister of Public Administration and Information and Minster of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, before the Attorney General gets into his stride, I know it is a few minutes, but I would like to move that the Senate continue its sitting on this matter until the completion of the debate on this Bill.

Question put and agreed to.

DEOXYRIBONUCLEIC ACID (DNA) BILL

Sen. The Hon. J. Jeremie SC: Madam President, as I was saying before we took the procedural motion, this piece of legislation is but a part of a package of legislation which had been agreed to between Government and Opposition at a

time when the country found itself in the midst of a crime wave. By definition that is a period of time when crime was increased to proportions which were hitherto unknown in this country. So, that we were in an unacceptable period of criminal activity and Government and Opposition got together and it is to the credit of both sides. And we on this side are eternally grateful that the Opposition lent its support to a package of legislation, which included the Police Service Act, the Constitution (Amdt.) Bill, the Police Complaints Authority Act, the Bail (Amdt.) Bill, the first one in 2005, the Breathalyzer Bill; the DNA Bill, which is before us. [*Desk thumping*]

There were some things agreed to which have not been done, the Equal Opportunity legislation is one which stands out; it is in a Joint Select Committee at this time. The Criminal Injuries Compensation legislation was agreed to but the figures had to be revised downwards, but it is before the Senate; and the other two pieces were the Anti-kidnapping Court legislation and the legislation to deal with the proceeds of crime. It is only with respect to the legislation to deal with the proceeds of crime where the Government has fallen down. We have not managed to enact that legislation as yet.

With respect to the Anti-kidnapping court, the special court, what we decided to do was to follow the model used to create the Special Family Court, which has worked. So, a team was set up in collaboration with the Judiciary to look at the feasibility of it and it has been working and working quite well and a parcel of land has been identified and purchased, I believe by the Ministry with responsibility for doing that; a note was carried to the Cabinet setting out a rationale and that project is on stream, so that in a relatively short period we shall have a court to deal with kidnapping, gun-related crime and violent crime located somewhere in the East of Trinidad, Trincity. The Firearms Interdiction Unit is up; that is in my colleague's portfolio, but I believe that that has been merged into the Organized Crime and Narcotics Unit; that is a separate matter.

There were seven contributions this afternoon, if I include that of Sen. Mark, which I never like to include as a whole contribution, I tend to say it is half of a contribution, a "half a mark", but I will include it and say that there were seven contributions this afternoon. I would not be able to go through everyone's contribution, pull out points, and rebut points, because really, this is an exercise of a Joint Select Committee and what we are debating is the report of the Joint Select Committee. So, I would imagine that we need not debate it as a piece of legislation, which is before us de novo.

The points which were made in general by almost everyone—I think Sen. Seetahal SC was the only one to put a time to it; she said three years and five months late—were as follows: one, the legislation was here too late; two, there was a philosophical question raised by Sen. Prof. Ramchand directly and in some of the other contributions, that is the balancing of the privacy rights versus the rights of the society to have DNA legislation, which is what I would say the "wider good" rights. The third point was that the utility of the DNA legislation by and of itself would not solve the crime problem; it is not a magic or silver bullet. The fourth point was that the legislation needed to be accompanied by training programmes, both in terms of personnel and a change of attitude. The fifth point dealt with—a technical one—the difficulties between intimate and non-intimate samples, which I kept hearing as a recurrent theme.

Now, if I could just take the points in order. With respect to the point that the legislation is too late, we say on this side that the first piece of legislation, which was based on—I am advised—the 2000 Act, the Australian model and I want to correct something Sen. Dr. Gopeesingh said here. He suggested that we had repealed the Act; that is not the case. We did not proclaim it and the reason we did not proclaim it—it is repealed here now [*Interruption*] but that does not account for the period of time between 2000 and now.

What accounts for that is our resolve not to proclaim the 2000 Act and that was deliberate. It was a decision which came out of the Ministry of National Security. It was a decision based largely on the fact that the 2000 Act was based on the Australian model. And some time after the 2000 Act was passed, when we assumed office, we entered into a collaborative arrangement with the United Kingdom Forensic Science Services, which has had over 25 years experience in the field. They conducted an assessment with respect to the Act and also the general state of affairs, the infrastructure at the Forensic Science Centre.

That analysis showed that there were a number of challenges, which would have arisen if the Act were to have been implemented as is. So that we were operating really on the basis of expert advice which told us that we should not go ahead and proclaim the Act. In fact, in Australia the authorities are now looking at their own legislation with a view to throwing it out and perhaps doing something else. So that is the reason. It might not explain the length of time but it explains the fact that there was a delay.

With respect to the second question, the philosophical question, as I term it, the one between balancing privacy—and Sen. Prof. Ramchand confused me a bit because in one breath he seemed to have been arguing for a draconian approach to

the legislation; he said that the legislation had not gone far enough. On the other hand, he said that we were storing samples for too long. The point is that we discussed the period of time in the Joint Select Committee and we took expert advice from the Forensic Science Centre.

Sen. Prof. Ramchand: Madam President, through you, could I "un-puzzle" the hon. Minister? What I really meant was that if we did not store the sample and if we restricted the profile to be only crime investigation, then I would want a larger database.

Sen. The Hon. J. Jeremie SC: I understand.

Sen. Dr. Saith: You understand? [*Laughter*]

Sen. The Hon. J. Jeremie SC: Sort of. The point is that we felt that 10 years was a sufficient period to store the samples for. We are not storing samples to see who has a cancer trait or a cancer gene so that we can deny that person insurance or send that person home at age 50 without their benefits or whatever. The Forensic Science Centre is about solving crime, so that they would only be storing samples for that very purpose which you articulated; for the purpose of solving crime. It is the same with fingerprints, when the police keep fingerprints.

Now, that sort of balancing act between the private rights of the individual and the public good, that sort of process in our system of separation of powers, is carried out for us by the courts. It is not carried out inside here where we are legislators; it is not done in the Cabinet; it is carried out by the courts.

6.30 p.m.

What the courts upheld—I am grateful to Sen. Seetahal SC for providing me with a recent case. In the case of *R(S) v Chief Constable for South Yorkshire*—that is a 2004 one, Weekly Law Reports, 2196 of the House of Lords—they held in that case, that the retention of fingerprint and DNA samples of persons who are acquitted or not proceeded against, does not amount to a breach of Article 14—they were dealing with the European Commission of Human Rights, Article 14, that is the provision against discrimination.

So that in our system, it would be left to the High Court as guardian of your constitutional rights to balance whether the Executive or the Legislature has gone too far, and even this piece of legislation is going to be subjected to scrutiny. There is one area in which we have gone very far, that is to say, to require the DNA of members of the protective services. That is something which the Opposition has asked us do; we thought about it; and that is an area in which the courts might find that the legislation requires some sort of severability.

I do not know, I am just flagging it because really, what you are doing there, is to say that all police officers—we should have a DNA database for a class of persons in the society without more. They have done nothing, but we want them on DNA database in any event, so that is something that is going to have to survive; I am assuming all of us will vote in favour. Even if we do that, the courts will still have the task of balancing rights there and they can still decide that that part of the law is not reasonably required in a society that has a fundamental respect for democratic rights of individuals.

Now, on the question of the utility of the legislation, I refer now to something that Sen. Kangaloo passed for me and told me she would not forgive me if I did not refer to it; it is case study which she has dear to her heart. This is the real story of a young woman who was age 17, here name was Nicola Dickson and her body was discovered in January of 1997 in Sutton, that is in Birmingham. She had been raped and beaten about the head. Semen had been detected in vaginal swabs, a DNA profile was obtained and it was loaded to a DNA database, but there was no match at the time.

In 2002, that is five years after, Colin Waithe was arrested for a road rage offence in the UK and his DNA was taken as a matter of course. His DNA matched; there was a hit with the profile taken from Nicola Dickson's body. The case corroborated with other forensic and CCTV evidence which—I am saying that it is not the magic bullet, there should be other evidence, so that the problems that some of the speakers here adverted to earlier of witnesses who are cowards, would not be solved by this legislation. Unless we can solve that problem, we are not going anywhere, but this piece of legislation does carry us, it does have some utility.

In November of 2003, Waithe was convicted of the murder and sentenced to life imprisonment for this crime, so that, yes, the legislation does have some utility. Witnesses are still important, but the legislation would allow for DNA evidence to be used, both to rule in and to rule out because is also excludes, it has that effect; we did not speak of that this afternoon, but it does have that effect of ruling out persons who are innocent. So there is utility to the legislation.

Fourth point, the need for the legislation to be accompanied by training programmes is one that we buy wholeheartedly on this side and I want to assure Sen. Mark in his "half a mark" contribution, that the infrastructure at the Forensic Science Centres has been upgraded. There is a senior member of staff from the Centre here, tonight with us, and they were full partners in the process with us of reforming the Bill. Sen. Dr. Gopeesingh would be able to attest; they were full

partners; they are on board; the equipment has been purchased, as a matter of fact, they have given me a list of things that they had done to bring themselves up to the speed.

Now, with respect to the final point, that is the bodily substance point, if you look at clause 4, the definition section, it deals with the question of the DNA Register and the Forensic DNA Databank which had been put out as well, it says the DNA Register is a police register first of all. I think that point has been raised, but not clarified, so that is the register which is going to reside in the police station, which is going to govern in general terms what procedures were followed, when the sample was taken. So, DNA Register means registering all information that is required to be documented by the police officer under this Act; it is to record it. Forensic DNA analysis means the analysis of genetic material.

The Forensic DNA Databank means the electronic or other collection of DNA profiles—and this is the question that came from Sen. Prof. Ramchand—attribute to individuals or crime scenes. Now, I cannot speak to the principle which guided the committee in determining that, and the nasal area—[*Interruption*]

Sen. Seetahal SC: Orifice.

Sen. The Hon. J. Jeremie SC: I did not want to use the word orifice, the nasal area was not an intimate sample. I cannot speak to that, but there are definitions on intimate sample and non-intimate sample. I have been told by the experts from the Science Centre that the nasal area is not one in which one would find a valuable DNA material.

Sen. Seetahal SC: [*Inaudible*]

Sen. The Hon. J. Jeremie SC: I sought an explanation from the experts and I was told that was not an area that one would expect to find useful tissue for analysis. Madam President—[*Interruption*]

Sen. Dr. Gopeesingh: Go back and touch on training.

Sen. The Hon. J. Jeremie SC: Well, I did not touch on training. I think Sen. Mark asked about training programmes—that was my fourth point, the need for registration to be accompanied by training programmes, both in terms of personnel and nurses; the whole range from nurses to police officers. We accepted that and we know that legislation will not work without training. You did ask a question about the University of the West Indies.

Sen. Mark: And the branches in Tobago and so on.

Sen. The Hon. J. Jeremie SC: The branches issue is set in stone, that is to say, I can speak—before you carry me to the Privileges Committee, I have to be careful now what I say in this Senate because we are in our dying days and I know that you all are grasping at straws, so that you wanted to carry me to the Privileges Committee today. I heard so.

Sen. Mark: You are very sensitive.

Sen. The Hon. J. Jeremie SC: I have to be sensitive, so what I have to say—we are coming for you—Madam President, is that I do not know yet what is on the cards with respect to the university. But I know that there are plans to establish a Centre in Tobago and in other parts of Trinidad, south and central would seem to me to be the logical venues.

In addition to that, I believe that a mobile DNA unit—[*Interruption*]

Sen. Seetahal SC: There is one installed.

Sen. The Hon. J. Jeremie SC:—is to be installed and commissioned or has been installed and commissioned. This is the note that I have been given by the Forensic Science Centre. So that, Madam President, with those few words on the questions which were common to all of the contributions, I beg move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Sen. Seetahal SC: I have one, on the definition of "incapable person", there is a typo, clause 4, on the second line, it says, 'incapable person' means a person who by reason of this physical or mental condition is unable ...", I think it means "is incapable of indicating whether he consent".

Madam Chairman: Unable of indicating, but that does not sound right.

Sen. Seetahal SC: It should be "incapable".

Madam Chairman: Or "incapable to".

Sen. Jeremie SC: It cannot be "unable".

Sen. Seetahal SC: Well, I do not know, but "it is unable of"?

Sen. Jeremie SC: It could be "is unable to indicate whether he consents". So that is a typographical error.

Sen. Seetahal SC: You should not define it with—

Madam Chairman: Or it could be also incapable of.

Sen. Jeremie SC: Yes, it says, "is unable to indicate whether he consents".

Madam Chairman: All right, that is a typographical error or drafting error.

Sen. Jeremie SC: It is a typo, Madam Chairman.

Question put and agreed to.

Clauses 4 ordered to stand part of the Bill.

Clauses 5 to 11 ordered to stand part of the Bill.

Clause 12.

Question proposed, That clause 12 stand part of the Bill.

Sen. Seetahal SC: I have a question which may be termed a typo. Under clause 12(1), it says, "An officer of the protective service shall give ...", as it stands, that legislation means one officer. If one officer out of all the 5,000 gives it, that is compliance with the Act. What I think was meant, was "every officer", otherwise as it is, it is not sensible.

Sen. Jeremie SC: Yes, what we mean is "each officer of the protective", "every officer of the protective services shall give a non-intimate sample." I think it is "each."

Sen. Seetahal SC: Every, is what I know of, but I do not see the difference grammatically with saying, "every" or "each", if it is more comfortable to say "each", I would agree.

Sen. Jeremie SC: Okay, "each" shall give a non-intimate sample.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

Clauses 13 to 19 ordered to stand part of the Bill.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Sen. Seetahal SC: I have a typo. Clause 20(1)(a), where it says, "person against whom the Order is sought was associated", it should be "is associated" because it is present. If you say "was associated" it means in the past and it is past. So it should read,

> "Where an application is made under section 19, the applicant shall satisfy the Court that on the evidence before it there are reasonable grounds to believe that the—
>
> (a) person against whom the Order is sought is associated with the commission of or committed an offence;"

So it has to be "is" at the time you are making the application that he "is" that time associated— That is how you would say it, "making an application on the basis that John Brown is associated with the commission", so "was" should be changed to "is".

Sen. Jeremie SC: If we change it there, Madam Chairman, we need to change it in (b) as well. This proves that that person "is associated with the commission of or committed an offence".

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clauses 21 to 40 ordered to stand part of the Bill.

Sen. Prof. Ramchand: A possible title, should there not be a capital b?

Madam Chairman: Where are you looking at?

Sen. Prof. Ramchand: 34(1).

Sen. Seetahal SC: Not at the start, just before it is constituted, you leave it there as a common b, is after.

Sen. King: [*Inaudible*]

Sen. Seetahal SC: No, no, afterwards.

Sen. Jeremie SC: The first one given is correct.

Clause 41 ordered to stand part of the Bill.

Clause 42.

Question proposed, That clause 42 stand part of the Bill.

Sen. Seetahal SC: I have a typo, please. It is at 42(5)(d), at the end of (d) an "or" which should not be there, because it is in the penultimate.

Madam Chairman: 42(5)(d).

Sen. Seetahal SC: Yes, that "or"—

Madam Chairman: That comes off.

Sen. Seetahal SC: It should, there is no reason for it there.

Madam Chairman: Right, okay. Sen. Jeremie SC, you agreed with that.

Sen. Jeremie SC: That is a typo.

Question put and agreed to.

Clause 42 ordered to stand part of the Bill.

Clauses 43 to 45 ordered to stand part of the Bill.

Clauses 46 to 55.

Question proposed, That clauses 46 to 55 stand part of the Bill.

Sen. Jeremie SC: There is just a little typo there. Part XII roman should have an extra "I." It is definitely a typo, Madam Chairman.

Sen. Seetahal SC: That is definitely a typo.

Sen. Jeremie SC: All of them are definite typos.

Madam Chairman: I do not understand what you are saying.

Sen. Cropper: Madam Chairman, there are two Parts XII.

Madam Chairman: Okay.

Sen. Seetahal SC: Since databank is Part XII, so the Miscellaneous has to be Part XIII.

Madam Chairman: Okay, and not 46 to 55.

Sen. Seetahal SC: There was need to be an additional—

Madam Chairman: Oh, you are saying it is a typo or whatever?

Sen. Jeremie SC: Yes.

Sen. Seetahal SC: It is an error.

Question put and agreed to.

Clauses 46 to 55 ordered to stand part of the Bill.

Sen. Seetahal SC: Just a question, it is not a typo this time. Clause 50(2) which deals with the penalty, where the penalty for merely taking a sample without authorization and so, and disclosing profiles, it is a fine of $100,000 and imprisonment for seven years. My question is that in the Magistrates' Court, the Summary Court, for trafficking cocaine, the maximum penalty is five years—which was reduced by the way, I do not know why—but that is less serious than this, so I wanted to know why this is so high and on the one hand, why is trafficking cocaine in Summary Court so low? Perhaps you can just tell me.

Sen. Jeremie SC: There is no question that we need to find a rationale to properly—there are a number of offences which the fines and the period of imprisonment does not reflect contemporary values and norms and the trafficking offence is just one of those. We say that for this offence that we are creating here, this is modern legislation and we want it to be $100,000 and imprisonment for seven years. Now that is a statement with respect to this piece legislation, at some point in time we need to sit and look at the summary offences generally, indictable offences perhaps eventually, and look at the penalty with a view to making them consistent with modern norms.

Sen. Seetahal SC: Just one point here before we go on and we are finishing now I see. Just to point out that in 2000, this penalty was the penalty for trafficking cocaine imposed, right, before that the penalty for trafficking cocaine in the Magistrates' Court was 10 years plus three times the value. For some reason the Legislature in 2000, I think it was inadvertent through you, Madam Chairman, that is was reduced to five years. I believe it had to be because at the same time they introduced the penalty to other things and this is something I had an opportunity to raise elsewhere, so I want to seize the opportunity in contrasting it to this and I would ask some kind of assurance. It was not because it is old legislation, it was reduced in error and I think that is a serious thing that we need to address as soon as the next Parliament comes. I want it to be noted, Madam Chairman.

Sen. Jeremie SC: Okay.

Sen. Ahmed: Madam Chairman, could I ask for some clarity on 46(1). The phrase using "reasonable force", it seems to be a little bit awkward. I do not know what it is referring to.

Sen. Jeremie SC: The use of reasonable force is a term of art, so that it is only what is necessary so that the—[*Interruption*]

Sen. Ahmed: No, no.

Sen. Jeremie SC:—so that the immunity covers someone who uses reasonable force to get the sample.

Sen. Ahmed: To take the sample?

Sen. Jeremie SC: Yes.

Sen. Ahmed: Okay. Thanks.

First Schedule ordered to stand part of the Bill.

Second Schedule ordered to stand part of the Bill.

Preamble approved.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment.

Question put, That the Bill be read a third time.

The Senate voted: Ayes 30

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie SC, Hon. J.

Kangaloo, Hon. C.

Montano, Hon. D.

Enill, Hon. C.

Manning, Hon. H.

Chin Lee, Hon. H.

Dumas, Hon. R.

Abdul-Hamid, Hon. M.

Titus, R.

Sahadeo, Hon. C.

Ramroop, S.

Hackshaw-Marslin, J.

Williams-Smith, Mrs. M.

Mark, W.

Gopeesingh, Dr. T.

Kernahan, Dr. J.

Ahmed, Mrs. R.

Ramadhar-Singh, Dr. G.

Philip, R.

Mc Kenzie, Dr. E.

Ramchand, Prof. K.

Deosaran, Prof. R.

King, Mrs. M.

Seetahal SC, Miss D.

Anmolsingh-Mahabir, Mrs. P.

Khan, Brother N.

Ali, B.

Cropper, Mrs. A.

Question agreed to.

Bill accordingly read the third and passed.

ADJOURNMENT

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate be now adjourned to Thursday, September 13, 2007 at 1.30 p.m. In the light of the way that we are working to getting our legislation passed, with the cooperation of all, I am suggesting that on Thursday we do the Bail (Amdt.) (No. 3) Bill. [*Interruption*]

Sen. Dr. Gopeesingh: That is if it is passed in the Lower House.

Sen. The Hon. Dr. L. Saith: Yes. If the Bill is passed in the Lower House, we would follow that by two Committee Reports, one on the Joint Select Committee on the Equal Opportunity Bill by Sen. Kangaloo, and the other by Sen. Prof. Deosaran on the Judicial and Legal Service Commission, after which we would deal with a Motion by Sen. Mark on the Immigration Amdt. Regulations. We have two private Bills, one by Sen. Prof. Ramchand on the Incorporation of the Freedom House and the other by Sen. Yuille-Williams on the National Carnival Bands Association. I know it sounds a lot, but it is a short procedure and I will like to get them out.

Question put and agreed to

Senate adjourned accordingly.

Adjourned at 7.05 p.m.