

**THE**  
**PARLIAMENTARY DEBATES**

OFFICIAL REPORT

IN THE SECOND SESSION OF THE NINTH PARLIAMENT OF THE REPUBLIC OF  
TRINIDAD AND TOBAGO WHICH OPENED ON DECEMBER 17, 2007

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**SENATE**

*Tuesday, November 30, 2010*

The Senate met at 10.30 a.m.

**PRAVERS**

[MR. PRESIDENT *in the Chair*]

**PAPERS LAID**

1. The Motor Vehicles and Road Traffic (Mobile Devices) Regulations, 2010. [*The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]
2. The Motor Vehicles and Road Traffic (Enforcement and Administration) Order, 2010. [*Sen. The Hon. S. Panday*]

**INTERCEPTION OF COMMUNICATIONS BILL**

*Order for second reading read.*

**The Minister of National Security (Sen. The Hon. Brig. John Sandy):**  
Thank you, Mr. President. I beg to move,

That a Bill to provide for and about the interception of communications, the acquisition and disclosure of data relating to communications, the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed and other related matters, be now read a second time.

Mr. President, before this honourable Senate today is a Bill to provide for and about the interception of communications, the acquisition and disclosure of data relating to communications, the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed and other related matters, otherwise known as the Interception of Communications Bill.

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[SEN. THE HON. BRIG. J. SANDY]

On Friday last, this Bill was passed in the Lower House, with full and complete support from our colleagues in the Opposition. [*Desk thumping*] It was clear that all Members recognized the necessity for this Bill and adopted it, knowing that it would be a useful tool in the protection of public safety and national security.

I do not wish to belabour the issue which brought this Bill to the fore. Those feelings of shock, horror, dismay, disgust and indignation we all felt still leave us with a bitter taste to this day. Suffice it to say that this Government assures the nation and the Members present that it intends to uphold and honour the rule of law and safeguard it carefully. To this end, this Government will not follow in its predecessor's footsteps and engage in the unlawful wiretapping and interception of the communications of private citizens without first establishing the proper legislative framework within which we intend to operate in the confines of the law.

Mr. President, our former Prime Minister, on his statement with respect to this Bill, indicated words to the effect that his unit, at the time governing this country, would first test the mettle of this Bill or test the activity before bringing the Bill to the Parliament. Subsequently, he was recorded as saying words to the effect that he had made an error and that was not what he meant. The error made initially was interfering with people's private conversation to the extent that a number of citizens were subject to the ears of those who unscrupulously, unlawfully and legitimately listened to their conversations.

Mr. President, you have sat in the Chair of His Excellency the President of the Republic of Trinidad and Tobago, and I am sure you would be appalled, and that is putting it quite mildly, to learn that your conversation—it could be with your daughter or wife, in which there would be some intimate content—was being listened to, recorded and handed over to someone totally void of your authority. You certainly would not allow someone to listen to your conversation, when were you speaking, not only on private matters but on any matter. There were instances of attorney/client confidentiality and all those things, which came to the fore, prior to the presentation of this Bill.

I learnt that my telephones were tapped and my emails as well were interfered with. What affected me personally is the fact that I, after three and one-half decades of loyal service to Trinidad and Tobago at the time, I had no political

aspirations whatsoever—just prior to the election of 2007, I was the subject of a Power Point presentation, the handouts of which I was able to see. My name appeared, “John Sandy”, with linkage, not with criminals, but I suspect people opposed to the Government at the time. [*Interruption*]

**Sen. Panday:** What?

**Sen. The Hon. Brig. J. Sandy:** I wondered: why would they want to do something like that? That one got to me more than the telephone and the email, because it was clearly evident then that I was the target. For what reason? God alone knows. I suspect very much that there are others like me who were equally appalled to find that they were part of that surveillance target, so to speak.

The implementation of this law will provide the authorization and oversight that was lacking, when our predecessors were engaging in intercept and will, therefore, provide accountability and defend against wanton violation of the privacy of honest, law-abiding citizens. It was with this in mind that the hon. Prime Minister sought feedback and input from the Leader of the Opposition and his Members in the Lower House, and together formed an historical bipartisan committee to sit and resolve matters of concern over the Bill.

I wish again, at this juncture, to thank those Members who sat and were able to resolve those matters on which there were some disagreements after careful and thoughtful discussion. There is the possibility that, because some of those Members themselves were subjects of the wiretapping, they eagerly and willingly contributed. Even in this august Senate, the phones of the Leader of the Opposition in the Senate were also tapped. I have not communicate with her in that respect, but I am sure she feels some degree of let-down, having regard to the fact that it was done by her administration.

Mr. President, the Government of the People’s Partnership and the Opposition arrived at a mutual consensus, wherein the Interception of Communications Bill that is before us today is even stronger and more effective than originally envisioned. The Opposition and members of the Law Association provided useful insight into this Bill, given how critically important it was to the People’s Partnership to get their views. We can now say that we present here to you a Bill that will be an effective crime-fighting mechanism.

I wish to thank my colleague on the other side, Sen. Fitzgerald Hinds, who was part of that committee. It was most refreshing, the interaction that I was part of. I sat on that committee. Interaction was so collaborative in an atmosphere of cordiality that can only be surpassed by what is experienced here in this Senate.

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Mr. President, I now respectfully request your leave to take you and Members of this honourable Senate through the most salient parts of the Bill.

Clause 5, the interpretation clause of the Bill, underwent some amendments at the committee stage of the Lower House.

**10.45 a.m.**

This was done after the informal meeting with the Opposition and the Law Association, whereas it was suggested that the authorized officer should be specifically identified in the Bill, as opposed to simply an officer to be authorized by the Minister. To this end, the authorized officer now means the Chief of Defence Staff, the Commissioner of Police or the Director of the Strategic Services Agency.

Note that, under clause 5(2) of the Bill, the authorized officer's function may be exercised by either him or through an officer authorized by him in writing, acting under and in accordance with his general or specific directions. This clause specifically enables the authorized officer to delegate his authority only where written authorization is given. The definition of "offence" should be noted.

Under this Bill, interception will apply to those crimes which carry a penalty of a term of imprisonment for five years and more, and would include offences where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law. This sought to narrow the offences to which interception would apply. This was a suggestion adopted from our friends on the Opposition side, who thought that the one-year term of imprisonment proposed in the initial Bill was insufficient.

Clause 6 of the Bill denotes what the offence of unlawful intercept is, and it prohibits a person from intentionally intercepting a communication in the course of its transmission by means of a telecommunication network. Mr. President, the penalty for someone who does, is a fine of \$500,000 and to imprisonment for seven years. Several exceptions were created with the most notable being the exception under the clause that allows for judicial authority, by way of a lawful warrant issued by a judge.

Another worthy inclusion at the Opposition's behest is at clause 6(2)(b) where it states:

“Notwithstanding any other law, a person does not commit an offence under this section if—

- (b) the communication is intercepted—
  - (i) in the interest of national security;”

The “interest of national security” is defined as:

“...including the protection of the State from threats of espionage, sabotage, any terrorist act or subversion.”

It continues:

- “(ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years or more...
- (iii) for the purpose of safeguarding the economic well-being of the State; or.
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement,

and any communication so intercepted may be used for the purpose of an application under section 8 or 11, but shall not be admissible as evidence in any court;”

Mr. President, the intention here is, while we are intent on enforcing the law, and while we are looking at the societal aspect of it, the personal aspect of it, and safeguarding individuals’ privacy, we must take cognizance of the fact that we ought not to allow the security aspect of it to be diminished.

Mr. President, this clause essentially dictates that intercept is permissible in these four types of situations, but such intercept need not be sanctioned by judicial warrant. This is so because the Opposition strongly felt, and the People's Partnership agreed, that intercept has shown itself to be quite a useful tool in detecting crime, and certain situations must not be too bogged down by the necessity of having to apply for a judicial warrant in the circumstances as mentioned before. The intercepted information gathered under these circumstances will be solely for the purpose of intelligence gathering and, therefore, cannot be use for evidential purposes in a court of law.

Clause 6(6) states:

“Information lawfully intercepted under this Act is exempt information for the purposes of the Freedom of Information Act.”

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This is understandably necessary, given the nature of the intercepted material, and the fact that such information should not be available for public knowledge and usage. This is clearly understood from a security perspective. We recognized that in every jurisdiction there are classified documents. As you are aware, there are different levels—secret, confidential and restricted. These are done for a purpose and in the interest of national security.

Clause 7 deals with the issue of possession of interception devices—possession, selling, purchasing or manufacturing of such devices or any component thereof, knowing that its design renders it primarily useful for unauthorized interception of private communication which is an offence that carries a fine of \$250,000 and imprisonment for five years.

The aspect of strict liability that this Bill had in the Lower House was removed at the Opposition's suggestion and, element of *mens rea* or intention, has now been incorporated into the offence whereby a person must know that the design of the device renders it, above all else, useful for unlawful interception.

Naturally, we have provided that persons engaged in lawful intercept would be exempted from this provision where they are carrying out their duties under the direction of an authorized officer, or where they are in possession of the device for the purpose of clause 6(2), or where the person has the device or component under the authority of a licence issued by the Minister. The Minister may thereby grant licences allowing such persons who wish to possess, sell, purchase or manufacture devices which can be used for intercept purposes, thus allowing for persons to do so within the confines of the law.

Mr. President, clause 8 outlines the procedure that an authorized officer must adopt in order to apply for a warrant. The application for a warrant shall be made *ex parte* to a judge. This application is necessarily *ex parte* owing to the fact that interception, by its nature, is supposed to be so. The subject must not know that his communication is going to be monitored, and that speaks for itself.

A warrant in this manner could therefore be issued:

- “(a) to intercept...communications as are described in the warrant; and
- (b) to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant.”

A judge shall not issue a warrant unless he is sufficiently satisfied that certain requirements are met. He must, therefore, determine that:

- “(a) the warrant is necessary—
- (i) in the interests of national security; or
  - (ii) for the prevention or detection of any offence where there are reasonable grounds for believing that such an offence has been, is being or is about to be committed;
- (b) information obtained from the interception is likely to assist in investigations...
- (c) other investigative procedures—
- (i) have not been or are unlikely to be successful in attaining the information sought to be acquired by means of the warrant;
  - (ii) are too dangerous to adopt in the circumstances; or
  - (iii) having regard to the urgency of the case, are impracticable;
- (d) it would be in the best interest of the administration of justice to issue the warrant; and.
- (e) the interception of communications to be authorized by the warrant is proportionate to what is sought to be achieved by such interception.”

I wish to acknowledge that the latter requirement of proportionality was recognized and recommended by the Law Association as a useful and necessary insertion into the clause. We certainly considered it to be so, and thank them again for their guidance on their worthy submission. [*Desk thumping*] This is the provision of judicial oversight that we have built into this Bill to protect citizens from wanton violation of their rights and invasion of their privacy.

The Government of the People's Partnership respect the independence of Judiciary and, therefore, retain the utmost faith that they would carry out this exercise of determining when to grant a warrant with the greatest of care and safeguard in mind.

I wish to point out, that under clause 8(3), the application for a warrant must be made on the prescribed form as set out in Schedule 1 and mandates that it must be accompanied by a declaration in the form set out in Schedule 2 where such a declaration is to be deemed to be a statutory declaration under the Statutory Declarations Act. Where the application is sought on the grounds of national security, it must also be accompanied by a written authorization signed by the Minister of National Security.

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Mr. President, we have established a set form in the Schedules attached which would make it much easier for officers to complete and submit in a timely manner, and which clearly sets out information that will be required under the Bill. Persons applying for such a warrant must adhere to the requirements needed and, of course, provide a judge with correct and relevant information to acquire that warrant.

All records relating to every application for a warrant or the renewal or modification of a warrant shall be sealed until the court orders otherwise. This is, again, to ensure that private and sensitive information which form part of the application is vehemently safeguarded at all times.

To emphasize this, the Bill makes it an offence for anyone to disclose the existence of a warrant or an application for a warrant other than to a person to whom such disclosure is authorized for the purposes of the legislation. The penalty for such an unauthorized disclosure is a fine of \$50,000 and three years, imprisonment.

Clause 9 identifies the scope of the warrant and includes such matters as the nature of the communication to be intercepted by the identity of the person whose communication is to be intercepted, by identity of the agency authorized to make the interception, and the name of the applicant.

Note that where the applicant intends to seek the assistance of any person or entity in implementing the warrant, the judge shall under the applicant's request, direct appropriate persons or entities to furnish information facilities or technical assistance necessary to accomplish the interception. This clause is essential as it involves the necessary collaborative aspect of interception between security agencies of the State and telecommunications service providers.

**11.00 a.m.**

Mr. President, clause 10 deals with the duration of the warrant and provides that a warrant may be granted, in the first instance for not more than 90 days, but may be renewed by a judge if he is satisfied that the renewal is justified in the particular case for a further period not exceeding 90 days.

Where a judge is satisfied that exceptional circumstances exist which would justify a renewal of the warrant beyond the first renewal period, the judge may, on application by an authorized officer before the expiration of that period, renew the warrant for a period, which he may specify in it, not exceeding 90 days from the expiration of the first renewal period. If, however, at any time before the end of

any of the periods referred to, a judge is satisfied that, after hearing representation made by the authorized officer, that a warrant is no longer necessary, he will revoke that warrant. This, again, is to operate as a further type of oversight to ensure that lawful interceptions will only take place for as long as is considered necessary.

Clause 11 provides for those instances where an application for a warrant needs to be made in urgent circumstances. Under this clause a judge may hear an oral application for a warrant and dispense with the requirements for a written application and declaration and may, if he is satisfied that a warrant is necessary, issue that warrant.

An application, however, has to fulfil the condition entrenched in the clause that, where a warrant is issued after such an oral application, he must submit to the judge the relevant documentation within 96 hours of the time of issue of the warrant. I might add that initially we were looking at 48 then 72 hours, but we were advised that under some circumstance the request could be coming from someone operational in the field who needs to pursue his target and, as such, the additional hours were allowed.

The judge will then evaluate the documents submitted and review his decision to issue the warrant and shall either make an order revoking the warrant, if he is not satisfied that the warrant continues to be necessary, or he may make an Order affirming that warrant. Where the applicant fails to submit the necessary application and declaration, the warrant issued shall cease to have effect upon the expiry of the 96-hour period.

Clause 12 provides for a judge to modify a warrant at any time after hearing representations from an authorized officer where he is satisfied that there is a change in the circumstances which constitute grounds for the issue or renewal of that warrant. This, of course, is necessary as we all are aware that circumstances change and the exigencies of a situation may require such modification. Here again this is part of the oversight to ensure that persons are not monitored unnecessarily.

Clause 13 expounds upon the duties of persons who are to provide prompt assistance or telecommunication services in order to ensure that interception warrants can be complied with. Telecommunication service providers must now take all necessary steps to fulfil this duty and assist by means of information facilities or technical assistance and shall, without delay, comply with the direction in such a manner that the assistance is rendered unobtrusively and with

the least interference to the services normally provided to the party affected by the warrant. Where a person fails to comply with the duty to assist or fails to provide prompt assistance, he or she may be charged and if, found guilty, may be liable to a \$1 million fine.

Clause 14—rules of confidentiality apply when information is gathered by means of intercept. Whereas clause 8 makes it abundantly clear that the records and documents pertaining to the application for an intercept warrant are to be sealed by the court, clause 14 goes even further. It stipulates that, where a judge issues a warrant, he shall also issue such directions as he considers appropriate for the purpose of requiring the authorized officer to make arrangements that are necessary to limit disclosure to the minimum that will be necessary for the purpose of the investigation or prosecution for an offence.

The clause also requires the judge to make directions regarding the safeguarding of copies of the intercepted communications that may have been made, and for the proper storage of such documents for so long as retention is necessary for the purpose of investigation or prosecution.

Clauses 15 and 16 deal with disclosure orders. Clause 15 provides that a judge may, on application by an authorized officer and after taking into account certain factors, order a person who has a key to protected communication to provide disclosure in respect of that communication only to the authorized officer or any other person specified in the Order.

A key is defined in the Bill as any key, code, password, algorithm or other data, the use of which, with or without other keys, allows access for protected communication or facilities for the putting of a protected communication into intelligible form.

Protected communication is defined in the Bill as any electronic data which, without the key to the communication, cannot readily be accessed or put into an intelligible form. It follows, therefore, that should an authorized officer come to be in lawful possession of such electronic data which he believes stores relevant information, but is encrypted, he can now apply to a judge for an Order requiring the person, whom he believes to have possession of the key, to produce such a key to decrypt and access the protected information that will be relevant to the investigation.

The judge's Order shall be in writing and shall describe the communication to which the Order relates, specify the times by which the Order is to be complied with and set out the disclosure required by law as well as the form and manner in which the disclosure is to be made.

I respectfully ask you, Mr. President, to take note of clause 15(4) wherein the judge must take into consideration the extent and nature of any protected communication which requires the key and any adverse effect that complying with the Order may have on any business carried out by the person to whom the Order is addressed. Consequently, the judge shall require only disclosure as is proportionate to what is sought to be achieved, allowing, where appropriate, for disclosure in such a manner that will result in the putting of the communication into an intelligible form other than by disclosure of the key itself.

This concept of proportionality as well as the stipulation that the disclosure shall only be to the authorized officer or such other person as the Order may specify, further provides the much needed oversight, checks and balances that such access to sensitive information requires.

Clause 16 provides that a person to whom a disclosure order is addressed, and who is in possession of the key to protected communication, must disclose to the authorized officer the communication in an intelligible form or the key or information to get the key. The authorized officer must access only the protected communication mentioned in the Order and ensure the confidentiality and security of the key and must destroy it as soon as it is no longer required.

Clauses 16(3) and (4) make provision for those instances where it would be difficult for a person to comply with all the terms of the Order through no fault of his own. Where the prescribed conditions exist, such a person will be deemed to have complied with the Order.

Clause 16(7) directs that where a person without reasonable excuse fails to comply with the disclosure Order, he commits an offence and is liable, upon summary conviction, to a fine of \$100,000 and imprisonment for one year.

Clause 16(8) stipulates that an authorized officer who obtains a disclosure Order is under an obligation to ensure that such arrangements are made to secure disclosed keys and information related thereto. Should such an authorized officer knowingly contravene this obligation, he commits an offence and is liable, on summary conviction, to a fine of \$200,000 and imprisonment for two years.

Mr. President, clause 17 provides that the content of a communication lawfully obtained is admissible as evidence in any criminal proceedings. This Government, as well as Members of the Opposition, are of the concurrent view that intercepted material should be admissible as evidence in our courts. Such evidence is undeniably stronger and more reliable than eyewitnesses who may be deemed unreliable through forgetfulness of the events or fear of intimidation or

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reprisals. A jury hearing an offender “set up a hit” or a drug drop shall definitely go a longer way to securing a conviction. The Government, however, recognizes that this aspect needs to have certain checks and balances therein. We know of so many instances when some witnesses would have given their evidence initially and sometimes under threat they develop amnesia or become ill and never attend court, or things of that nature.

Clause 17(1) defines sensitive information as any information that suggests—

- “(a) any of the details pertaining to the method by which the communication was intercepted; or.
- (b) the identity of any party carrying out or assisting in the interception.”

Clause 17(2) allows for the contents of the communication that is obtained by interception are to be admissible as evidence in any criminal proceedings.

**11.15 a.m.**

Mr. President, I wish the Members of this honourable Senate to note that exemption at clause 17(3). Where a warrant issued under urgent circumstances under clause 11 is revoked, the contents of the communication intercepted during that urgent period would be inadmissible.

Clause 17(4), Mr. President, specifies that:

“In any criminal proceedings—

- (a) no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information;
- (b) a statement by the witness that the interception of the communication was permitted by virtue of section 6(2)(a), (b), (c), (d), (e) or (f), as the case may be, shall be sufficient disclosure as to the source and origin of the communication; and
- (c) in proving the truth of a statement referred to in paragraph (b), the witness shall not be asked to disclose sensitive information.”

This ensures that disclosure and sources and the methods of intercept are safeguarded.

Clause 18 provides that an authorized officer may, by written notice, require the provider of a telecommunications service, who is in possession of, or capable of obtaining, any communications data, to disclose such data not later than one

month from the date of the notice to an authorized person in the interest of national security, for the prevention or detection of an offence. Communications data and other such relevant terms like “traffic data” have been carefully defined in the clause. By way of example, Mr. President, traffic data is information about data that is being transmitted, for example, IP addresses, phone numbers, to, from, et cetera. Communications data is the actual body of the data package being sent; for example, the contents of an actual email message.

Clause 18(2) provides that an authorized person may require a telecommunications service provider to disclose all the data in his possession, or subsequently obtained by him, or, to obtain the data and so disclose it. This requirement shall be by notice in writing, and, in accordance with clause 18(3), a notice in relation to any communication data shall not be issued unless the authorized officer has obtained a warrant under section 8 or 11 which, to remind this honourable House, deals with the application of the interception warrant. Clause 18(4) delineates the contents of the notice, and clause 18(5) stipulates that the requirements as to compliance and confidentiality are adhered to under clauses 13 and 14 of the Bill.

Clause 19, Mr. President, provides that communication data which is lawfully obtained is admissible as evidence, but, in so doing, the method used to get the data and the person who supplied it, except in special circumstances, shall not be disclosed. Like the previous clause relating to the admissibility of interceptive communications, guidelines are provided to deal with the disclosure of such data and witness statements.

Mr. President, clause 20 deals with the destruction of records. This was amended in the Lower House after it was suggested to us by the Opposition that requirements as to the destruction of intercepted material should be put in place and legislated for. We thank them for this proposition and, after our consultation and other meetings, inserted this clause which provides for the destruction of any information obtained from the interception of communications. Under clause 20(1); “An authorized officer shall ensure that any record of information obtained from the interception of communications in pursuance of section 8 or 11 that is not related to the objective of the interception is destroyed immediately.”

Further, in clause 20(2): “An authorized officer shall ensure that any record of information obtained from the interception of communications in pursuance of section 8 or 11 being information that relates wholly or partly and directly or indirectly to the objective of the interception is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced as evidence.”

Clause 20(3) provides, however, that clause 20(2) does not apply where a record of any information is adduced in proceedings in any court, thus safeguarding material that has already been adduced into evidence from destruction. Clause 20(4), Mr. President, provides for those instances where a warrant has been revoked under section 11 or ceases to have effect. Any record of information obtained from the interception of communications in pursuance of the warrant shall be destroyed immediately.

Clause 20(5) directs that an officer who intercepts a communication in pursuance of section 6(2)(b) shall ensure that any record of information obtained from the interception that is not related to the objective of the interception is destroyed immediately. Under clause 20(6), the Commissioner of Police, before he destroys such records, shall consult with the Chief of Defence Staff, the Director of the Strategic Services Agency, and, where he considers it appropriate, the Director of Public Prosecutions.

Clause 20(7) creates an offence where a person required to destroy any record of information in accordance with this section fails to do so, and he may be liable to a fine of \$500,000, and to imprisonment for seven years. Clause 21 of the Bill provides that an authorized officer shall not be liable for any act done by him in good faith pursuant to the Act. Clause 22, Mr. President, is another amendment proposed in the Lower House, and now provision has been made for the Minister to be informed of interception under certain circumstances within a certain time.

Where the intercept falls within any of the situations prescribed under clause 6(2)(b) of the Bill, the Minister is to be informed within 48 hours of the commencement of interception. Where an application for an interception warrant has been made under clause 8 of the Bill, the Minister is to be informed as soon as practicable after the making of the application. Where an urgent oral application for a warrant to intercept has been made under clause 11, the authorized officer must inform the Minister within 48 hours of the making of the said application. Note, Mr. President, that in order to simplify and expedite the procedure, there is a prescribed form which is to be submitted to the Minister in this regard, and this is set out in Schedule 3 to the Bill.

Clause 23 lists offences that were not previously cited in the Bill. It states that it is a summary offence to make a false statement in an application or statutory declaration under the Act, or intentionally to disclose information obtained by a warrant or in contravention of the Act, or to have possession of intercepted communication without authority. Mr. President, I respectfully ask hon. Senators to note that under clause 23(6): “No action shall be brought in any court against a

person or entity for any act done in good faith in pursuance of a warrant under section 8 or 11 or a direction under section 6(2)(b) to provide information, facilities or technical assistance.”

Thus protecting service providers from legal action, once they act in good faith pursuant to an intercept warrant.

Clause 24, Mr. President, stipulates that the Minister of National Security shall prepare an annual report on the operations of the Act and cause it to be laid in Parliament within three months after the end of each calendar year. This specified time period was an amendment that was agreed upon by this Government and Members of the Opposition, as we all thought it to be necessary to emphasize the need to have the Minister submit the report within a timely manner. The details to be included in the Minister’s report are itemized under clause 24(1).

Please note that at clause 24(2) the Minister shall cause a copy of the report to be laid in both Houses of Parliament promptly after its completion. This is, of course, adhering to this Government’s position that transparency and accountability are first and foremost in such matters, especially where citizens’ privacy is affected and where State funds are being used to conduct such covert operations. Mr. President, clause 25 enables the Minister to make regulations to give effect to the purpose of the Act, subject to negative resolution of Parliament.

Mr. President, hon. Senators, I have sought to take you all through the significant clauses of the Interception of Communications Bill, 2010. I can say that I am duly proud and even heartened at the united front that was presented by both the People’s Partnership Government and Members of the Opposition in getting this Bill to this stage now.

As my colleague has arrived, I would like to thank him personally for his input. He was part of that committee as well; [*Desk thumping*] Sen. Fitzgerald Hinds.

I submit that this Bill provides the much needed legal framework that deals adequately with the issues of confidentiality and access to information gathered, proportionality, disclosure, retention, and destruction of records, the use of the information as intelligence or evidence, and the issues of oversight and accountability.

Mr. President, additionally, the Government not only hears but we listen. We listened to the suggestions of the Members of the Opposition. We listened to the suggestions and the guidance of the Law Association. We listened to the

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telecommunications service providers and we listened to the public. We took heed of their recommendations and I can safely say that the Bill presented to you in its current form cannot meet with derision as it is the outcome of mutual talks and discussions with the relevant parties concerned.

I wish again to borrow a quotation from our learned and honourable Prime Minister's speech in the House some days ago, wherein she stated that the interception of communications is a necessary evil, but the interest of national security must prevail in the clash between the right to privacy and national security. I concur with this point of view totally. Interception of communication, Mr. President, once used within the proper regulatory framework and with the proper judicial oversight, is quite an effective crime-fighting weapon.

This Government will continue to protect the privacy of citizens from wanton abuse and misuse; however, we will also continue to protect them from those who have no regard for the rule of law; the criminal elements who not only seek to invade privacy but who destroy lives with their criminal and nefarious ways, plotting murders, kidnappings, jailbreaks and drug drops, for instance, through the use of cellphones or the Internet. This Bill, Mr. President and distinguished Members, shall be another tool that our law enforcement authorities can utilize to safeguard the safety and security of citizens of our blessed nation, Trinidad and Tobago.

With these few words, Mr. President, I beg to move. [*Desk thumping*]

*Question proposed.*

**11.30 a.m.**

**Sen. Terrence Deyalsingh:** Good morning, Mr. President. I thank you for the opportunity to join this debate on the Interception of Communications Bill, 2010 in this the Twentieth Sitting of the Tenth Parliament.

Mr. President, let me say from the onset that, since the revelations in the Lower House on November 19, I have never been more proud to be a citizen of Trinidad and Tobago. I have never been so heartened by the response of what I now fondly refer to as Mr. and Mrs. Trinidad and Tobago to this issue. Let me say from the onset that, like Sen. The Hon. Brig. Sandy, I too share his indignation that this issue has raised its head and it is my intention to couch my debate from the perspective of a lay person, because that is basically what I am and I hope to make some sense to, again Mr. and Mrs. Trinidad and Tobago sitting in their easy chairs, listening on their radios while they do their gardening this morning or on the highways and byways of Trinidad and Tobago.

Let me say why I am so heartened and why I am so proud to be a citizen of Trinidad and Tobago. The response of Trinidadians and Tobagonians to this issue has been a very mature one. I have looked at the blogs, read the letters to the editors and so on. In reading those responses you can clearly see the political affiliations of some people and there were some responses that were very politically biased, which is everybody's entitlement. However, I must say that the majority of responses, even though they took on the tone of political bias had first and foremost what was best for Trinidad and Tobago and our citizenry must be complimented for that. [*Desk thumping*] That was the maturity of the responses.

Before I get into the heart of my contribution like—as I said, I share Sen. The Hon. Brig. Sandy's indignation, and in sharing that indignation I just want to echo the words of the political leader of the People's National Movement, both in and out of Parliament, when he said that, “We cannot and will not defend the indefensible”. So my contribution is couched in those terms.

Mr. President, the hon. Prime Minister, Kamla Persad-Bissessar, raised the issue in the Parliament on the afternoon of November 19. I want to take the opportunity to do a couple of things: lay for the public record a chronology of events leading up to November 19 and then the response on November 19 and the aftermath of November 19. Hopefully it is my intent for the population looking on, listening, to take the problem as presented on November 19, deconstruct it and look at the way it was handled and the way it should have been handled.

First of all, I go on to what, in my view, is that chronology of events that maybe led to the building of some pressure. The first event in that chronology is the remark to the Caribbean community about Trinidad and Tobago not being an ATM machine. That started the ball a-rolling. The second event, as I see it from my point of view, is the issue of issuing of contracts by the Airports Authority without necessary approvals—my view.

The third issue leading up to November 19, in my view again, had to do with the issue of runaway MPs who were speaking before thinking and who had to be slapped down—and you would notice since being slapped down you no longer hear from them.

The fourth issue, as I see it, had to do with the continuing toing and froing of the Clico/HCU issue, which to date the population at large still does not have a clear idea of how the issue is to be addressed. We have had many sayings, comings and goings.

The fifth issue, as I see it, is mixed messages being sent out by Ministers on matters of national importance, national issues. For instance, the debt owed to the contractors, how it is to be paid. I do not want to go into the details, but it is an issue. The contractors are no more aware of what the quantum is and how they are to be paid.

The sixth issue, as I see it, and we are reminded of it because we can hear them in Woodford Square, is the sabre-rattling by the trade union, the PSA. Their issues have not been dealt with. They continue to be disaffected. They are meeting right now in Woodford Square. After the PSA you have the fire service, and you have TTUTA waiting to see what the settlement is going to be.

The seventh issue, Mr. President, as I see it, was the unfortunate remarks over aid to the islands in the aftermath of hurricane Tomas and the trade fallout coming out of those remarks. We actually had to go to Jamaica with a delegation to pacify them on those issues and also to lend some comfort on the talks with Air Jamaica.

The last issue, which is the proverbial straw that broke the camel's back and an issue which still haunts and which is now engaging the attention of the Prime Minister, is the Fazeer Mohammed issue, with the excuse now being, it was bad timing. However, if CNMG did have a restructuring policy in place, how could it have been bad timing? That is my question.

So these were the pressures building up to November 19 as I see it from my perspective. What was the result? As a good politician you have to change the game, you have to change the news, you have to reset the media, change the front page, change what TV6 is saying at seven o'clock, change what IETV is saying, CNC3, the *Newsday*, the *Guardian*, the *Express*. It is up to the public to decide—not for me, I have just thrown out a chronology of events—whether in fact that chronology is linked to the revelations on Friday, November 19. I leave that in the hands of the public in whom I have great faith. As I said, I am heartened by the response of the public to this issue. I am encouraged, so let the public decide for themselves.

So now we come to Friday 19. The hon. Prime Minister produced a list and I have heard many people on all sides of the political divide wanting to know if there are any more names on the list. Many people on all sides of the political divide want to know if they can trust the veracity of that statement. All we have is a list. Do we believe that TSTT and Digicel were forced to cooperate with the government of the day as the newspapers made it out to be or as politicians made it out to be? When one looks at the Telecommunications Act under which these

providers get their licences, it is built into the Act that those providers have to cooperate with the government of the day. So I do not know what is fact, what is fiction. Again, it is for the population to decide on the veracity of the statements.

Mr. President, let us leave the present and go back briefly to the past, because, you see, the past is instructive in how we react to this problem. The past is instructive in how we learn and move forward. I want to refer to a Motion brought by the then representative for Diego Martin West, Dr. Keith Rowley. Although this has already been aired in the other place, the Lower House, I think it is instructive for us to revisit that Motion so that we can understand the past so we can appreciate the present.

On Friday, March 07, 1997 the then Member for Diego Martin West, Dr. Keith Rowley brought a Motion and I would like to quote from *Hansard*:

“*Whereas* it has been reported that the Prime Minister of Trinidad and Tobago”—the Prime Minister then being the hon. Basdeo Panday—“at a public political meeting referred to privileged information obtained in his capacity as Chairman of the National Security Council regarding alleged internal problems in the People's National Movement detected by the Security Services:

*Be it resolved* that this honourable House condemn the political use to which the Security Services are reportedly being put and the public use by the Prime Minister”—referring to the hon. Basdeo Panday—“in a political capacity of privileged information so obtained.”

Mr. President, I lay this to show that we would not defend the indefensible, and one of my themes in this Parliament has always been, we are all culpable to some degree. The days for pointing fingers and saying, “It is your fault and you should ah do it”, are over. [*Desk thumping*]

I would like to go on, on that same page 1 of that same *Hansard* report:

‘Govt was spying on the PNM. Panday: Security services informed me of ‘serious convulsions’ which was carried in the then *Independent* dated February 19, 1997, written by Richard Lord. It states:

‘The Country's national security services had infiltrated the People's National Movement and alerted Prime Minister Basdeo Panday about the troubles with’ in the opposition party.’

Here we have political capital being used by a past Prime Minister. On page 2 of that report, if you would allow me:

“The reporter went on to quote Mr. Panday, who is the Prime Minister of Trinidad and Tobago.

‘Because I am Chairman of the National Security Council, the Prime Minister is privy to information which very few people have’, Panday told his audience.”

“He goes on to say:

‘I was waiting...waiting like a cobra, ready to sting,’...I was ready and I put everything in place.’”

These are the words of a former Prime Minister. Again, I would stand here and say we cannot defend the indefensible. This cannot be defended! Anybody who uses State security services in this fashion cannot be defended. I want to make that abundantly clear.

Mr. President, in that same *Hansard* report on page 6, it goes on again to talk about the political use.

“The Prime Minister went on to say that being in the position that he is, as Chairman of the National Security Council, he was receiving that information and, based on the flow of it, he was able to position himself to make political capital to receive those who want to come across, because he is building something called a government of national unity.”

So he was using the information to entice people of the People’s National Movement to cross the floor to come across to his government then.

Mr. President, on page 20 of that same report, it goes on again about making political capital:

“Mr. Speaker, the *Daily Express*—

...this is why our citizens should be alarmed, both at Mr. Panday’s disclosures and his manner of making them. On whom are the security forces spying? To whom is that information brought? Most importantly, to what end is it being put?”

**11.45 a.m.**

That is the context; that is the history of abuse of our national security forces. No abuse must be tolerated, whether it is then and whether it is now, and I am sure Brig. Sandy would agree with me; no abuse should be tolerated. I am putting this *Hansard* on record to show that we are all in this. There is enough blame to go around.

Heavy weather has been made as to the legality of wiretapping and eavesdropping and, not being a lawyer of such eminence as my friend, Sen. Al-Rawi, whose flu I have now caught from yesterday—

**Sen. Al-Rawi:** Gift that keeps on giving.

**Sen. T. Deyalsingh:** —gift that keeps on giving—there is some precedence, maybe, to show that what was being done could have been legal or not. In that same *Hansard* report on page 5, it speaks to the issue of legality. As I said, the Intelligence Services Act, 1994, Chap. 13 of the United Kingdom should guide our conduct in this country. This is what it says about the function of the intelligence service and it goes on to quote section 1, section 2, and so on.

The point I want to make is that this is a grey area in law, as I see it from a layman's perspective, whether, as that *Hansard* report suggests, the Intelligence Services Act, 1994 of the UK is applicable to Trinidad and Tobago or not. I say this in the context of another Act called the Colonial Laws Validity Act of 1865. I was trying to get an expert opinion, a learned opinion, about this Act, the Colonial Laws Validity Act, 1865. Basically—and for the benefit of the population—what that Act says—if you notice the date, 1865; we became independent in 1962. What the former colonial masters were attempting to do with this Act was that, as their colonies gained independence, in an effort to strengthen their legislators, this Act meant, basically, that any Act that was in force in the UK became the common law in their former colonies.

Now, we became independent in 1962 and if you notice, the *Hansard* report makes reference to the Intelligence Services Act, 1994 of the United Kingdom. That is after we became independent. My conundrum—and maybe Senior Counsel, who is not here, could probably shed some light, or if the Attorney General was here. Does the Colonial Laws Validity Act, 1865 still apply to Trinidad and Tobago?

**Sen. Al-Rawi:** It does.

**Sen. T. Deyalsingh:** My learned colleague here is saying it does. Why I am raising this is to show that there possibly was a legal framework for the operations of our security agencies. That Colonial Laws Validity Act had serious implications for the former colonies of the United Kingdom, because it featured heavily in a case in Australia, the Attorney General for New South Wales *v* Trethowan, where the New South Wales legislature, in 1929, did pass an Act in which it gave very onerous conditions for going back on it. The New South Wales Assembly in 1935 sought to overturn that Act of 1929, and they were

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unsuccessful because of that Colonial Laws Validity Act of 1865. This is the import of that particular Act, and, as my colleague here says, that Colonial Laws Validity Act may have some implications for Trinidad and Tobago still.

I have tried in the past few minutes to highlight certain things. I highlighted the past use of wiretapping and eavesdropping for political gain, which must not be tolerated by anybody. I have tried to show that maybe there were some legal guidelines, but the third point I want to make in my reference to that *Hansard* report is the whole issue of—and I want to practice this word well before I say it—anonymity. It is a word which, in public speaking, can get you into a lot of trouble, so I got it right—anonymity.

Our security force, to be successful, to be effective, to be efficient, have to have a certain degree of anonymity and, again, I want to go back to that *Hansard* report of Friday, March 07, 1997. This is a response by the then National Security Minister, the Hon. Brig. Joseph Theodore.

“The Member mentioned that the Prime Minister offered to speak with the members of the agency and in so doing suggested that was a way of finding the membership.

Trying to find out how the members of the security services are.

“As far as I am aware, I certainly was never asked, and I have never asked anybody to supply the names of the operatives of any intelligence agency.”

This is the then Minister of National Security.

“This confidentiality is maintained and, as is known, without that, the agencies would be hampered in their functions.”

I would come back to this question of anonymity very soon.

So I took us from the present, went back into the past and I would like to bring us back into the present again. This era, 2010, that we are living in, is probably one of the most dangerous eras in world history. You have cybercrime, e-crime; you have technology now being used in crime. The days are gone when we had guns, bayonets and machine guns to terrorize people. Now you are terrorizing people with a phone, because, as we recently saw in the United States, you can set off a bomb in a Christmas gathering by simply dialing a number on a phone. So technology in crime is becoming an issue and, therefore, the old adage: fight fire with fire. If crime now has a heavy technological slant, it means that we have to respond in kind, which brings us to this particular Bill.

National security of all countries is being threatened on various sides. Currently the issue is *Wikileaks*. I am sure everybody in this Senate knows about that, where that particular website, *Wikileaks*, is publishing data, communiqués, from the US Intelligence Services; very uncomplimentary telegrams, putting people's lives at risk, putting the security of the United States at risk, and their NATO partners, as they try to deal with the war in Afghanistan.

Without being flippant and without trying to make trite of a heavy matter, I long for the good old days of the cold war. The world was a safer place then, you know. You had two superpowers, each with the capacity to bomb each other a thousand times over and they kept everybody in check; but with the fall of the Iron Curtain it meant that every two-bit terrorist now has the wherewithal to bomb us all. That is part of the problem, in a small country like Trinidad and Tobago, with which we are faced.

Our history, our experience with 1990, brings that into full view. It focuses us on the fact that, after the cold war, no state is free from terrorism. So we have had our brushes with terrorism and, because of that and because of the concurrence of arms, we debated the Firearms Bill recently, I think which has not been concluded; I know we have the Anti-Gang Bill; the Anti-Kidnapping Act; the Bail Act. The problem facing modern societies—and, again, I like to refer to those scales that sit precariously over your head—is, how do we balance civil liberties and national security? How do we balance the rights of citizens to have a private life but at the same time make sure that the society is protected; that our borders are protected?

That is the conundrum facing us and that was brought home in a landmark case in the UK in 1979, *Malone v Metropolitan Police Commissioner*. In that case, Mr. Malone had his letters looked at; he had his phones tapped and, of course, he took the Police Commissioner to court in England, but strangely enough he lost. He took his case to the European courts, as England is a signatory and a member of the European Union, looking for a judgment under Article 8 of that Convention. Article 8 of that Convention seeks to protect private rights, and so on. That judgment from the European Court of Human Rights was instructive, and if you will allow me to quote again:

“Respect for private life has generated protection against telephone interception. You will recall from Part B that in *Malone v Metropolitan Police Commissioner* (1979) the UK courts held that there was no right to privacy in UK law.”

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This is UK law, eh, which our common law is based on, that there was no right to privacy in UK law.

“This case was appealed to the European Court of Human Rights where in *Malone v UK* in (1984) a different conclusion was reached. The European Court of Human Rights held in *Malone* that the tapping of telephone lines was in breach of Article 8 because it was ‘not in accordance with the law’ but was instead governed by unregulated police discretion.”

It goes on:

“The European Court did not say that telephone tapping was illegal, but that unregulated telephone tapping was contrary to Article 8. The Government reacted by introducing the Interception of Communications Act 1985 to control telephone tapping by the police.”

But in that same judgment it went on to that—and this is where the law is flexible to deal with immediate situations. There was a critique of the judgment in *Malone*, but the European Court went on to say that—they sort of left it up to domestic jurisdictions to decide whether this thing is illegal or not, and the need, which brought us to the issue of proportionality mentioned by Brig. John Sandy, in one of the clauses.

So this is the point we have reached. We have reached a point in the debate where we have to look at the rational use of this technology to protect national security whilst, at the same time, protecting all of us from its use for political ends, political gains, as I have shown, by anybody. Political abuse of that kind should not be tolerated. As I said at the start of my contribution, part of my contribution was going to be the taking of the scenario that faced us on November 19, 2010 and to deconstruct it.

### **12.00 noon**

So I am going to go back to that fateful Friday, November 19, when the revelations were made in the Lower House. The hon. Prime Minister went public with her information; she fired the head of the SIA; the systems of intelligence gathering were compromised and possibly shut down; you had a population that initially panicked; that was initially aghast and rightly so; you had the sensationalizing and politicizing of a matter of national security which, from my information, adversely affected our relationships with some of our Caricom and foreign partners who depend on the data and intelligence that we gather to feed into their own intelligence services, to trap drug shipments and so on.

So, as we deconstruct what happened on November 19, three things faced us—as Sen. Ramgoolam reminded us last week, we are all politicians. This is a political arena—and the sequence of activities was first: to make political capital out of the issue; second, to deal with the national security issue and also by the naming of the head of the SIA in my view—and I made the point in the Life Fund Bill and I will make it again. I respectfully—my personal view—do not think that the Parliament is a place for calling of people's name, disclosing their illnesses as was done in the Children's Life Fund Bill. As I said, you could say child “John X”, “John Doe” suffering from so and so, but I think it is in poor taste for the Parliament to be calling people's names and their illnesses. And in the case of the SIA, I do not think it was necessary to mention the man's name and I will tell you why soon. So that is the deconstruction scenario one.

Mr. President, I will now go the deconstruction scenario two. If I had my way—if the Prime Minister had this information, it begs the questions: what did the Prime Minister know; when did she know it; and what ought she to have known as the head of the National Security Council? Because as Prime Minister, you are automatically head of the National Security Council which consists of the Minister of National Security, the Commissioner of Police, Head of the Defence Force and so on, and, ideally, the chairman of the National Security Council who is automatically the Prime Minister of the day, should be having weekly meetings with the National Security Council. So after six months in office, there ideally should have been 24 meetings with the National Security Council.

Given our history as I have shown in the *Hansard* records, abuse of technology in wiretapping has been going on prior to the last administration, prior to this administration, and we have had a long and sordid history of wiretapping. Anybody who was in Government prior to 2010 should have known, ought to have known that this was going on. So it should have been no big surprise on November 19 that this was going on. As I have said, as head of the SIA, the Prime Minister of the day would have been meeting with all the heads. So how should this matter have been handled?

I would like to humbly suggest a reversal of the scenario I saw. My priority would have been securing the national interest of Trinidad and Tobago, first and foremost, national security first. I would have dealt with the matter in a quieter manner initially; I would have preserved the anonymity to have agencies which I referred to earlier; I would have preserved the ongoing legal work; I would have immediately stopped the illegal part of it; and I would have quietly fired the head of the SIA—[*Interruption*]

**Sen. A-Rawi:** If necessary.

**Sen. T. Deyalsingh:**—if necessary because, by putting that man's name into the public domain, you have risked his life and those of his children. He would have been instrumental in bringing criminals to justice.

Recently, we had a case where a head of a security service in Central America had to flee and go to another country looking for asylum. I would have quietly fired him if that was the course of action. I would have preserved his anonymity. I would not have risked his life, those of his wife and children if he has them. [*Desk thumping*] Notice, I am not calling his name because I abhor the increasing practice of calling citizens' names in Parliament and so on. I do not like it.

Third, I would have gone to the Opposition, to the Judicial and Legal Service, the Judiciary and form that same committee to look at good law, instead of coming with a Bill with all the flaws. Behind closed doors I would have formulated the Bill—talk with us, get the opinions of all the stakeholders and come with good law to the Parliament that could have been passed in a faster manner. Then, and only then, after I have done 1, 2 and 3, I would have come to the Parliament “buss the mark”, embarrass people and look for political capital. That is the sequence of activities I would have engaged in. By doing that, you would have accomplished several things: you would have protected our national security interest; you would have maintained the relationships with our foreign partners, both Caribbean and otherwise, who depend on our data and our intelligence for their own use; you would not have compromised that system; you would not have compromised the head of the SIA; you would have come to Parliament with good law from day one; and you would also achieve your objective of political capital. That is the sequence I would have followed. Get all the political mileage you want, but after we have seen about the people's business.

Mr. President, as I have at the start of my brief intervention here how proud I was to be a citizen of Trinidad and Tobago as a result of this issue, but that pride is then matched by my pride in being a Member of this Opposition, the People's National Movement, because we acted responsibly, we acted with alacrity and we acted in the good faith of Trinidad and Tobago. I think every single one of our suggestions and our amendments was taken into consideration and I heartily congratulate the Government for doing that. That is a bipartisan issue.

Mr. President, post November 19 I think will go down as a watershed period in the life of the Parliament of Trinidad and Tobago. It was an epiphany, it was a watershed, because it presented us as a country with an opportunity to show the population that your parliamentarians, whether elected or appointed, have your best interest at heart. We have clearly shown on this side that we are going to be

responsible and back good law where it deserves backing. We have shown to the population that this Opposition is more than ready to assume the mantleship of leadership whenever it presents itself, and I want to tell the Government, the Senators across there, that even though it is 16 against six, we may be out-manned, but we are not out-gunned. I hear some Steups, but that is all right. We may be outmanned, but definitely not out-gunned.

**Sen. Ramlogan:** [*Inaudible*]

**Sen. T. Deyalsingh:** Thank you, Sen. Ramlogan. I want to end in the spirit that Sen. Brig. Sandy piloted the Bill, because in one of my earlier contributions I made the point that the Government side pilots a Bill and the tone of that initial presentation sets the tone of how we respond and so on, and I took offence with the way some Bills were being piloted in the past but I must congratulate Sen. Brig. Sandy. He has proven today that he is a patriot. [*Desk thumping*] He has proven today that he is a gentleman. I congratulate him. He piloted the Bill in a manner becoming of his status, and I thank him for it.

**Sen. George:** [*Inaudible*]

**Sen. T. Deyalsingh:** Sorry?

**Sen. George:** No, it is all right.

**Sen. T. Deyalsingh:** I have tried to adopt the same attitude, Sen. George.

**Sen. George:** That is not what you did.

**Sen. T. Deyalsingh:** I want to let the Government know that, in any good legislation that comes before this Senate, you will find no more willing partner than the People's National Movement. The path to our door will be clear, the door will not be ajar, it will be wide open and that the atmosphere in it will be one which is fragrant with acceptance, and we look forward to debating future Bills in this Senate.

I thank you. [*Desk thumping*]

**Sen. Basharat Ali:** Thank you, Mr. President. I have the pleasure in leading my Bench in this topic that we have today, the Interception of Communications Bill, 2010. Let me say that I am a complete layman. I am not an attorney, I am not a security person, but I have between my ears a background in security because I have been in charge of security, if only as an estate police department.

I would like to start by making, with your permission, a brief statement on the position of the Independent Members with respect to the Bill now before us. The original debate on this Bill started in the Lower House on Friday, November 19

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and I know it continued until probably the very early hours of Saturday morning when, apparently a decision was taken to have an informal committee meeting of Government and Opposition Members on Monday 22nd at 4.00 p.m. in the Attorney General's office. That is what I learnt on that night or that early morning.

On Saturday evening, November 20, I spoke to the Leader of Government Business, Sen. The Hon. Subhas Panday enquiring whether any Independents were to be invited and he advised me that I am invited and he expected to see me at 4.00 p.m. at the Attorney General's office. But on Sunday morning when I read one newspaper, I learnt that “the informal committee” of 10, comprised six Government Members and four Opposition Members. So evidently, that was a committee of the Lower House.

**12.15 p.m.**

I subsequently sent an email to Sen. The Hon. Subhas Panday on Saturday morning at 11.45 a.m., which reads like this:

Subject: The informal committee on the Interception of Communications Bill. Having read today's *Newsday's* report where there was a composition of the informal committee, I realized that these meetings are a Lower House matter. I have spoken with a couple of my Members who do not wish to be observers but active participants in a joint committee.

Therefore, speaking for myself I will not be attending Monday afternoon's session. Instead, I will await the outcome of the continuation of the debate next Friday. In the meantime I will be concentrating on the revised agenda, namely the Census Motion and the Children's Life Bill for a sitting on November 23.

Kindest regards.

**Sen. Panday:** I did invite you. I know that you are the coordinator of the Independent Bench and you must not believe everything you read in the papers. I told you directly to attend and all those who attended participated.

**Sen. B. Ali:** I am still not there because up to now all that I have heard is that word “bipartisan”. Bipartisan means two parties and this is talking about two political parties. We are different; we are nine independent voices. We have more than the Opposition. They are six; we have nine votes.

At the end of next month, I will be here seven years and there have been many occasions on which we were canvassed. Whenever there is a constitutional majority—and let us face it, if the six Opposition people say no, then we would

actively canvas either at home or even when we come here to find out how we are going to vote. It seems that we are there as a convenience and that is what I put to you today.

That is why I said, having done that, I eventually noted that we had one person from the Senate, Sen Fitzgerald Hinds, who is an Opposition Senator, so the bipartisan nature of the meeting was still intact. I believe that it was unfortunate we were not asked to participate. We do have nine independent voices, nine votes to cast, which is especially important when we have a Bill which requires a constitutional majority. In my view, what was needed was not a bipartisan meeting of minds but a tripartite meeting of minds.

Having said that, I note that good progress was made at the meetings prior to the resumption and passage of the Bill in the other place with a unanimous vote. I acknowledge that work was done and I thank the Deputy Chief Parliamentary Counsel, Mr. Cuthbert Jolly, for communication to me and, I believe, to other Senators on my Bench, of the amendments to the Bill, which were placed within the previous document. I had no objection to that because, having read the original Bill, I found it easy reading the marked-up version with the inserted amendments. The amended Bill, which was laid yesterday, we received hot off the press at the sitting. That is here now with all the bold print.

Mr. President, I believe that the amended Bill addressed the process of interception very well. However, I have one major reservation and that is the absence of any independent scrutiny of the powers that devolved to the individuals, including but not limited to the authorized officers, that is the Commissioner of Police, the Chief of Defence Staff and the Director of the SSA.

I say “including but not limited to” because authorized officers can also appoint others to carry out the interception function. They can be subject, I note from one of the clauses in the Bill, to charges and to be punished if they are convicted.

I go to clause 16(8) of the Bill, which states:

“An authorized officer who obtains a disclosure order shall ensure that such arrangements are made as are necessary for securing that—

- (a) a key disclosed in pursuance of the order is used to obtain access to or put into intelligible form only the protected communications in relation to which the order was given;

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- (b) every key disclosed in pursuance to the order is stored in a secure manner, and any records of such key are destroyed as soon as no longer needed to access the communication or put it into an intelligible form; and
- (c) the number of—
  - (i) persons to whom the key is disclosed or otherwise made available; and
  - (ii) copies made of the key,

is limited to the minimum that is necessary for the purpose of enabling the protected communication to be accessed or put into an intelligible form.

- (9) an authorized officer who knowingly contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for two years.”

From that point of view this Bill is quite good, but the question of detection is what bothers me. There is no oversight in this Bill and that is what worries me. Who is guarding the guards? The Bill does not provide for it. It provides a process and I think that is a very serious shortcoming in the Bill. I say so because I am very concerned. What has happened in the past—I will not go back into it—is not necessarily going to be prevented by what we have in this Bill without any form of oversight.

I went back to the UK Regulation of Investigatory Powers Act 2000, RIPA as it is called, and particularly to Part I, Chapter I, Interception of Communications, and Part IV, the scrutiny, et cetera, of investigative powers. Those are the parts I looked at.

This Act looks like it formed the basis of a pattern for our Bill because many of the definitions et cetera are similar. The title is the same for this Part I, Chapter 1, Interception. Looking at the scrutiny part of the investigative powers, section 57 provides for an interception of communications commissioner appointed by the Prime Minister and they say that that person shall not be appointed unless he has held a high judicial office or is or has been a member of the judicial committee of the Privy Council.

We need the equivalent of that sort of commissioner. We do not have to have the Prime Minister appoint that person. If we choose to go in that direction, that

person can be appointed by His Excellency The President in consultation with the Prime Minister and the Leader of the Opposition and we seek then to get the independent person who can do the scrutiny of the work there.

Section 58 of the Act addresses the cooperation with and report by the commissioner who prepares an annual report. I found the Report of the Interception of Communications Commissioner for 2009. This was ordered by the House of Commons, to be printed July 27, 2010. It has already been laid in the UK Parliament in July 2010.

I would like to touch on a couple of items in this report because it gives a feel for what this person does and how he does it. The report itself is a Crown copyright 2010 and I believe I am required, if I am going to release anything from it, to acknowledge it and make sure I do not provide any misleading information. I do acknowledge that I will be reading little excerpts from the Report of the Interception of Communications Commissioner for 2009, by the Right Honourable Sir Paul Kennedy, who is that person.

Just to select one or two areas of the report, I go to the oversight arrangements. The report itself is written in the first person. When I read, it is not me I am talking about; it is the commissioner.

The report says under “General”, speaking of oversight arrangements:

“I meet officers in the agencies undertaking interception work and officials in the departments of the Secretaries of State/Ministers which issue the warrants. Prior to each visit, I obtain a complete list of warrants issued or renewed or cancelled since my previous visit. I then select, largely at random, a sample of warrants for inspection. These include both warrants and attendant certificates. In the course of my visit I satisfy myself that those warrants fully meet the criteria of RIPA, that proper procedures have been followed and that the relevant safeguards and Codes of Practice have been followed.”

Mr. President, there is the basic way and what is his remit. Then he goes on to deal with the different parties he meets. In fact, the warrants are issued by the Secretary of State, not by a judge. Really, the man whom we are looking at is the one, the Secretary of State and those other Ministers, like within the Scottish Government, who are also issuers of warrants. So there is a large section on that, which I will skip, just to get a feel for what happens there.

One section says “successes”. This is good to read. It says:

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“It is impressive to see how interception has contributed to a number of striking law enforcement and national security successes during 2009. It has played a key role in numerous operations including, for example, the prevention of murders, tackling large-scale drug importations, evasion of Excise duty, people smuggling, gathering intelligence both within the United Kingdom and overseas on terrorist and various extremist organizations, confiscation of firearms, serious violent crime and terrorism. I have provided fully detailed examples in the Confidential Annex to this Report. I think it is very important that the public is re-assured as to the benefits of this highly intrusive investigative tool, particularly in light of the ongoing debate about whether or not intercept product should be used as evidence in a court of law.”

**12.30 p.m.**

This is what I see. This is the success, but on the subject of errors, he goes through the list of those groups that he did randomly and every one is there. Just to give an example, Mr. President, we have here the Serious Organized Crime Agency, SOCA is the name, reported eight errors, two of which I detail below. The first error involved a warrant where an incorrect number was used when the warrant was applied for, resulting in an incorrect telephone number being intercepted. The interception was immediately cancelled and all products destroyed. The case officer was reminded of his responsibility for checking and verifying the appropriate telephone numbers prior to submitting applications for interception.

The second error involved a warrant where two digits in a telephone number had mistakenly been transposed before the application was submitted for a warrant. This resulted in an incorrect telephone number being intercepted. The interception was cancelled and deleted from the warrant and all the products destroyed. So it gives you really the attention to detail which this commissioner is taking in doing his job. How does he do his job, Mr. President? He has an inspectorate.

Let me just go back to 3.4 of this, and he says:

“I have a responsibility to oversee the use which public authorities have made of their powers under the Act and how they have exercised their rights and responsibilities. Although I retain sole oversight of anything to do with interception, in relation to communications data I am supported by a Chief Inspector and five Inspectors who are all highly trained in the acquisition and disclosure processes, and in the extent to which communications data may assist public authorities in carrying out their functions.”

So this is the basis. He has his inspectors who will go from one Ministry to another, and I am not saying that we need such a big organization, but it is a model; the commissioner and inspectors as an independent group, to monitor the activities of the Executive.

Just for the final part, Mr. President; the conclusion of this report, it says:

“As I said in my previous Reports, the interception of communications is an invaluable weapon for the purposes set out in section 5(3) of RIPA. It has continued to play a vital part in the battle against terrorism and serious crime, and one that would not have been achieved by other means. The task of the agencies working in this field has become, and is becoming ever more, technical and difficult as a result of the greater sophistication of terrorists and criminals. I am satisfied that Ministers and the intelligence and law enforcement agencies carry out the work, which I am required to consider, diligently and in accordance with the law.”

So this is basically his conclusion for the year 2009, and I was really impressed by this report and I felt that it could be a model which we can adopt. I mean, there are differences because the warrants here are issued by the Secretary of State, a political position, whereas our warrants are issued by a judge; and then we have the authorized officers who carry out the work.

I would have liked to see that in place from the inception, in fact, of this Bill. So not only do we not want protection that we are not doing anything illegal, but we want to know that the monitoring is there from day one. Therefore, Mr. President, my strong view is that we need this oversight organization from the outset if we are to mitigate against what we have experienced recently. It must never happen again. Let us protect our people from such evil.

Thank you very much. [*Desk thumping*]

**The Attorney General (Sen. The Hon. Anand Ramlogan):** Mr. President, permit me to thank Independent Senator, Basharat Ali, for his incisive contribution and for his rather insightful comments. A couple points that were raised by the Independent Senator, however, merit some brief response before I proceed to make my contribution on this important Bill before the House.

The idea that there is no independent scrutiny and the debate about whether there should be an interception commissioner, or an intercept commissioner, is one that was considered by the bipartisan committee. There were various views expressed, and one of the views that held sway is that if you cut and paste

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everything that happens in England, in a society as small as Trinidad and Tobago is, there are unforeseen inherent dangers in doing that that would not really obtain or apply in a society the size of England and Wales.

In our society, the class and the pool from which you would pull an intercept commissioner is a very small one. The qualifications mentioned range from a retired judge at the level of the Privy Council in England, selected by the Prime Minister; but once you select a judge from a pool of retired judges, which is so small in Trinidad and Tobago, you run into the argument and the very difficulty that was advanced, that the possibility of one person having oversight over such an important function is not enough, because one person may be subject to influence in a matter so important, especially in terms of political perception, if we went with the UK model and we say, well, the Prime Minister is to appoint.

Even in our own Constitution, if the argument, or the suggestion rather, was accepted that the President appointed, even then, there are those who would lift the constitutional veil and argue that, ultimately, the President of the country is ultimately selected by the Executive arm of the State, or the Government of the day. The route might have some curves and some bends, but ultimately the Constitution allows for that.

It was felt, and it is a view I subscribe to, that when you have judicial oversight, it is not that there is no independent oversight. To be able to intercept private communication that is admissible as evidence against any citizen, you must make an application to the court. When you make an application to the court, you are not making an application to any one particular predetermined judge. What we have now in the High Court is a docket management system where a judge is randomly assigned by a computer, based on a waiting system, and that is how a judge is assigned in the docket management system that we have adopted from England.

What that means is that, when you make your application, you do not know beforehand which judge, Mr. President, is going to hear that application; and you have a greater reservoir or pool of judicial independent—not an independent mind or not a mind that is meant to be independent, but you have a pool of sitting judges, a larger pool, and a random assignment of a judge to deal with the application on its merits comes into play.

I say this because we should not bury our heads in the sand. We have had instances in the past where aspersions have been cast against retired judges. People have ascribed political connections to some retired judges. Some have

chaired commissions of enquiry. Even now, we have matters before the court pending where Justice Deyalsingh—I do not know if he is any relation to my learned friend on the other side.

**Sen. Deyalsingh:** Uncle.

**Sen. The Hon. A. Ramlogan:** He is a judge for whom I have the greatest respect and admiration, but the point is, under the former administration, he was accused of bias; and political bias, because he was an outspoken judge who, post-retirement, wrote in the newspapers. There are question marks about what criteria would the Government utilize to select a retired judge from the pool of retired judges; and these are questions that have bedevilled us in the past.

It was felt that, if you leave it to the Judiciary, that is the better form of protection as compared to England, where the pool of retired judges is much larger. The cocktail circuit in this country is rather small, Mr. President. We have to, because of the sheer size of our society, rub shoulders in a very limited class; and that by itself raises questions. So, I subscribe to the view that the better and stronger independence, and the better and stronger independent audit and check and balance on the exercise of this important power is the one that we have chosen, which is to make the application to the Judiciary without knowing beforehand which judge is going to be allocated by random computer, by docket management system, to deal with that application.

Could we imagine what would happen, based on what we are authorizing, if we had a judge and an allegation of political bias is made? It compromises the integrity of the entire structure that we are about to set up. More than that, a judge who is serving on the Bench is, perhaps, in my view, respectfully, better positioned to deal with this matter than a retired judge. A judge who is serving on the Bench is someone in active, live practice. Under our Constitution, a retired judge is not allowed to resume private practice until, I think, 10 years have elapsed.

He is kept abreast of the developments in the law, and especially in an area where the jurisprudence is a galloping one, and it is galloping with fast pace, where you have to keep abreast. This is not about the right to privacy alone. In fact, in our Constitution, unlike others, there is no express right to privacy. There is a right to respect for family life and private life, but it is phrased differently. Ours is a rather unique Constitution. We have a right to freedom of expression, yet still we have, as a discrete and separate right, the right to freedom of political expression, which I dare say would have been a subset of the right to freedom of expression. The latter would have been subsumed in the former.

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Now, the sure point, Mr. President, is that a judge would know about the right to freedom of expression, the right to freedom of political expression, and the right to liberty; all of these rights which this interception would impact upon. The Constitution, it is said, is a living instrument. It must change and it must grow to meet the needs of our society, and a serving judicial officer would be better placed to balance those competing interests, and to properly scrutinize the application. That was the view that was expressed by members in the bipartisan committee, and that is why we opted for this judicial oversight as opposed to a single intercept commissioner.

**12.45 p.m.**

I say that, in dealing with the point raised by Sen. Ali about independence. I can see no greater independent oversight than the Judiciary in the country, and let us get it clear, let us not misunderstand what we are authorizing. If you want to gather any admissible evidence that can be used against someone, you must obtain a judicial warrant. The oversight comes with the judge scrutinizing the application, the grounds upon which the application would be based, and the judge has to satisfy himself that it is a justified incursion on the person's sacred right to private life and privacy.

We debate this matter at a time when the nation is still reeling from the impact of the revelations that prompted this intervention by the Government of the day. Those revelations were psychologically damaging, painful and even traumatic. It has caused great anxiety and distress but, as a Government, we have a responsibility to come clean with the population, because of what we discovered, and I dare say the hon. Prime Minister, in being frank and making full disclosure to the nation, has earned the respect of the nation. [*Desk thumping*]

What my learned friend, Sen. Deyalsingh, omitted to mention in his contribution is that the learned Prime Minister said she was not going to call all the names. She called some, to give a brief sampling of the wide spectrum and cross section of the society that was subject to wiretapping. But, more importantly, those individuals who were identified would have been individuals whose, as the subject of intercept, justification was not clear.

The Prime Minister revealed names with which, really, there was no criminal connection and the justification for the wiretap was one that was of real concern: the President of the country, judges, serving judges, trade unionists, media, editors and journalists. Not one of the names called by the Prime Minister, not one of those individuals, we can say has a pending matter before the court or has been

charged with an offence; nothing of the sort. Where they have been charged with an offence, short shrift. Like Inshan Ishmael, he was detained under the Anti-Terrorism Act and it boiled down like “bhagi”. They charged him for a handbill offence; publishing a handbill without having the name of the publisher. That is abuse.

The revelations violated the very core of our constitutional democracy. It was necessary, because what was being done had disastrous consequences for the rule of law and it struck at the very heart of the concept of liberty and the rights and freedoms of individuals.

Mr. President, reckless use of power is facilitated when there is no regulation. Unregulated and unrestrained use of power leads to abuse of power. That is why, although my learned friend, Sen. Deyalsingh, tried to create a link to show that, perhaps, this was being done under a former administration, during the Panday era, you would see that they cannot call a single name outside of the police service and the criminal sphere, like the President, judges or media people to say that, under a different regime, those persons were the subject of intercept; not one.

The implications of the Manning era; the ramifications and implications of what was being done are so far and wide; so far-reaching because there was no legal framework, it was exploited. Could you imagine that a former Prime Minister would describe the modus operandi of his government as saying “The government would start something, and if it is successful, it would be given a legal complexion”. That was the political philosophy of man who ruled as Prime Minister, some say emperor, for eight years. His government would start something and if it was successful, it would be given a legal complexion. That is a political philosophy that collides with the fundamental rights and freedoms of each and every citizen in our country. People stood shocked and amazed to hear that a former Prime Minister could actually say that to the nation. May I ask the question: How was Mr. Manning going to determine if something was successful? When was he going to determine if it was successful? The Interception of Communications Bill has been with the Law Reform Commission for quite some time. The Bill was already drafted. It was there. So, what was Mr. Manning waiting on to decide if it is so successful, to bring the legislation to regulate the exercise of that power? That is the question.

**Mr. Panday:** “He say election.”

**Sen. The Hon. A. Ramlogan:** He said it was election. With all that interception, he did not realize that he was about to be intercepted and the government was about to be intercepted by the people of Trinidad and Tobago.

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[*Desk thumping*] We thank the people of this country for that interception; that rather timely, lawful and constitutional interception, via the general election; but for that intervention, democracy would have continued to be distorted and derailed.

Could you imagine, a Prime Minister having access? I want to get it clear, it was on the eve, after the 18/18 tie, after Mr. Manning was installed as Prime Minister—not elected—installed, it was the eve of that general election thereafter, that the high-tech, sophisticated, intercept equipment was imported from Tel Aviv, Israel. It was not available before. That has been in the public domain for quite some time, but the sophisticated high-tech equipment to intercept email, text and telephone conversations on cellular and landlines, was imported from Tel Aviv, Israel, under the Patrick Manning administration, after they were installed as a result of the 18/18 tie.

In the face of that, Mr. Manning being in possession of that kind of equipment that could do all of this, said, when people’s children were being kidnapped, that those kidnappings were bogus. Mr. Manning was not using the interception capabilities to see whether people’s children were being genuinely kidnapped. His response was: “It was bogus.”

His second response was that the kidnappings were inspired by the UNC Opposition, designed to make the government look bad. [*Interruption*]

**Sen. Al-Rawi:** Source of your authority.

**Mr. Panday:** Sen. Deyalsingh.

**Sen. The Hon. A. Ramlogan:** It is in the public domain. Then, he came with the third one, collateral damage. [*Interruption*]

**Sen. Al-Rawi:** Evidence.

**Sen. The Hon. A. Ramlogan:** Mr. President, I can see my learned friend has a very short memory, but the population does not. Every single mother and father whose son or daughter was kidnapped, you ask them and they will tell you that they remember and would take it to their graves. Sen. Al-Rawi, your leader, Mr. Patrick Manning said that the kidnappings were bogus and he then said that it was inspired by the Opposition. [*Interruption*]

**Sen. Al-Rawi:** Move on, move on.

**Mr. Panday:** “Yuh cyah take it, Al-Rawi!”

**Sen. The Hon. A. Ramlogan:** You all have moved on and that is how you have ended up on the other side, let the truth be told. Let the nation be told.

This morning before I came to this honourable Chamber, I placed a phone call to “Tiki” Ali, in Gasparillo. “Tiki” Ali’s son, 19 years of age, Naail Ali, up to today that child has never been found. I visited the home of “Tiki” Ali when the child was kidnapped and “Tiki” Ali and his wife called the then Prime Minister. They called Mrs. Hazel Manning. They were begging for some form of intervention.

The Anti-kidnapping Squad, I met them in the house; they had what looked like a transistor radio with old speaker wires, the red and black speaker wires and a little computer and what looked like an old, discarded cassette player. Those were the resources that the Anti-kidnapping Squad had, while people’s children were being kidnapped and their whole life’s savings and work wiped away by a ransom demand, while SAUTT and the SIA, without any legislative authorization, were being given all the resources. The police service was being starved of resources, while billions were being pumped into SAUTT and SIA and when a man’s child was kidnapped, the Anti-kidnapping Squad, that was their equipment. I ask the question today: why did our children suffer; the innocent children who were kidnapped? Why did Mr. Manning and the PNM make them suffer? What was their sin? Why were they not given the equipment that they had purchased from Tel Aviv, Israel, so that they could intercept the ransom demands? That is the real question we must answer.

The nation’s conscience must be shocked into the reality of the dictatorship that ruled this country for the past eight years. “Tiki” Ali’s son—it is not an easy thing as a parent to bring a child into this world and raise him until 18 years of age and see him vanish into thin air, not a trace, not a word. Up till today, that remains the same. Ransom demands were made and the police advised Mr. “Tiki” Ali to pay up the money. They said they imbued it with dye. “Tiki” Ali told me this morning that he asked them three times: “Do you need to take a note of the serial numbers of my money that I am giving to you to pay ransom to get by back my son?” They said no. SAUTTT advised “Doh take no note of the serial numbers, the dye is there and everything is okay.” When the “fellas” were actually held with the money and the dye was found all over them, “mark buss, eh we shoudda take ah note ah de number because the evidence is not admissible in ah court of law.” That is the reality. This morning Mr. “Tiki” Ali, a father, is crying and remembering his son. He was able to tell me how many years, how many days and how many hours his son has been missing and he paid the ransom.

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He went and cooperated with the Anti-Kidnapping Squad, according to every single instruction, and still that is the result. Do you know what? At that time, the number of kidnappings outnumbered the number of officers we had on the Anti-Kidnapping Squad. The number of officers on the Anti-Kidnapping Squad was half the number of kidnappings. So, there was really no real intention or hope for those kidnapped victims. In the meantime, all the resources were pumped into parallel units like SAUTT and the SIA, which were concentrating on something else.

Mr. President, what we sought to expose—as the Prime Minister said, there is much that she has not said—was not the legitimate use of interception. We recognized, as Sen. Deyalsingh said, the nation's protection and defence of national security must come first. That is why we did not expose the genuine and legitimate criminal intelligence that may have been gathered. What we exposed was the illegitimate use of the power to intercept private communications of citizens who have nothing to do with criminal activity. It was to expose a chief “maco” who was using the State's resources to satisfy his own political curiosity. That is what we exposed. It was to expose the ultimate puppet master in all his glory, in the rawest form possible, to show how many strings were attached to each finger while he danced the nation into death and despair.

Mr. President, it is not an easy matter; the implications of it. Permit me to read from the *Sunday Express* dated May 08, 2005; Camini Marajh, headline: Jerry Narace on phone to Dhansook—PNM protects its own. This is what Mr. Narace said:

I will tell you; well they can't do you anything. The fact that you gave two conflicting statements, you have two conflicting documents; a letter and a retraction.

Dhansook replied, well the first one was true; the second one was a lie. I lied to safe Frankie [expletives].

Narace advises him:

This was in the context of trying to get Dansam Dhansook to retract a complaint to the Integrity Commission about political corruption and political bribery. They were trying to get him to say the money that was paid was not a bribe, it was a loan. This is what Mr. Narace advised him on the phone.

Mr. Narace: I tell you just relax nah boy. The party will help any party member. We have had people who had things thrown out of the courts before. You are a member of this party. There is a benefit to being a member of this party. Is the party will do this, not the Government, is the Party.

**Sen. Hinds:** What is the source?

**Sen. The Hon. A. Ramlogan:** The source is the *Sunday Express* dated May 08, 2005.

**Sen. Hinds:** Written by who?

**Sen. The Hon. A. Ramlogan:** Camini Marajh.

**Sen. Hinds:** Thank you.

**Sen. The Hon. A. Ramlogan:** Mr. President, the front page and that story was the PNM advising its own that they have gotten things thrown out of the courts before, do not fear. You can manipulate justice. “We have gotten things thrown out of the courts before.”

**Sen. Hinds:** Will the Attorney General give way?

**Sen. The Hon. A. Ramlogan:** Sure.

**Sen. Hinds:** Hon Attorney General, you have just quoted from a newspaper article written by a journalist who you named. Have you used the authority and the office that you now hold to confirm whether, in fact, that was true?

**Sen. The Hon. A. Ramlogan:** Mr. President, I would expect that when the PNM was in Government, if this was not true, they would have corrected it themselves. [*Desk thumping*] The implications of someone so close to your party and government saying that is something that they would not want to leave on the record unchallenged.

**Sen. Hinds:** You hear the Attorney General of Trinidad and Tobago!

**Sen. The Hon. A. Ramlogan:** I know my learned friend would be riled up. I could understand Sen. Hinds being a little riled up.

**Sen. Hinds:** I expected more from the Attorney General. [*Crosstalk*]

**Sen. The Hon. A. Ramlogan:** Mr. President, you see, we expected more from the former administration. [*Desk thumping*] We expected better from them. In particular, when my learned friend, Sen. Hinds, was vying for ministerial

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appointment, I expected better from the Prime Minister not to say that he was an apprentice and he could not appoint him. [*Desk thumping*] I expected much better. [*Desk thumping*] I congratulate the Leader of the Opposition, Dr. Rowley, for appointing my learned friend here.

**Sen. Hinds:** This is not a joke you know! This is a serious matter

**Sen. The Hon. A. Ramlogan:** Mr. President, I agree with much of what Sen. Hinds has to say. When he says that it is not a joke, I agree with him. That is why this is serious business. You see, it was not just a political interest in this matter. At the time, the then Prime Minister and the then government had several matters pending before the courts. There were the Gypsy and Chaitan election petitions.

**Sen. Panday:** True.

**Sen. The Hon. A. Ramlogan:** There were the election petitions against Mr. Patrick Manning and Mrs. Eulalie James. The result of those election petition matters could have altered and changed the government of the day. If, in the meantime, you are tapping a judge's phone, I ask the question, what does that spell for democracy and the administration of justice?

Mr. President, I looked on in horror at the list, because the independence of the administration of justice is what I was concerned about. It sent a chill down my spine when I heard the names rattled off. What did they have in common? What did the Sanatan Dharma Maha Sabha, a religious organization—what pray tell would Mr. Manning want to have to do with them by spying on them? Did Mr. Manning spy on the Catholics? Did he spy on the Presbyterian Board? He spied on the Sanatan Dharma Maha Sabha. I could tell you that he spied on Sat Maharaj as well, personally; he spied on the organization; he spied on the general secretary; he spied on its executive member, Devant Maharaj; he spied on Marlene Coudray and he spied on Inshan Ishmael. Do you know what they all had in common? The one thing they all had in common is that they all had cases pending in the court against Mr. Manning and the PNM administration. [*Desk thumping*] That is what they all have in common. They also have something further in common, and that is they were all represented by the same attorney-at-law, and this is my good self.

**Sen. Panday:** Take that! Take that one!

**Sen. The Hon. A. Ramlogan:** And furthermore, the plot thickens, because not only are you spying on the client, but my wife and my phone are on the list.

So, you are spying on the clients; you are spying on the judge and you are spying on the client's lawyer. Connect the dots and see the danger and the crisis that this matter is all about.

I agree with Sen. Hinds, it is not about no joking matter. A conversation between a client and a lawyer is privileged in law. A client must be entitled to speak freely and privately with his lawyer. The law protects that conversation. I would have been discussing litigation strategy; receiving instructions; and advising my clients and little did I know that my wife, phone, my clients' phone, the judge's phone and my phone were tapped, and the defendant was listening and he had access to that.

**Sen. Panday:** Oh no!

**Sen. The Hon. A. Ramlogan:** Mr. President, you see, the Maha Sabha radio licence case was about discrimination against the community. I won that case in the High Court and we did not get the licence. I won the case in the Court of Appeal, and we did not get the licence. It was in the Privy Council that they ordered that we get the licence.

The Trinity Cross case, I won it in the High Court and got no order to abolish the award. I lost it in the Court of Appeal, but won it in the Privy Council. Mr. Sat Maharaj was the litigant.

Inshan Ishmael, the handbill case, it is there; Mr. Devant Maharaj, Mr. Manning unlawfully vetoed to block his career advancement; and Marlene Coudray, the wife of one of his own ministers in Cabinet, he was trying to transfer her out from the San Fernando City Corporation, because she would not comply and allow them to build houses willy-nilly to have this mass human transplantation exercise—this artificial social engineering—so that they could guarantee a victory for themselves.

So, Mrs. Marlene Coudray, who was standing to enforce the by-laws of the corporation—she was the CEO of the corporation and trying simply to do her job—Mr. Manning, suddenly, in advance of it, he said at a press conference, she would be transferred. Lo and behold, the independent Statutory Authorities Service Commission, a couple weeks later, happened to effect a transfer. Well, we won that case also.

This is the hidden danger in it. The integrity of, judicial system may have been under threat; the independence of the Judiciary would have been under threat. Let me pause to make the point that the idea that has been mooted by my learned

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friends on the other side that in the normal scheme of things this is not information to which the Prime Minister would have had access, let me dispel that myth now.

Mr. President, before we took steps to remove the head of the SIA, we formed a committee, led and chaired by the Minister of National Security, Sen. The Hon. Brig. John Sandy, Minister Ramadhar, Minister of Justice, Mr. Volney and myself and met with the head of the SIA. The head of the SIA—I want to tell the nation, because it is being peddled that maybe Mr. Manning did not know—informed us—from the horse’s mouth—that he took instructions for certain wiretaps from the then Prime Minister to whom he reported back. Those are the facts. Mr. Patrick Manning was actually instructing and directing the wiretaps through the SIA, and they would report back to him.

When I heard the then Prime Minister disavow any knowledge about that and disassociate himself as if to hang the head of the SIA out to dry, I say, what manner of man is this? You authorized it; you instructed it; and you wanted it, and now you want to wash your hands clean and hang them out to dry! The nation is not that stupid. I ask the question, would the head of the SIA really be so mad as to tap the phone of the President of this country, the judges’ phones and political opponents phones and the then Prime Minister not know? What crime was the President of the country suspected of being involved in? What crime was Dr. Keith Rowley and Miss Donna Cox suspected of? You see, what he was doing is keeping tabs on everyone.

So, I agree with my learned friend, it is about serious business, because the upsurge in serious crimes, gang activity, organized crime, violent crime, kidnapping, drug trafficking and white-collar crime over the past eight years have changed the way we live in this country.

There used to be a time when people leaving your home in the night, you would say “Bye Bye”. Do you know now what people are saying? They are saying, “Reach home safe”. They want to wish that the person reaches home safely, because it is a wish. They are not sure if they are going to reach safely.

Mr. President, detection rates fell under the PNM. Witnesses were no longer willing to come forward to testify. The Witness Protection Programme became a laughing stock, and the criminals were always one step ahead of the game. When you speak to Christine Hosein, whose son, Imran Hosein, was kidnapped, they transported that child in barrels, switching.

**1.15 p.m.**

Mr. President, they transported that child in barrels on a truck and they were able to outmaneuver the police at every possible roadblock, because they were getting information using a cellphone to relay from one point to the next, "Have a truck waiting at next junction, we coming now to do a handover; roadblock ahead." Those conversations were not being intercepted.

**Sen. Hinds:** How do you know?

**Sen. The Hon. A. Ramlogan:** Had they been intercepted they would have solved the crime; yes; one would hope so.

The nation cannot forget. Everything they tried, they flung money at it; from Prof. Mastrofski, Operation Anaconda under Howard Chin Lee; Operation Baghdad, eye-in-the-sky. Everything they tried was big-ticket, big-money ideas, fancy toys, but yielded no results. That is why the former Minister of National Security, Mr. Martin Joseph, will be remembered as the worst Minister of National Security this country ever had. That is why he said, "We know who the gang members are; 500 people holding this country to ransom." No one will forget that. The former Minister of National Security said that there were 500 gang members and leaders holding this nation to ransom. He said, "We will hunt you down," his famous words. "Well it look like dem was going to hunt them down with bow and arrow and spear, not with technology that was available," and what they did not do in eight years, they quarelling and expect us to do it in less than eight months.

Mr. President, we understand what is at stake. That is why we understand that we need to redirect the resources in the fight against crime. Interception is a valued tool and weapon in the fight against crime. Trinidad and Tobago, this is not new. It is in the United Kingdom (UK), Jamaica, St. Lucia; it is all over the world. It is an important weapon in the fight against crime. But for it to be effective there must be the political will to solve crime, and for it to be effective you must be able to use it in the right place at the right time.

We intend to re-engineer and redirect the use of technology in the fight against crime. We will collect vital criminal intelligence and we will begin to fight crime at the domestic level; share information at the international level and we will be able to harmonize all the agencies that have been scattered about, competing with each other.

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That is why we brought this legal framework to the House, to be able to regulate the exercise of the power. I want to tell my learned colleagues, hon. Senators on the Independent Bench, no matter what you put, I am sure there will be concerns, but the formula and model arrived at between the Opposition and the Government, after much discussion, is not perfect, but nothing will be perfect. If you have the intercept commissioner, you will find yourself with the allegations: Why did you select that one, not the next judge? How “dis” retired judge get it and not the next one? What about if “this retired judge son”—look at Sen. Deyalsingh. Could you imagine if we hired Justice Deyalsingh to be the intercept commissioner and then his nephew or cousin or somebody lands up in the House as is their constitutional right? We have politicians who have family members in the Judiciary; so there are all sorts of quirks in a small system.

**Sen. Hinds:** Nuances.

**Sen. The Hon. A. Ramlogan:** There are all sorts of nuances. I am winning you over, I am glad, but you are right. [*Laughter*]

**Sen. Hinds:** Not at all.

**Sen. The Hon. A. Ramlogan:** My learned friend, Sen. Hinds, supplied the word. There are all sorts of shades of grey and nuances involved in the thing; that is why we have to be careful about it. That is why I do not think the intercept commissioner would have been the right fix and we, after much discussion, agreed with my learned friends that the better way to go was this. I see my learned friend shaking his head I am grateful to him for that. It is a mark of nobility and honour that we could have trusted each other in those discussions, without having to worry about our conversation being intercepted or misrepresented or misinterpreted. [*Laughter*]

The fact that we have chosen to bring this Bill before this honourable House signals our commitment to democracy, the rule of law and the Constitution. It shows we have respect for the Constitution, which is the supreme law of the land and it shows we have respect for the rule of law. We have tried to strike the right balance between the competing interests; on the one hand, the right to privacy and the right to liberty and freedom of expression and, on the other hand, the need to protect law-abiding, innocent citizens from criminal activity that could harm and injure them. [*Interruption*]

**Mr. President:** Hon. Senators, it is now 1.21 p.m. I propose that we take the lunch break at this point and we will return at 2.21.

Before doing that, I should inform the House that the speaking time of the hon. Senator has expired. We will proceed when we return.

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. B. Panday*]

*Question put and agreed to.* [*Interruption*]

**Sen. Panday:** You want him half an hour, you may have him.

**Mr. President:** We will return, after the suspension of this sitting at 2.21.

**1.21 p.m.:** *Sitting suspended.*

**2.21 p.m.:** *Sitting resumed.*

**Mr. President:** When we broke for lunch the hon. Attorney General was on his legs and his speaking time was extended by 15 minutes.

**Sen. The Hon. A. Ramlogan:** Mr. President, I wish to address some aspects of the Bill in terms of the changes that were made, because we are all well familiar with the original draft. I will address these changes in the context of the independence and oversight argument that has been raised by the learned Sen. Ali on the Independent Bench.

The first injection of a measure of independence and some of check and balance in this Bill was the removal of the Prime Minister as the person who could authorize the wiretap. Having regard to my earlier disclosure to this honourable House about the role played by the former Prime Minister in instructing, authorizing and soliciting information via wiretap, this is a most significant change and it is to the credit of the Prime Minister, hon. Persad-Bissessar, that she so graciously and willingly relinquished that power, which they on the other side had in the draft Bill. She had asked that it be devolved instead unto the Minister of National Security.

From there, a further change to depoliticize and reinforce the independence was made, and that was to take away from the Minister of National Security the right to grant such authorization and to place it instead in the hands of three office holders: the Chief of Defence Staff, the Commissioner of Police and the Director of the Strategic Services Agency.

The Commissioner of Police, you would recall, is an independent officer of the State who is appointed by the Police Service Commission, which in turn is appointed by the President of the country. The Chief of Defence Staff holds office pursuant to the Defence Act of the country and he is appointed by the President,

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on the advice of the Minister of National Security after consultation with the Prime Minister. The Director of the Strategic Services Agency is appointed under section 4 of the SSA Act by the President, for a term not exceeding five years, and is eligible for reappointment.

So the first safeguard comes in giving these independent officer holders, who are not directly appointed or hand-picked by politicians, the power to apply to a judge for authorization, via judicial warrant, to actually conduct interception, which can be used or held against someone in a court of law, in other words, gather evidence that can be admissible.

Gathering of criminal intelligence, which you cannot use in a court of law, that is a different story, but again you have to go and trust the same three office holders.

**2.25 p.m.**

What would an Intercept Commissioner have over these three independent office holders? What is the magic about it? Is the Intercept Commissioner going to be any different to the Chief of Defence who has risen through the ranks, served the country, or the Head of the Strategic Services Agency, or the Commissioner of Police, who, as we know, is appointed by the Commission after a rigorous exercise of interview and so on? I dare say not.

Concerns were raised with respect to the need for some measure of proportionality. Proportionality is one of the most important concepts that informs the law of human rights today. In fact, Mr. President, the emerging Strasbourg Jurisprudence from the European Court of Human Rights makes the concept of proportionality the cornerstone of the development of human rights in Europe. It is for that reason we introduce yet another important safeguard, and that is the concept of proportionality. The judge must be satisfied that the means justifies the ends and on the original Bill interception was permitted for crimes that carry the term of imprisonment for a year or more.

What we have done in consultation with the Opposition is to lift the bar and we have now moved the bar from offenses that carry a term of imprisonment of one year to a term of imprisonment for five years. So the more serious offenses, really, are the ones that would make you liable to have your private communication intercepted. It is not that you are saying investigate obscene language or some trivial offense that allows the State to intercept your private communication. There must be an offense carrying a term of imprisonment in excess of five years straight up to life imprisonment and even punishable by death. So that is another important safeguard.

The first one is that you have independent office holders of the State coming from the State apparatus of the highest level that has nothing to do with the politics of the day. The second is that you have to go before a serving judge, without knowing who that judge will be and you simply would be allocated one at random. Thirdly, you have to satisfy the judge that the measure is proportionate, that you could not get it by any other means and the crime must be one that is very serious, with a term of imprisonment in excess of five years.

Now, the exception for gathering criminal intelligence where you do not need a judicial warrant is an important policy change where we had consensus and we were *ad idem* with the Opposition on that. The reason for that is this. You may have individuals whom you wish to have under constant surveillance, you may have international treaty obligations and requests from foreign states that may have an interest in a particular individual. Someone is planning to “bomb up” a plane and they are in the planning stages or you suspect, you are not sure, but the point is, you would want to have that person subject to some form of monitoring. If the person is not engaging in any serious criminal activity then there is no reason to fear and there is no problem; because what you intercept would not lead to the commission of an offense that carries a term of imprisonment over five years.

However, if the person is planning to “bomb up” a plane, if the person is planning a coup, if the person is planning a jailbreak, or to use the example cited by my learned friend Sen. Hinds, if the person is planning to throw a barrel of oil on the highway and the President's entourage is about to come unto that route, you may very well find that it may involve what may seem innocuous, it may involve larger policy and national security consideration.

The jail-phone calls and cellphones seem to be readily available in jails.

**Sen. Panday:** More than outside.

**Sen. The Hon. A. Ramlogan:** More than outside. I do not know, it is better bMobile and Digicel open up a booth inside there and start running some promos. It looks like they are giving them free airtime, but again, that is a sensitive place that may need to have a special kind of arrangement with respect to communications that emanate from and are received into the jails; the Immigration Detention Centre, deportees.

So the need may arise and we have to give and take, but the need may arise where the police have reasonable grounds to suspect or to desire that this individual or this place requires a little more supervision to detect something

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before it happens. You want to be proactive not reactive, and if there is nothing to detect, there is nothing to fear. If it is minor crime, they cannot use it. It must be five years or more.

Mr. President, unlike other countries where they have a schedule of offences, the schedule of offences is one, when you legislate by reference to a schedule, you have to keep coming back to Parliament when you want to amend the schedule and there are so many crimes that we would create in the future that should be on the schedule, but you waste valuable parliamentary time having to come and debate it to put it on the schedule, we opted for the model that you would simply benchmark it by reference to a term of imprisonment. For example, cybercrime, child pornography on the Internet, human trafficking, all of these matters may be serious crimes that we will legislate into our domestic body of law. When that happens each time you would have to go back and amend the schedule to permit for interception of communication in the investigation of that crime.

So it was felt that the term of imprisonment which would capture all serious offences now and hereafter would be the better formula and that is why we went with it. The exception that we have made for intelligence gathering is not so novel, I must confess, it is based on the United Kingdom model. In England they allow for the gathering of criminal intelligence via interception in the interest of national security for the prevention or detection of serious crime, to safeguard the economic well-being of the state and to give effect to our International Mutual Legal Assistance Treaty Obligations.

Now, by copying the English model on this, we felt we were enabling and empowering our law enforcement agencies to be able to fight crime on the ground better. We were equipping them with a valuable tool that their technology now gives and allow so they can actually fight crime.

Now, recognizing the pressure the police service is under—we have many good officers, good police officers who are giving their lives to this country, laying their lives on the line, they are protecting and serving and we must pay tribute to them and never forget that the police service is one that has worked under tremendous pressure and, for the past eight years, with little or no resources.

The police service had to undergo the demotivating phase of seeing resources that should come to the police service to fight crime being pumped into a parallel police service as though it was a private political arm—SAUTT, SIA—and you bypass the Police Service Act, you bypass the Police Service Commission, but

what you created in effect is a parallel police service beholden and loyal to the government of the day and they depleted the resources available. That same police service which stood all that pressure and stood up, they stood up well, I pay tribute to them.

Mr. President, we want to simplify the procedure to apply for the judicial warrant in recognition of the harsh realities that face our police service. It was felt that the need for a Commissioner of Affidavits would be an unnecessary hurdle that was artificial.

**Sen. Panday:** An impediment.

**Sen. The Hon. A. Ramlogan:** It would be an impediment in practice. Thank you Sen. Panday. *[Interruption]* Because commissioners are nowadays becoming a rare sight and the rules that govern and the procedures that govern how they do their business are observed more in the breach than in actual practice in some cases.

At the end of the day, the Commissioner's stamp does not add anything to the veracity of your statement. What we opted for instead is to have a declaration signed by the applicant and that declaration—we have put a safeguard whereby the declaration, once signed, is deemed to be a statutory declaration. That means it has the same force, legal and judicial character as a sworn affidavit and it is an offence to mislead the judge at a court under that application or to make any false statement, and the penalty for that offence is \$250,000 and a term of imprisonment of three years. That I think, I dare say, is an adequate deterrent to ensure that the rights of citizens are adequately protected.

What we are trying to go after is not law-abiding citizens like the President, or the media, or the trade union movement. We are trying to go after those who are inclined to disrupt and harm society and injure and cause loss and grievous bodily harm to innocent, law-abiding citizens. We do not want to go after people like my dear friend, Sen. Beckles-Robinson, whose phone was tapped. What possible criminal activity could an angelic and charming woman like Sen. Beckles-Robinson ever be in?

**Sen. Panday:** Oooh, ooh dear!

**Sen. The Hon. A. Ramlogan:** When the list of names was being read out you could hear the anguish and the anger when they heard my learned friend Sen. Beckles-Robinson's, name called; a noble and honorable citizen, if ever there was one.

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Mr. President, we went further, and in recognizing that when the police needs to respond and react in realtime, when the crime is happening on the go, like when they kidnap someone and they are moving them, then we realize that for the police having to write down all the grounds and so on, we thought that we would extend it from three days to four days, from 72 hours to 96 hours. So you get the oral permission you can intercept, but within four days you can file the written application with the grounds that you would have, no doubt, outlined to the judge in the first place on the making of the oral application.

Recognizing that there is a need to have a retention and disposal policy, we created a section that allows for the Commissioner of Police—

**Mr. President:** Senator, your speaking time has expired.

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

*Question put and agreed to.*

**Sen. The Hon. A. Ramlogan:** I am grateful to my learned friends. The Commissioner of Police in consultation with the Chief of Defence, the Director of the SSA, he will be able to make a decision to retain or dispose as and when necessary in the interest of justice, whether it is needed for criminal investigation or contemplated criminal proceedings. Those are the adequate safeguards that have been put into this Bill, Mr. President.

I thank you very much. [*Desk thumping*]

**Sen. Fitzgerald Hinds:** Thank you, Mr. President. I want to say from the outset that, indeed, there was collaboration and cross-fertilization of ideas between both sides of the political divide in the Parliament and I thought that that was a very sensible approach. I took part in some of those deliberations myself, and therefore the product that was presented today by the hon. Brig. John Sandy, Minister of National Security, is something for which we must all be proud, and of course, share paternity of.

**2.40 p.m.**

It came to that rather belatedly because this Bill is before the House today following, as my friend Sen. Deyalsingh explained graphically, a series of circumstances and developments in the society, culminating in, what I consider—and quite frankly, you know I am a man who say it as I see it and express it as I feel. When I sat before my television that morning and I saw the hon. Prime Minister revealing some of these issues to the national community, the hon. Prime Minister, being a serial politician, and the tone in which it was done and the

things that were said, I was very, very, perturbed at that, and when I consider the way legislation like this finds itself in the Parliaments of other countries, including the United Kingdom, which only fairly recently legitimized the activity of which we speak today—in 1984, was it? Or 1985—fairly recently—and when one considers the technology has been in place for many years before that and the cold war issues, espionage, and all of the things taking place among states, so 1985 is not too long ago, but what they found in that country was that there was a study on the situation, a compilation of a report and the report came for the consideration of the Parliament, and, arising out of that, in a rather civil kind of manner, they came up with a package to legitimize the activity, and I was rather proud of that.

Only recently, last year, St. Kitts, one of our neighbouring sisters in the region, passed this legislation, and while there was some debate in the Parliament, certainly without the rancour and the publicity that we had to experience in Trinidad and Tobago, before we settled into a position where we could collaborate on both sides, and hopefully, come up with a piece of legislation that meets the satisfaction of both sides, the satisfaction of other parliamentarians who are not on the political front lines, that is to say, the Independents, and the satisfaction of the national community, including the operatives in national security, whose business it is to protect each and every one of us, our assets and the assets of the State—I told the Attorney General when he was speaking, that this matter is a very serious one, and indeed, it is, and I am happy to see that he demonstrated that he understood the seriousness of this very, very serious matter.

I mean, I am aware, by virtue of being a former police officer and working in the Ministry of National Security myself, of the risk that a number of those operatives must undertake in order to protect us. When we are soundly asleep at 2.00 and 3.00 in the morning, young men and women are out there, in some cases dressed like vagrants; in some cases women dressed like men and otherwise, doing things; in some cases getting involved in relationships with people over a period of two years, three years.

I know of a particular case where, in a situation like that, an operative had to deal with a gun in her face, and while she was armed she could not go for it. It would have revealed her cover and she had to cope with that—great risk! Very recently, operatives out of a certain agency reported, painfully, that, having gone to their regular financial institutions to transact personal business, people are now looking at them askance and elbowing each other and whispering, because, at the end of the day, a lot of cover is blown. This thing is very serious.

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Those are among some of the reasons I was very perturbed, very disturbed, at the way in which the Prime Minister set about dealing with this situation. The hon. Attorney General told us in blissful—and I mean no offence; I use the word, “ignorance”, in its purest term.

**Sen. Ramlogan:** You know about it, so—

**Sen. F. Hinds:** The hon. Attorney General, in his blissful ignorance, told us that when we came to power—into government, sorry; I should never use it like that—and that was after Mr. Panday had publicly said that he was using intelligence measures, the apparatus of the State, to spy on the political opposition, the PNM at the time—

**Sen. George:** He said that?

**Sen. F. Hinds:** Yes, he did. The hon. Attorney General—[*Interruption*] Yes, he did, he did, he did. You were a permanent secretary at the time and you might have been otherwise busy. So let me continue.

The hon. Attorney General told us that we did not hear about any president, any judge, any journalist, any other politician on the list. What the hon. Attorney General did not tell us was that at no time did the National Security Council Chairman, the then Prime Minister, Mr. Manning—at no time would he have revealed that kind of information. We play it a little differently. We handle the thing very, very differently, because we understand how serious this thing is.

Let me begin by saying that the way this thing has gone so far, it has had a very demoralizing effect on many of the men and women of the national security platform whom we entrust with the responsibility to protect us. They are demoralized. They feel very uncomfortable, especially when they hear the Prime Minister saying that those who were involved in illegal wiretapping would be locked up and all of that kind of thing. I mean, if that is the way that you propose to handle things, you feel free, but that does not please me, and I am not going any further on that.

The trouble is, a lot that has been said so far in public may not necessarily be true.

**Sen. Panday:** No!

**Sen. F. Hinds:** It may be usual Trinidadian exaggeration and hyperbole.

**Sen. Ramlogan:** I see some of your colleagues smiling.

**Sen. F. Hinds:** You could say that, but I know what I am talking about very well. I know what I am talking about. Unfortunately, because secrecy is the essence of the success of this work and the hon. Attorney General, in his capacity, and the Minister of National Security and the Minister in the Ministry of National Security, all of whom are present here today, they will soon, if not yet, understand these things a little better. Well, I think the Brigadier understands it full well, because he was directly involved as a Chief of Defence Staff and in charge of the DFIU, the Defence Force Intelligence Unit.

So that because of the essence and the importance of secrecy for the thing to succeed now and in the future, a lot of the untruths cannot be corrected by the people who have the information to correct it. [*Desk thumping*] So they take the national pain and they listen, but there is something inside of them, military people and otherwise, an oath that tells them what they have to do, so they take the pain, and the nonsense continues.

But we are at the place where we are now before the Parliament, after we settled again, to discuss measures to legitimize the activity. I want to say flatly, in preparation for the debate on the efficiency and efficacy of Parliament, although I did not make a contribution to it, I had a look at a distinction drawn by the legal sociologist in *The Jurist* about lawyers' law and living law, a dichotomy drawn. It is interesting to note that, in another debate yesterday, we extended the time for giving notice under the Land Tenants (Security of Tenure) Act, and a lot of people who were direct beneficiaries did not even know what their responsibilities were; a perfect example of lawyers' law, as opposed to living law, where the people themselves are engaged in the thing.

I use that dichotomy to make this point, that when this issue became public, the outrage in the society was not about the fact that the intelligence agencies must operate in order to protect us. In fact I have got a sense that the people in Trinidad and Tobago, as people in every other country, have no issue, fundamentally, with the question of wiretapping, to put it flatly. What they have a concern about might be the element for abuse when it is wrongly used.

So I hope that the distinction that I sought to draw is borne out here. The people are not too troubled about wiretapping. They were not before. What they were concerned with was the issue of abuse that was acutely highlighted when the Prime Minister spoke that morning coming off the plane, because the focus was on the abuse. Some of it might have been exaggerated, some inaccurate, but it stands unchallenged for the reasons I have stated.

**Sen. Panday:** Mr. President, I wish to—

**Hon. Senator:** A point of order?

**Sen. Panday:** Standing Order 35(5)

**Sen. F. Hinds:** What is your problem? The President “and all” is at a loss.

**Mr. President:** What I understood the Senator to be saying, I heard him talk about there were untruths in the public, without necessarily identifying any particular Member of Parliament relative to speaking the truth, and then lately he talked in terms of whether there were inaccuracies in a statement made. He did not use the term, but I think he meant the Prime Minister, and he suggested that there were people who could answer that but felt it was not in their position to do so. It is in that context that I will allow the statement. I will, at the same time, caution the Senator not to impute improper motives to anybody or to cast aspersions on their truthfulness about statements made by them. Whilst he may do so in a general manner, he may not do so specifically to anybody directly. [*Desk thumping*]

**Sen. F. Hinds:** Mr. President, for your observations, I am grateful. As I was saying, I was trying to say—and I am not going to repeat that, but I was trying to say that a lot of what has been said stands unchallenged for the reasons that I have stated. That is all I was saying, and we have no way of determining whether it was true or false. But I heard recently—

**Sen. Ramlogan:** There is a way. Ask Manning. He knows. He will tell you if is true or false; ask him!

**Hon. Senator:** You ask him. You are the AG.

**Sen. Ramlogan:** We did—

**Hon. Senator:** Bring a charge. Ask him.

**Mr. President:** Can you continue, Senator?

**Sen. F. Hinds:** You see, I tell you we do things differently? You see why I have to be proud of the PNM? [*Crosstalk*]

**Sen. Ramlogan:** Mr. President, on a point of order.

**Sen. F. Hinds:** No, no, no, I am—

**Sen. Ramlogan:** On a point of order.

**Sen. F. Hinds:** Which point of order? State the point of order.

**Sen. Ramlogan:** Standing Order 35(5). What the learned Senator is actually doing—

**Sen. F. Hinds:** You do not need to explain. Just say the point of order 35(5). That is it.

**Mr. President:** Can we listen to the point of order?

**Sen. Ramlogan:** Thank you very much, Mr. President. What the learned Senator is doing is saying directly, now that the information revealed about those citizens who were wiretapped, that that information was exaggerated or may be untrue and they have no way of testing it. That is indirectly or directly saying that we exaggerated or lied to the population when we disclosed those names.

**Sen. F. Hinds:** No.

**Sen. Ramlogan:** That is what it is. If that is not what he is saying, then he should make that clear, but that is what I understand him to be saying.

**Mr. President:** What I understood the Senator to be saying, as he, I think, tried to correct himself after the interposition by Sen. Panday, was that there were statements made, the truth of which could not be determined by anyone.

**2.55 p.m.**

**Mr. President:** I do not think that goes so far to say he was suggesting that the—I did not hear the word “exaggeration.” He may have said that, but—

**Sen. F. Hinds:** Yes, he did so.

**Mr. President:**—I do not think it goes so far as to say he was imputing improper motives to the Member. He is within his right to say that the matter is one, the truth of which cannot be tested. I think that is within the bounds of what he is permitted to say. [*Desk thumping*]

**Sen. F. Hinds:** Thank you very much, Mr. President. Yesterday or the day before, a newspaper article reported the Minister of Works and Transport as saying, “He had an opportunity to see his file and that he was wiretapped because he is a terrorist.” He said so earlier. So how did he know that?

Sen. Beckles-Robinson’s name was called. She does not know if a file exists. She did not see any file, but a Minister of Government is saying he saw his. So the thing is very complex, very dangerous. That is the point I am making, and this is why matters like this must be handled responsibly.

Let me continue, Mr. President. I want to make reference to the Bill immediately because I know time will go. They are trying to cheat my time. “Is mash dey trying to mash meh up here today.” So let me go ahead. “Them ol’ tricks.” [*Laughter*]

**Mr. President:** The Chair will always allow you injury time. [*Desk thumping*]

**Sen. F. Hinds:** Oh, you are most gracious. You are most gracious, Mr. President. [*Desk thumping*] This is why I welcomed you on your return from the lofty office of Acting President [*Desk thumping*] and I see a sense of justice today. There was a time right here when I could not feel this way, but thank you, Mr. President. I will elaborate on that at a more convenient moment.

Mr. President, in the definition section, the word “offence” is defined in clause 5(1) and it says:...

“means any offence where the penalty, whether on summary conviction or conviction on indictment, is imprisonment for five years or more, and includes an offence where death, imprisonment for the remainder of a person’s natural life or imprisonment is the penalty fixed by law;”

But we go inside of the legislation, in particular, in clause 6(2)(b) we see and I read from (b):

“the communication is intercepted—

- (i) in the interest of national security;
- (ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years or more,...

I think we need to tidy that up a bit because it is defined on the one hand as five years and I am seeing the—it is something we need to look at, Minister, and just pay some attention to that to see what we can do.

There are a number of other issues that I would raise as we go ahead, but I feel obliged, before I do that, to respond directly to some of the things that the Attorney General has said. The Attorney General told us in his very animated contribution that—we had a spate of kidnapping, a very serious issue. I happened to have had a conversation with a name mentioned by the Attorney General here today, the Hosein family. I have all the photographs. That is a young man who was taken and kept I think for 17 days—painful experience for his family. We know all about that. We decided that we had to do something as a nation about it, and a lot was done. I heard the Minister of National Security stand here a few

weeks ago and say that there was a kidnapping and within 24 hours it was detected. He does not know how it happened. You think it happened by guess? You think it happened per chance: I want him to contemplate—and that was before today. He boasted on it, but let me say in 2005—let me get the figures accurately for us. Abductions and kidnappings in 2006, 214; in 2007, 162, a 24 per cent reduction; in 2006, abductions and kidnappings, there were 16 for ransom; in 2007, 13 kidnappings for ransom. I remember in 2004 we had 51 kidnappings for ransom, and in 2005 it went down to three. Sen. Panday remembers that. A lot of work has been done and the thing, as I always try to explain, is a moving target. You have to keep your eyes on the thing. You have to be able to suppress the thing. Those who are involved in this will understand. It is not by coincidence that since this matter was brought to the public domain in the way it was—it is not a coincidence that we had something like 32 murders over a 10-day period.

**Sen. Beckles-Robinson:** Two weeks.

**Sen. F. Hinds:** Over a two-week period.

**Sen. Ramlogan:** Every Christmas as [*Inaudible*] Every Christmas [*Inaudible*]

**Sen. F. Hinds:** “I think you better keep quiet, you know. You will embarrass the Government. Keep quiet. Keep quiet. Doh do dat. Keep quiet.” I am saying, I am aware it is not by chance because criminals are opportunists. They prey on your weakness and your perceived weaknesses, and if they feel you are walking naked they will prey on you and, therefore, this legislation—I see it says “by proclamation” and I know sometimes in our nation we pass legislation and there is a serious hiatus between passage and proclamation. I want to recommend, Minister of National Security, that, as we finish with this legislation, it must go for proclamation to the President immediately, so that the lights could come on again; [*Desk thumping*] not by chance. It is not by chance that kidnappings were substantially reduced in the period of which we spoke. Today, we do not have as big a problem in kidnappings for ransom as we used to. There is a way the thing is done, and the SIA, with all of the criticisms directed at it, I am in a position to say that it led the intelligence platform in Trinidad and Tobago. It was the guiding light; it informed everything, police, DFIU. So it is important that we do not further weaken it.

The Attorney General said here today that the Witness Protection Programme flopped and failed. Those are my words, but in effect that is what he said. Now, those are not words that ought to come from the mouth of an Attorney General.

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[*Desk thumping*] In the *Art of War* the Chinese wrote about 2,000 years ago—I see Sen. Abdulah perked up when he heard that, because it has some red in it and he is attracted to that. They taught us—and the Brigadier will understand this. He is a man—peaceful as he looks, handsome as he looks, he is a man of war.

**Sen. Brig. Sandy:** No thank you, Sir.

**Sen. F. Hinds:** He is not an easy man. He is a soldier at heart.

**Sen. Abdulah:** You are apologizing—[*Inaudible*]

**Sen. F. Hinds:** You leave me alone. Mr. President, notwithstanding all the criticisms that that organization has faced and the negativity now associated with it, it really led the thing. It was a guiding light. I do not want to say much further on that, so let me leave that.

The Attorney General talked about the witness protection programme and said it failed. That is not true. All Witness Protection Programmes carry some difficulty with them largely because they are voluntary programmes. The individuals in the programme must want to stay and decide to stay. Clint Huggins was a part of it. He left and lost his life on the Uriah Butler Highway. Many of them walked out of it because it is very restrictive. If you are accustomed to doing what you want, going how you want, drinking beers, liming, running your life and so on, and they put you in a programme where you have to stay for a period, no girlfriend and those kinds of business, and you are not getting to do the things you are accustomed to doing, even sometimes in your indiscipline, it is hard. They cannot take it, so they want to leave and the police are not able to tell them, “You must stay here.” So they leave and, “trouble come”, but the programme has worked successfully in many cases and it has to continue to operate because witness protection remains an important piece of the whole thing.

When the Attorney General speaks like that, it just weakens the thing. It sends the wrong signals to those who are listening, including the officers who must manage the programme, and they would feel now like they are working in vain.  
[*Desk thumping*]

**Sen. Oudit:** Senator, would you give way? Would you allow me for a minute?

**Sen. F. Hinds:** Absolutely not! I am sorry. That is not like me, but absolutely not.

**Sen. Oudit:** [*Inaudible*]

**Sen. F. Hinds:** I may consider it at that time—[*Interruption*]

**Sen. Oudit:** Sure.

**Sen. F. Hinds:**—but right now I am still vex.

**Sen. Oudit:** [*Inaudible*]

**Sen. F. Hinds:** No!

**Sen. Oudit:** All right.

**Sen. F. Hinds:** Mr. President, the hon. Attorney General went back in times—although you do not step back in a foxtrot. You should know that. But I do not think he is a good dancer anyway. It does not look like he has timing.

**Sen. Ramlogan:** I know.

**Sen. F. Hinds:** That Mr. Manning said that the kidnappings were bogus, that is not true. Mr. Manning never said. I am not here to defend him, because he is very able, as we all know, to defend himself. But let me say, I was familiar with the comments made and he never said that. That is a misconstruction of what was said, and, at any rate, some of the reports of kidnappings were, in fact, bogus. People have been charged for wasting police time in this country for that. That is a fact. He also told us that Mr. Manning easily decided that a lot of people who lost their lives, it was collateral damage. I do not expect to hear that coming from the hon. Attorney General, a man learned in the law [*Desk thumping*] and now holding the Office of the Attorney General. Leave that for bloggers; leave that for the uninformed and the uninitiated.

**Sen. Panday:** So, Mr. Manning never said that?

**Sen. F. Hinds:** I do not expect to hear that from people in positions like yours. In the United States we received statistics sometime ago in that office. Over a 10-year period they had about 25,000 homicides in the United States and they estimated that about 60 per cent were innocent bystanders. There are gangs, when they have to initiate new members, part of the initiation process is to go down the road and just kill somebody—blood in the gang and blood out. You die going out. Sixty per cent innocent bystanders—and look at the big issue at Movie Towne when the young lady lost her life, when members of the Jaamat al Muslimeen had their internecine issues and persons ended up before the court. She was an innocent bystander. That is typical collateral damage. She was not part of the antagonism when the fight began. She was not a protagonist. So when I

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hear ordinary people making these statements, I dismiss them and excuse them, but I do not expect to hear that coming from Members of the Cabinet and the Government of Trinidad and Tobago. [*Desk thumping*] I do not expect to hear it.

You have to be far more sober. I expect you will get up now and tell me a point of order just because I say “sober”. If you want to, go ahead.

**3.10 p.m.**

**Sen. Panday:** “Because you drunk.”

**Sen. F. Hinds:** Mr. President, on the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT), I was at Laventille a few nights ago. The hon. Minister was present too. There was a function called “Pan Relay” and we all enjoyed it. The people of Laventille, I congratulate them, beautiful and sweet—the spirit of Laventille came out that evening. We all had a fantastic time and members of the Special Anti-Crime Unit were out in their numbers and that was part of the reason we all had a good time. We all felt secure. They serve a purpose.

However, they have been vilified by colleagues on the other side for years. They play an important role and I heard the Attorney General in a very ordinary and banal way say they were getting all the resources and the regular police service was not getting any. Of course, they had resources that the police service was not getting in some cases; but the Special Anti-Crime Unit was born out of troubles with the very police service. That is the historical truth. [*Interruption*]

Just a moment! Drink your porridge cool! Sip it! Do not get discombobulated! Take it easy! I will tell you something. It was an entity apart from the police service and they functioned in Trinidad and Tobago. They were part of the platform for our protection and security in Trinidad and Tobago. The Special Anti-Crime Unit fought crime in Trinidad and Tobago and are still fighting crime and offering us protection. They had the capability of teaching through its academy, in a certain place, all members of the national security family, including the police, specialized areas of that activity. So do not behave as though it is some “outside child” and has not served its useful purpose.

I want to say these few things so that you will have a better appreciation of how this thing works. I was telling you about the Chinese and the *Art of War*. My friend distracted me. They taught us in that writing that when you are going to take something over, you try to take it over intact. You do not destroy it. It is a usable tool. You have to use it now because you are now the Government. Handle

it gently. You do not “lick it up”; it will be of no value to you. [*Interruption*] They were reminded yesterday. I understand you all were carried to a certain place and reminded yesterday that you are the Government now.

**Sen. Panday:** You intercepted that information.

**Sen. F. Hinds:** You shut down the country yesterday; shut down the Senate and displeased the Independent Senators. They all came to debate three Bills as Sen. Al-Rawi reminded us, and walked away to go to listen to the riot act in a certain place. Frustration and anger. Fraught. You thought it was easy. You wanted the “wuk”; you have it now.

**Sen. George:** You want it back, though.

**Sen. Deyalsingh:** Touché.

**Sen. Beckles-Robinson:** Tell him in time; in time.

**Sen. F. Hinds:** Mr. President, they are trying to distract me. They are trying to interfere with my time.

The Attorney General spoke a while ago as though judges are, as a group, sacrosanct and immune from the vagaries of this life. Not in Trinidad and Tobago; certainly not! However, in many countries of the world judges have been known to take bribes and to be engaged in activities that were in support of the government; taken over by the government. In some countries judges cannot act independently. All the decisions they render are in support of the government of the day.

In some countries, judges are known to be beholden to gangs and criminals. In some countries judges have been known to be involved in pedophilia and other such awkward proclivities. You can have all kinds of things and this is why we always say that crime is a function of sin. The sinful nature of man is at the heart of crime and no law or politician can deal with that. That is for men and women of the cloth.

I say to young people that all crimes are sins, but not all sins are crimes. You cannot have a crime-free world unless you can have a sin-free world. The thing is a moving target; you have to fight with it. You have to deal with it. I said that in passing for your edification.

The Attorney General, the way he spoke about Minister Martin Joseph, a man who—I am very sincere on this one as well; I worked closely with him and I saw the work he put out for this nation. You will soon realize that the job you have is a

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thankless job. You just do it for love of country. Some of you would have given up better pay packets in your private operations to serve. That is fine. You will understand.

I whispered to the Minister of National Security, while we were having the break, that some time he will sit at home in his rocking chair regretting that he had joined up with you all and he would be hearing other people who would have come after say that he was a waste of time and that he did nothing. I would feel hurt because I know the man. I would agree with the first part but not that part.

He said that Minister Martin Joseph did absolutely nothing. Now, how could an Attorney General say that?

**Sen. Ramlogan:** Mr. President, on a point of order, I should be quoted correctly. I did not say that. I said that the former Minister of National Security, Mr. Martin Joseph, was the worst ever Minister of National Security in this country's history. I did not say he did not do anything.

**Mr. President:** Sen. Hinds, that is certainly as I recall it.

**Sen. F. Hinds:** I know you do not agree, but it was Minister Joseph, recognizing that the police service was the major platform for crime prevention and detection in this country, who set about reforming a police service that had fallen significantly behind the requirement of the times—major efforts at reform! Ask your two colleagues who are now in the Ministry of National Security. Do a comparison with what existed 10 years ago. The selection process for a commissioner and a deputy commissioner was introduced by Minister Joseph in the interest of efficiency. Mr. Dwayne Gibbs would not have been there had it not been for those reforms. I know you told him that his honeymoon was over. That was a snide way of telling him: “Look, shortly we will send you packing”, as you did to Mr. Philbert.

**Sen. Ramlogan:** Me!

**Sen. F. Hinds:** Yes, but Minister Joseph did that. He rearranged the promotion system, not so much on seniority. Men used to sit and wait for stripes, pips and crossed-tipped staves because of their longevity in the service. That is a thing of the past. Now it is about merit. Now, all the young men and women of all the agencies in national security are competitive, getting themselves suitably qualified in all kinds of disciplines, recognizing that a competitive police service today requires training and discipline in all fields, including theology. If you have to succeed in the fight against the human spirit, the sinful nature of man that we call crime, understand that.

It was Minister Joseph who introduced the high-impact supervision training for the Second Division Officers, the corporals and the sergeants. I met a Woman Police Corporal who had just come out of one of those programmes; a woman whom I trained when I was a police instructor. She said: “Mr. Hinds, that training we did changed my 24 years of perspective on policing as a police officer. It changed my life.” Minister Joseph did that.

The model stations which I heard the Minister of National Security and the current commissioner say they will continue and expand were done by Minister Joseph. The introduction of the Crime and Problem Analysis Branch (CAPA), a very important unit because before things were *vaille-qui-vaille*, but now they can see what is happening in real time and respond to it. A lot has been done by Minister Joseph.

Police used to use the excuse of saying they have no vehicles. I heard the Minister of National Security boast recently that they gave 90 vehicles that were parked up at VMCOTT to the police service. Well, of course, I excused him that time because he did not know they cannot use the excuse again. Now, you can hardly go anywhere, police cars are up and down, left right and centre. Minister Joseph saw to that and security does not come cheap. The largest chunk of the national budget in this country went to national security and education for about six years. Minister Joseph.

When you stand and glibly say that \$300 billion was squandered, I want to remind you that these things cost money.

**Sen. Ramlogan:** [*Inaudible*]

**Sen. F. Hinds:** I will not tell you. You are now in the government; you have to work that out. You have to tell us now how you had 32 murders in two weeks and what you are going to do with it; how you will handle that. Do not look so bewildered! You look shocked; stunned.

**Sen. Ramlogan:** I was shocked at your defence of Mr. Joseph.

**Sen. F. Hinds:** I am only saying that in fairness, as a man should be. As my father used to say: I am a man first and everything else after. The truth must be told.

**Sen. Panday:** You are a manicou.

**Sen. F. Hinds:** That is why I tell you we do it differently. Mr. Williams would have called him a “zandolee” but I am not going to go there.

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Mr. President, the Attorney General quite properly identified the safeguards in this legislation and, as we had said earlier, we were a part of the discussions and are satisfied that those safeguards can meet our expectations in terms of creating the balance between the need to see with both eyes and hear with both ears and to feel with your spirit everything that is happening in Trinidad and Tobago.

I told the Attorney General that I was very fortunate one evening a couple years ago to have received a call to which I responded personally. It was in an area with which I was familiar. It was 9.30 in the evening and they were about to do something horrible. This is a strange country. The young people are responding to the urgings from cultures far away from Trinidad and Tobago via the Internet and the television. You see a young man in Flanagin Town and you assume that that is his culture and you assume things about him. The Minister will see a young man from Gonzales where we grew up and he will form the opinion that he is cultured by that neighbour but he may be totally wrong. He is cultured by Fifty Cent out of New York or by some freak somewhere in Paris or he may be inspired not by Bob Marley and Mighty Sparrow like me, but Nicki Minaj.

**3.25 p.m.**

**Mr. President:** The speaking time of Sen. Hinds has expired.

*Motion made,* That the hon. Member's speaking time be extended by 15 minutes. [*Sen. The Hon. A. Ramlogan*]

*Question put and agreed to.*

**Mr. President:** Sen. Hinds, please continue.

**Sen. F. Hinds:** I am most grateful to you, and I am particularly grateful to the Hon. Attorney General. It appears as though he is coming around. Like he is understanding me. [*Laughter*] [*Desk thumping*] Mr. President, lest I be accused of not dealing with the Bill—[*Laughter*] [*Desk thumping*—I would like to bring Members' attention to clause 8(1) of the Bill.

I know that my friend, Sen. Al-Rawi, meticulous as he is; and my learned Senior in whom I am particularly proud, and the Independent Benches and others on the Independent Benches will address the minutia of the legislation. We have a long day ahead of us, so I will not use up too much of their gunpowder on the issues, but let me just take a small bit of it. Clause 8(1) says:

“Subject to this section, an authorized officer may apply *ex parte* to a Judge for a warrant authorizing the person named in the warrant—”

I would like to complain that that is most, if I may use Senior's language, most inelegant. Rather inelegantly stated; and I would like to propose that it can simply be rearranged to say—because you see, to say the authorized officer may apply *ex parte*, he may make an *ex parte* application, it is the application that is *ex parte*. Okay?

**Sen. Panday:** Senator, what section are you on?

**Sen. F. Hinds:** I am on 8(1).

**Sen. Panday:** Sure.

**Sen. F. Hinds:** And rather than say “for a warrant authorizing the person named in the warrant” one can simply say, “to authorize the person named in the warrant”. I think that would not only be more elegant; it would be more accurate. There are a thousand other little typographical and other errors in this, but I should not interfere with those. I am sure that those coming after me would have cast an eye on those.

Mr. President, having assured myself that I would not have utilized all my time on this debate, and unfortunately, or fortunately, perhaps, having to address issues raised by the Attorney General, I want to conclude by saying that the ability to see with both eyes, and to hear with both ears, and to feel what is happening all around you all of the time is very important. You know, we complain and we raise issues about the fact that we had an average of 500 murders a few years ago; 555 murders in the year, and you count the figures, and all of that. I was never one to be guided by murder counts as a determination of how successful the thing is, or not.

A simple and banal example, an individual can come to a public place this evening with an automatic weapon and kill 60 people in one go. So that really, really, I am not convinced that that is the proper gauge, but then they tell me that is the litmus test; murder figures, so that is the conventional wisdom. I will tell you something. Had it not been for the work of the SIA; had it not been for the work of the Special Anti-Crime Unit of Trinidad and Tobago; the Trinidad and Tobago Police Service; the SSA; the DFIU and all the other agencies, including the Customs and so on, that played their part; had it not been for the strong, preventative aspects of what they do, 500 could easily have been a thousand.

You and I have no idea how much the preventative elements of the national security elements work. Let me give you a small example. Recently, two weeks ago, just before this thing broke—When did this thing break? About a month ago?

**Sen. Al-Rawi:** November 19.

**Sen. F. Hinds:** November 19. Just before that—I am sure the Minister is aware; he is aware—there was a party in Belmont and two gangs were supposed to have met at the party and they were planning to have a shoot-out there; but somebody was able to see and hear and feel and made an intervention before and broke it up. God knows, the Minister could have been coping with another five or six murders in the space of an hour.

I have a number of other examples that I can share, but not necessary. Therefore, I conclude by saying, the dichotomy that we—well I do not want to take all the credit, but that we agreed on for intelligence gathering in contradistinction to activity for the purpose of evidence in court, that was very, very important. Very important. You agree?

**Sen. Panday:** Sure.

**Sen. F. Hinds:** Well once you agree, I think I can retain my seat. Mr. President, with that agreement and these few words, I thank you very warmly. [*Desk thumping*]

**Sen. Panday:** I did not know I had that command.

**Mr. President:** Sen. Baptiste-Mc Knight.

**Sen. Corinne Baptiste-McKnight:** I thank you, Mr. President, for allowing me the opportunity to intervene in this really very important debate. Mr. President, both the Hon. Minister of National Security and the Attorney General have pointed to the need and, without saying it in so many words, the urgency of passing this bit of legislation. The Attorney General has made the point that the country is reeling from the impact of the revelations of two weeks, and he is right. Some people are outraged that their privacy has been violated. Some are concerned that theirs was not, because they now consider themselves of no consequence. [*Laughter*]

Then, there is a section of the national community that is not even aware of the fact that it is reeling from the fact that, as a result of these revelations, the intercourse between our protective services and their international counterparts with whom they have agreed to exchange information—[*Desk thumping*—has been interrupted, to our detriment.

Now that, to me, is the urgency for this bit of legislation, but will this legislation stop the reeling? It will go some way towards, as the Attorney General said, regulating the process; but, in truth and in fact, it is not the process alone that is the problem. What our international counterparts are going to be looking at is

the manner in which, and the consistency with which we can demonstrate that we can deal with sensitive matters and situations in an effective manner. It is that confidence that was shattered by these revelations in Parliament that concerns me.

In a previous contribution, I suggested, with no malice, that perhaps there is need for some training of the advisors to the Government. I would like specifically to suggest that people who have to advise on these bits of communication be subjected to the Dale Carnegie course on how to win friends and influence people, [*Desk thumping*] because this is an example of how it must never be done again. [*Desk thumping*]

Mr. President, let me move on to the Bill, because I feel that there are elements in here that definitely need to be considered again. Let me start with clause 5(1). The authorized officers, Chief of Defence Staff, Commissioner of Police, and Director of Strategic Services, now, a very important person is missing here—the Comptroller of Customs and Excise. If we are talking about national security and economic security, there is that whole area which this person controls that is left vacant for somebody else to look after. I feel that this is a grave omission. The Comptroller of Customs & Excise should be among the authorized persons.

Now, moving on to communications, I note that this is the only place in this Bill where it is hinted that postal communications are also communications. It is implied when they talk about data and visual images, because those can be sent by post. Is it that the post can be intercepted under this Bill as it stands? As a layperson, I read it and I do not see it included, so I would hope to be told something about this later on.

Before I go further into the clause-by-clause analysis, let me share a very deep concern that I have. Now, as a result of part of my misspent working life in the foreign service, I had to be involved in quite a few of these security conferences, et cetera. As is my wont, I would try to get all the information that I could in order to make sure that I could understand what was going on to report properly, and I think that I learned that there is a difference between intelligence and evidence. [*Desk thumping*]

Now, this is hinted at in the Bill here and there. There is talk about intelligence security for national security in clause 6(2)(b). It makes special mention of national security prevention and detection, et cetera, and it says that communication so intercepted may be used, but shall not be used as evidence.

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**3.40 p.m.**

Now, this seems to me to imply that a warrant is not specifically needed for interception under this item 6(2)(b) but, when we turn to clause 8(2)(a)(i) and (ii), it specifies that a warrant is necessary for these two identical purposes. I do not understand whether a warrant is needed or not, but the problem is, if a warrant is needed specifically for intelligence-gathering, then we are in trouble. We are never going to be on time to collect the evidence, because it is a real-time business and, however quick the judge is, by the time you get the warrant, you have lost the opportunity.

Now, let us go to clause 8(3)(b), where it goes further to say that in order to get a warrant for national security, you need the signed authorization of the Minister, and it goes on to insist “where the warrant is applied for on the grounds of national security”. We have to make up our minds, it is either you need a warrant or you do not. As I keep saying, non-lawyers read these things. Our international counterparts are going to be looking to this legislation and going through it with their legal minds, with a fine-tooth comb and they are really not going to know what is going on, because then we go on to clause 22(a), which says specifically that interceptions under 6(2)(b) must be notified to the Minister within 48 hours of the commencement of the interception. Now, if the Minister has to authorize the interception in one clause, and in another clause has to be notified within 48 hours of the commencement—[*Interruption*]

**Sen. Dr. Balgobin:** It is now 96.

**Sen. C. Baptiste-McKnight:** Yes, 96 hours—it occurs to me that somebody is crazy, because that does not make sense.

Then clause 23(6) makes a provision for certain actions to be taken, both in pursuance of a warrant under clause 8 or 11, or a direction under 6(2)(b). The framers, the people who gave the instructions, have not made up their minds whether intelligence needs a warrant or whether intelligence is to be treated differently from evidence. I would like to suggest, from my different experience, that it is very important that the Bill state clearly that intelligence would go by way of a direction, as opposed to under a warrant. Of course, if in time any part of it needs to be dealt with as evidence, then it should be treated that way.

Mr. President, I would just like to draw your attention to clause 20(5). I am not sure what sense this makes, in terms of intelligence-gathering. It says that any information gathered that is not related to the objective of the interception must be destroyed immediately. That is not how you deal with intelligence because, when

you gather intelligence, it is not something that you need right away. You go and destroy it and then the next bit of information you get you say, “Oh my God, perhaps I should not.” No, we have to do something about that. *[Interruption]*

**Sen. Ramlogan:** I think the objective of that section is, for example, if you are intercepting a conversation and parts of it may relate to your private life or something that clearly does not sound in any criminal realm, that part of the interception would be immediately destroyed, because there is no value. What you would keep is anything that you think may have the potential to sound in the criminal realm. I think that is what it is aiming at.

**Sen. C. Baptiste-McKnight:** Mr. President, I am not learned, because who have silk and whatnot, you are all learned friends. I consider myself to be just friend, because I am trying to be helpful. If I am gathering information, if I am doing research, nothing is irrelevant until I have put that piece of paper or case to bed. I cannot—because this particular chapter does not seem to be very relevant—discard it. Check with whoever is the relevant authority in the realm of intelligence, and find out from them whether they could live with this, and I would be surprised if they could, and if they could, fire them. They do not understand what they are supposed to be doing.

I notice that the Bill is silent on how all of this information, whether for intelligence or for evidence, is to be dealt with. How is it to be stored? How is it to be maintained? Do not tell me that you have clauses where the judge will determine how the matter is to be stored. That is not good enough. This Bill has to—if what you want to do is to regulate the process, you have to regulate the process. There will be regulations right at some point, just saying that it would be stored in accordance with the regulation to be promulgated under clause whatever.

Let me go back clause by clause, now I have got my intelligence problem almost off my chest. The last thing on the intelligence is the duration. This Bill only makes provision for information to be stored and retained for nine months, 270 days. This can possibly refer to intelligence. I do not know about the evidence part, but given the fact that the security forces are undermanned, et cetera, and given their track record, I really do not think that any case in this country gets solved within nine months. When you give people nine months—think of an elephant. The gestation period of an elephant is longer than nine months and many a human being is born before nine months, but most of them born before nine months have problems. Nine months is, I think, a minimum period. Nine months, 270 days, you will find, is not sufficient even for dealing with evidence. *[Interruption]*

**Sen. Ramlogan:** Which clause?

**Sen. C. Baptiste-McKnight:** You are not serious. This is your Bill; you must know it by heart. It is clause 10. Clause 10 deals with all the duration. *[Interruption]*

**Sen. Ramlogan:** Duration of warrant.

**Sen. C. Baptiste-McKnight:** But one warrant is for three months. It can be renewed for another three months. If my math is right, that is six and it can be renewed only for another three months. That makes a maximum total period of nine months, 270 days. My contention is, that is not sufficient for any purposes, because I do not think that any case in this country has been solved within nine months.

**Sen. Ramlogan:** That is how long the judge can grant the warrant for authorizing the interception to take place, but the retention of the information that is collected is not dealt with there; that is a different matter. The retention, disposal of the intercepted information is dealt with in clause 20 of the Bill.

**Sen. C. Baptiste-McKnight:** I thank the hon. Attorney General, but I think he is listening to me behind the veil of what he knows he has here and what he would prefer.

Could I suggest that you clear your mind of that and just listen to exactly what I am saying and process that? What I am saying is, if you are working on an investigation and, as a result of this, you need to have a wiretap or wiretaps, I do not think that it is conceivable that you can get all of the information that you need within the period of nine months.

The criminals outside there are brighter than us and if they know that you have nine months, all they do is delay. It says a final period of—*[Interruption]* you can get a fresh warrant. If you can get a fresh warrant and go for nine months, why shut off in nine months in the first instance? That is creating work for the judges—*[Interruption]* I am not giving way again, just listen. Mr. President, I would need too much injury time if we continue this. Anyhow, this is how I feel about it, rather than having to get a fresh warrant every nine months, just cut off the final period of nine months and let them have extensions as required.

We were going back to clause 6(2)(d). This, I find interesting. Clause 6(2)(d) states that you are not at fault if the communication is intercepted as an ordinary incident in the course of employment. This, here, I will allow you to correct me if I am wrong—“in the course of employment”, whose employment? That is somebody who is employed in the telecommunication services. *[Interruption]* “In the provision of services” means that is an employee. That is an accident.

**3.55 p.m.**

When you come to clause 17(4)(b), it says:

“a statement by the witness that the interception of the communication...”

But (d) is included in this. That seems a little strange to me. Does the employee who came upon this by chance have status? Just think about it and explain it to me in wrapping up or anywhere else.

With respect to clause 7(1),(2)(a), I am just seeking information. It says that anybody who possesses an appliance that is able to do this. Are the drafters of this Bill aware that there are cheap medium-wave and short-wave radios of their own volition that pick up people's phone conversations, police bands and radio communications?

Now, in the 1970s, I had one of those which I bought from the Reader's Digest for \$9.99. I would be listening to my little Roberta Flack and, suddenly, I would be hearing, police band coming across and somebody on a telephone coming across. Nobody that I know and nobody that I am interested in! I have a sneaking suspicion that those things still exist. Now, how can you penalize somebody for listening to Bob Marley or Buju Banton and by chance pick up with the Attorney General's conversation? There is a problem there.

Now in clause 8(1)(b), if after the interception is made it is deemed necessary to disclose the content to persons other than the ones included in the warrant, does that mean that one has to apply for a new warrant? I guess we can get the answer during the committee stage.

I listened with rapt attention to the Attorney General explaining the role of the judges and I wonder, are our judges really in a position to fulfil these functions? I think one needs a certain amount of experience and understanding of security matters to be able, for instance, to decide what is proportionate to the interception that is sought. This is pretty technical. I think that we are doing our judges a disservice to ask them for all of this. I want to know whether this compels a judge to have all of these from (a)—(e). Are all these situations to be met or can it be selective? Does the judge decide? Who decides what is satisfactory? *[Interruption]* I am happy.

Let us go to clause 9(2)(a) and it says:

“A warrant shall authorize the interception of—

- (a) communication transmitted by means of...from one or more addresses specified in the warrant...”

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Now, if I understand correctly, an address could be a telephone number where you can find the person. In the case where the address is a telephone number, if I have a cellphone and I have a bag of sim cards, what is the address on the warrant? In order to be able to intercept any communication that I send out, if you are using that number, you must have the number of all of my sim cards and that is going to be a tall order.

Let us go again. In clause 12, if I understand the Attorney General, he alluded to this as one of the clauses that gives the judge the oversight function that, I believe Sen. Ali was enquiring about. I am wondering to what extent the judges could really have oversight over the process. The granting of a warrant is only one part of the process. If I understand correctly, the commissioner in the British system has oversight over the entire process, not just the granting of the warrant. The judge grants the warrant and then has to ensure that the person to whom the warrant is granted maintains the information in a proper manner. I do not know how the judges are going to be able to do that. Perhaps we can come to that in the committee stage.

Clause 13 purports to detail what the providers of telecommunication services need to do. I think that there is a serious omission here, in that it does not state that they need to maintain their data records for any specific period of time. I think that it would be important, because if in your interception you find that you need records from a month or so before you started, they might not have them, because they are not mandated, either here or in the Telecommunications Act, to maintain their data record for any specified period of time.

Mr. President, I come to a very interesting clause, which is clause 24. Now, I find this very curious. The Minister is expected to report within three months on a whole number of things over which he has absolutely no control. In the body of the Bill, all that I see that the Minister has to do is to accept the report from the authorized officers when they request a warrant, but he is being asked to do a number of things here. I do not see how he is going to be able to do it. Now, I think this was taken straight from the duties of the commissioner, but the commissioner has functions that would allow him to do these duties. Mr. Minister, do you really think that you could do these duties, given the duty that you have?

**Sen. Brig Sandy:** It would not be me doing it.

**Sen. C. Baptiste-Mc Knight:** This does not give you any permission to disclose this information to anybody. So you are looking at a quarter-million-dollar fine. You cannot disclose this information. It means that you have to take

night to make day to find this information, and that is if these authorized officers put you down on the list of persons to disclose this information to. I think there is a little gap in this Bill, as it stands, with regard to that.

Mr. President, finally, I would just like to suggest that at clause 20, where the Commissioner of Police is mandated or allowed to exchange information with the other officers before the information is destroyed, I think this is something that should be across the board. All of the authorized officers should have to consult with each other before information is destroyed.

In the interest of time, and my curiosity to hear what other Senators have to say, I shall end here. Mr. President, I thank you. [*Desk thumping*]

**Sen. Faris Al-Rawi:** Mr. President, thank you. [*Sen. George roset*] A slight look of consternation; I thought there was an arrangement with the Leader of Government Business.

**Hon Senators:** Yes.

**Sen. F. Al-Rawi:** Much obliged, Sir. Mr. President, I rise, and I do not mean this cheekily, to intercept the debate of this particular Bill. I say that because of the manner in which this Bill has come. I undertake not to be as exhaustive as one ought to be on a debate like this, mainly because it is clear that Sen. Baptiste-Mc Knight has intercepted my content already, because she has spoken on many of the particulars that I think ought to be put onto the record.

I have said that this debate really ought to involve an extensive discussion, primarily because of our fundamental recognition that this is originating legislation. We in Trinidad and Tobago are about to put onto the book, of our laws a serious piece of legislation. So it is incumbent upon us in our role as parliamentarians to set the record of *Hansard* straight in a number of areas.

In particular, we should be speaking to the mischief which we seek to solve; we should be identifying and setting out the references which we have drawn upon in creating these laws so that we may properly aid those who have the task to interpret the legislation; and we must interrogate the laws that come before us, so that we ensure that, in the end, we are leaving the citizens of this country, who are the beneficiaries of this law, in a solid state of having good and well-thought legislation put for their benefit.

With that said, I come back to the original point of intercepting the Bill. I say that, not to be cheeky, but really out of a candid recognition that this is shotgun legislation in action. We are being brought today, as a result of a disclosure on

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November 19, 2010, to rush a piece of legislation through its various stages, which, having been fundamentally amended from its original state on November 19, 2010 to November 26, 2010 in the Lower House, and now having sat in the Senate yesterday to come back today to deal with the legislation.

**4.10 p.m.**

We are again touching upon the rights enshrined in sections 4 and 5 of the Constitution. For this particular debate, permit me to elevate that very noble document, which we call the Constitution of the Republic of Trinidad and Tobago, and to read into the record of *Hansard* the rights which we are today seeking to contravene.

I read from the Constitution at section 4, “Rights enshrined”. It states:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the freedoms following fundamental human rights and freedoms, namely...”—subsection (d) speaks to—

“the right of the individual to equality of treatment from any public authority in the exercise of any functions;...”

And I have jumbled the reading purposefully, and I will explain shortly; subsection (a) reads:

“(a) the right of individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law...”—which we are seeking to do today—

“(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;”

Albeit that we heard the hon. Attorney General say that this section is peculiar because it speaks to “his private and family life”, those words can, in fact, be construed to mean his private life and, therefore, his right to privacy.

So unlike other jurisdictions, and in particular I speak to England where there is an unwritten Constitution—there are conventions which they observe—we have a clear, defined, enshrined right which can definitely be put to mean a right to privacy. That is point one.

Two, in dealing with a diminution of those rights, specifically by this Bill requiring a three-fifths majority as it does, to seek to set aside the constitutional rights of sections 4 and 5, we are, as constant case law has demonstrated, obliged to act with wisdom. Dare I say that it cannot be very good wisdom for us to be constantly engaged in shotgun legislation. The Children's Life Fund Bill, shotgun legislation; the Firearms (Amdt.) Bill, which was pulled back because of inadequacies in drafting—shotgun legislation.

This particular Bill is shotgun legislation because it came about as a result of—and I wish not to be uncharitable—a poor exercise of judgment in the disclosure of what had been said to be a recent discovery. I regret that the hon. Attorney General is not with us, because we are always better off for his presence. I am sure he is attending to some amendments now, and I am being charitable. The hon. Attorney General spoke to a discovery, but he spoke to it, when you strip it down to its naked truth, in, perhaps, a discovery which I will call Christopher Columbus style, because he discovered that which was already there.

He attempted to convince us that the discovery of the hon. Prime Minister, relative to spying action, was recent discovery. It is on the record in the House of Representatives. I wish for the benefit of the interpretation to ask this honourable Senate and the record to read into our debate all the contributions in the Lower House relative to the origin of intelligence, as it is used in a security and surveillance sense, in Trinidad and Tobago.

I wish to set the record straight now, not because of a political banter between who did it better or who did it worse; PNM this, UNC that, but we cannot accept the fact that surveillance in Trinidad and Tobago, in a clandestine fashion, has been stated on the record of the *Hansard* repeatedly to have existed since pre-independence. It has been the subject of contributions of Ministers of National Security from all political parties, the NAR, the UNC and the PNM, and, in particular, it has been a statement of specific disclosure by attorneys general in the UNC when it held power and also by the Minister of National Security, Brig. Joseph Theodore, when he replied in 1997 to a motion on the adjournment presented by the now leader of the PNM, Dr. Rowley. So I want to set the record straight.

Sen. Deyalsingh meant no mischief, or I should say did not intend to ignite a political debate as to who was doing it better, when he put on the record the fact that the UNC Government knew very well that surveillance existed and, in fact, their full particulars of its nitty-gritty, build, complexion, kind and function,

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certainly on the records in 1997 and again in 2005 in the House of Representatives, and *Hansard* would reveal that fact. But he did it simply to state, in the purpose of originating legislation, the mischief which we seek to solve today.

I will not go into heavy weather on political rights and wrongs, but national security is a concept which we recognize, in accepting surveillance of the kind we are talking about, as a trade-off to personal freedoms. It is, as lawyers know, a classic example of an application of utilitarian justice, and that is, where the rights of the majority outweigh the rights of the minority and, in this case, the individual rights. That is where persons are required to trade in certain of their freedoms for the good of the entire society. That is what this legislation is about.

In recognizing that we are engaging in utilitarian justice statements, we must be careful to recognize the balancing act that we are engaging in. It cannot be apposite to the best interest of our citizens for us to make disclosures that there have been recent discoveries, when they were not recent, when the fallout from those discoveries are really fallouts of a very sincere kind.

The fallout involved, one, a betrayal of interrelated security interests that we share with our foreign partners. Two, it involves a betrayal of the interests of those who have served us at the request of successive governments and certain bits of legislation, in conducting the surveillance as they did, because they were employees and agents in the process, not necessarily perpetrators of crime, because the crime statement is being made today. Prior to today's legislation, there would not have been a crime, *per se*. There may have been an infringement of private rights, which could have gone to a court and been determined by way of declaration to the court, but not having gone to court, so today we are defining the crime.

Thirdly, we would be looking at a consequence of a breakdown in national security. It is an incontrovertible fact that when the surveillance equipment shut down—as it must have, because I am told the surveillance equipment involves what you call a digital footprint, that is, everything that is on the surveillance equipment is recorded and cannot be erased—so the minute, “de mark buss” on November 19, in the attempt at sensationalizing the recentness of the discovery or the attempt to truly politicize the issue, the unit is turned off. There was an undeniable spike in crime and it was the citizens of Trinidad and Tobago who paid the price. [*Desk thumping*] We saw a shoot up in the murder rate and we saw difficulties. This was what Sen. Hinds referred to as collateral damage, but which he took objection to in terms of the trivialization of the term by the hon. Attorney General.

Mr. President, in looking at the legislation, I wish to start with the point that Lord Browne-Wilkinson is attributed to a wonderful statement. He said that the dossier of private information is the badge of a totalitarian state. I wish to accept that as an absolute truth. We cannot allow the State an unbridled existence in collecting dossiers of information relative to private citizens, but we must also balance that by the utilitarian concept of requiring the State to protect its interests and, by extension, the interest of the citizens who have the social contract with the State.

With some of the philosophy put onto the record, because it is important in originating legislation to make the statements as to the mischief and the purpose of the legislation, I think it is critical for us to turn to an analysis of the laws themselves.

It is true that the Members of the Opposition and Members of the Government team had an opportunity to sit in the shotgun circumstance that they did, to deal with the adequacies of the Bill as originally presented, and that a remarkably better version of that Bill did result. But with the strictures of time being what it is, we have been denied the opportunity, by way of the rush that is required to deal with this legislation to put right the collateral damage which has happened, to consider the full effect of some of the legislative difficulties by way of drafting in this particular Bill, which Sen. Baptiste-McKnight quite properly alluded to and some of which I will point you to in a moment.

Suffice it to say, Mr. President, that I think it important to state that, in creating the legislation, it must be noted and put on the record, that from a comparative legislative perspective, this legislation is, in fact, a collection of jurisprudence, because the laws relative to the United Kingdom, the laws relative to the United States and the laws relative to Australia have certainly been referenced and their complexions are reflected into this particular Bill, save that this legislation moves a step beyond, in that, with respect to the English law, while we have borrowed a lot of their terminology and clause definitions in that legislation, we have moved beyond the executive grant of warrants for surveillance and we have moved beyond the ability to adduce evidence in courts of law as a result of surveillance—those are two deficiencies in the English system—and we have accepted, relative to the US position, the use of judges as the originators of warrants. Relative to the Australian perspective, we have sought to borrow some of the terms relative to the management of data in particular.

In doing that and in borrowing this legislation in a rushed fashion from various jurisdictions, dare I say that I disagree, on one of the few occasions, with Sen. Ali. Our Bill is not so much a reflection of the Jamaican or St. Lucian Acts,

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but is, in fact, forgive me if I got it wrong, a reflection of the English mixed with a little American, mixed with a little Australian Act put together. But in borrowing the legislation from the three sources that we have done, we have failed to take into account the backdrops which exist in those particular societies from which those laws originate.

**4.25 p.m.**

Mr. President, under the English jurisprudence—and England passed through the stage of having an Interception of Communications Act in 1985, but moved on to a broader perspective of a Regulation of Investigative Powers Agency in 2000. They went a step beyond interception of communications and actually included, by way of legislation, the management of physical surveillance and postal surveillance, which was a point raised in this debate already. However, the backdrop to that Act is, firstly, and I wish it to be understood, the English legislation borrowed from two secret agencies, MI5 and MI6 existing in covert surveillance techniques, which, in fact, operates beyond the scope of the legislation.

Secondly, the English operates upon a backdrop, which is essential—that of data protection legislation being in place, and we have none. It also operates critically upon a backdrop of security of information as is set out in the UK Official Secrets Act. So what we have done—and I would say if I were to describe the child of this Bill, the Bill being a child and where its parentage comes from and how much DNA it possesses of the respective party's contribution, the Bill which comes before us now is really largely a United Kingdom piece of legislation with the exception that it is not executive warrant issuing again and our evidence can be used in certain circumstances. However, in doing that, we have ignored the fact that the English have, as an essential position in their legislation, a Data Protection Act which originated in 1984 and which arose at the same time that their Interception of Communications Act was being developed, as well as an Official Secrets Act which has been modified from time to time. Those two pieces of background legislation are critically important because they form the balances and the ability to test and the ability to provide the guard who is guarding the guard to the types of powers that prevail under this particular bit of legislation.

I see my friend is, in fact, waving—the hon. Leader of Government Business—his secret agenda, because his Government's agenda is still secret and we do not know it. So it is irrelevant to me that he is waving, and I am sorry for being uncharitable, but it is irrelevant to me that he is now waving across the table in the course of today's debate, on serious legislation, what purports to be an

omnibus package of legislation, because I have not seen it and I am not interested in seeing it at 17 feet away from me. [*Desk thumping*] So forgive me for being remarkably uncharitable on this occasion.

Mr. President, my point is that in seeking to borrow the legislation from England as we have, we must take cognizance that the Interception of Communications, which was the original Act in England in 1985 which later became what is now called the RIPA, the Regulation of Investigatory Powers Act, that RIPA bit of legislation is premised on the backdrop of secrecy legislation and data protection legislation, and also ably assisted by an immediate statement of regulatory codes of practice which are published by the parliamentary arms which give the supervision.

Now, albeit that that is provided by, I believe, clause 25 of our intended Act, the ability to make regulations, it is the statement of codes that really should be accompanying this bit of legislation and on that bit I would give the Government a short “bligh”, but not as long a “bligh” as it has taken for them to either kick-start the economy or produce a legislative agenda, but what I am saying is that that regulation can ostensibly originate under the Act. The point is, the backdrop must be there if we are to get it right.

Under the American jurisprudence there are three bits of legislation that exist. They allow interception on a federal level and under statutory level in different senses, and under the American backdrop they use judges, mainly because the American legal profession and the American judicial system is a highly efficient system relative to our own, firstly in the number of judges who exist, and secondly, in the manner in which the circuit of judges operates. I might add at this juncture that American judges are appointed, some of them, by election. It is not uncommon when you go to the United States to see signs saying, “Please vote for me judge x or judge y”—I think Sen. Ramlogan will fall off his chair if you do not wake him up.

**Sen. Ramlogan:** I am listening to you my friend! I am listening to you!

**Sen. F. Al-Rawi:** Thank you, Attorney General. The point, Mr. President, is that it is convenient under the American system to use judges as originators of warrants because there are so many of them and they can be neatly categorized for the purposes of obtaining warrants.

However, our legislation must be factored in our context, and with respect to our context I wish to refer you to the 2008/2009 Annual Report of the Judiciary of the Republic of Trinidad and Tobago. In that report it is stated—and if I could

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draw it in some way that we are understaffed, undermanned with declining ratios of performance and success, where we have judges who, as the Attorney General correctly pointed out, are docketed by case management computer systems by a docket system on a weighting basis—W-E-I-G-H-T—to select matters.

Our system may result in the fact that you may select a judge who knows nothing about the criminal law. I do not mean to be uncharitable, but the fact is that if our judges are not sensitive of the nature of law that they are dealing with, it is going to be problematic. When one contemplates upon the statistics available in the public domain relative to the throughput of cases in the High Courts of Trinidad and Tobago, it will be readily appreciated that we may very well be overburdening the system as it currently is stacked. At this point I cannot say anything other than, I actually agree in principle with the point that judges should be authorizing officers for warrants, but I am cautioning that we have to take an immediate step to looking towards the efficiency of the Judiciary, and therefore it is efficacy—in assisting them to have the tools to deal with what is about to meet them.

You see, Mr. President, today was “Blue Tuesday”. There were sirens up and down the road today, you would have noticed. There was a meeting across the road in the square, and today there was a statement which is a reminder that our civil service is in difficulty and that persons at the High Court, once they have done at the court officewhat they call their 1 per cent for the day, they are done! Nobody in Trinidad and Tobago today experienced an easy time in filing at the court office. My office has been in constant communication with me reporting that we could not file documents today because there is a de facto strike going on, or, at least, a work to 1 per cent rule basis.

That, I am mentioning in the context of this Bill, because it affects the realities of the legislation that we are seeking to put into effect. Because if we do not recognize that the system itself is in need of serious aid, we are going to find that we have passed good legislation that cannot be put into effect. So the point that I wish us to take away is that the backdrop in Trinidad and Tobago relative to efficiency in the judicial process is a very difficult one.

Secondly, that the legislative agenda in dealing with this Bill should have a statement relative to the production of data protection legislation and also secrecy of information as it relates to national security. Whilst it may be that we have, by way of savings law in our Constitution, preserved onto ourselves aspects of the UK Official Secrets Act, 1911—because it is that we would be seeking to traverse further aspects of constitutional rights defined in sections 4 and 5 of the

Constitution—that legislation would also have to come to Parliament when we bring it. I am sure that the Government is listening and they will take heed and bring that legislation.

Mr. President, the backdrop in place, let me turn quickly to look to some of the clauses in the Bill; because, like Sen. Baptiste-Mc Knight I, too, share some concerns relative to the interoperation of certain of the clauses in the Bill as set out. In particular, while I note that even though the explanatory note does not form part of the Bill, it does form an aid for interpretation insofar as it may be referred to under the rule of *Pepper v Hart* sometime later and, that I had recommended simply that we amend at page 5 of the Bill—sorry, at page 4 of the Bill, at clause 11, explanation, the change from 72 hours to 96 hours as is now stated later on in the Act.

But turning quickly to the clauses of the Bill itself, I too share Sen. Baptiste-Mc Knight's concerns that clause 5(1) of the Bill which gives the definition clauses as it relates to “authorized officer” in particular, that it omitted—and I do not think it is purposeful because, again, it is shotgun legislation—to include Comptroller of Customs and Excise. I say that because—

**Sen. Ramlogan:** That was taken out by—

**Sen. F. Al-Rawi:** Whether it was taken out or not, the process that it was done in is shotgun circumstances. You know, there is a famous statement in law, hon. Attorney General, that reason must be allowed to resume its seat. That is when you are dealing with the law of provocation.

So if we were hot-headed at the time, whether it is the Government or the Opposition in removing [*Interruption*] something, it may mean that the hon. Attorney General, having had a chance to allow reason to resume its seat, could reflect upon my contribution and see whether or not he wishes to add the Comptroller of Customs and Excise, because we are talking in the legislation to the introduction of a warrant for the purposes of the economic interest of our country. That is in fact stated with no uncertainty in clause 6, it is, of the Bill.

Mr. President, you see this is what Sen. Hinds means by sipping your porridge cool. It is not to be inflammatory, you know. We are here, we have accepted:

1. It was a bipartisan product;
2. The Independents were left out for one reason or the other, not by our choice, but because of the shotgun choice;

3. The fact is that, blame aside, this legislation is originating legislation. We need to get it right.

There was a lot of huff and puff and blowing at 3.30 a.m. when we discussed the amendments to the Children's Life Fund Bill. They had lost their cool on the other side. They did not have the patience to stay the course, but the amendments had to be inserted, Mr. President. [*Desk thumping*] However, on this particular piece of legislation it is originating legislation and we have to get it right. So do not dismiss the introduction of the Comptroller of Customs and Excise.

**Sen. Ramlogan:** May I please? Mr. President, I just want to say for the record that, whilst we had that included in the original Bill, it was at the request of the Leader of the Opposition that that was taken out after collaboration. We acceded to that. So unless my learned friend thinks that the Leader of the Opposition needs to resume his seat of reason, perhaps he might inform his comments by reference to what the collective consensus and collaboration was all about.

**Sen. F. Al-Rawi:** Attorney General, that point was made very clear in crosstalk. The reason I ignored it in crosstalk is that I said it plain as day for all those waking Senators here to hear, that I did not really care whether it was the Leader of the Opposition or the Government Bench who removed it or put it back in, because I said it came under the circumstances of shotgun legislation. It should not have been brought in the fashion in which it was done. [*Interruption*] There was a different management option open to this Government to produce this legislation, but they chose not to do it. Whether one was to accept the rationale that Sen. Deyalsingh has put forward of a media reset, or whether it is for your own political gain, the point is that it needs to be looked at. Mistakes may be made in the rush.

Dr. Rowley will admit he is human. By the way, while I am on the point, the constant politicizing of whose fault is this and whose fault is that, let me just say that is something that we all need to move on from, and I will move on with that.

**4.40 p.m.**

Do not be troubled by it.

Relative to the Bill again, I turn to the description of "offence" which describes any offence—

**Sen. Ramlogan:** What clause?

**Sen. F. Al-Rawi:** It is in the interpretation section 5; it is on page 8 and I am dealing with "offence".

“‘offence’ means any offence where the penalty, whether on summary conviction or conviction on indictment, is imprisonment for five years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;”

I ask you to hold that in mind for a moment because I am asking you to flip straight on to page 11 and I am looking at clause 6 of the Bill. It is worth clarifying, the intent—and I am going to ask the hon. Minister to deal with this in wrap-up, because I think it is very, very important, because it appears to me to be a core concept of this Bill. Clause 6(2)(b) of the Bill—clause 6 deals with the exceptions to the offence. Clause 6(1) creates the offence and subclause (2) says it shall not be an offence and then it goes down into several subparagraphs.

Subclause (2) says:

“Notwithstanding any other law, a person does not commit an offence under this section if—

- (a) the communication is intercepted in obedience to a warrant issued by a Judge under section 8 or 11;
- (b) the communication is intercepted—
  - (i) in the interest of national security;
  - (ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;”

The Bill then goes on in clauses 8 and 11 to describe related provisions as they deal with the obtaining of a warrant and other aspects, but I want to state the point very simply. Clause 6(2)(b) is defining a different form of “offence” and I know what it is intended to take care of. It is intended to take care of a statement of what the English have used as a serious crime or a serious offence, which they have by schedule incorporated into their legislation and which we seek to do by way of a broad definition instead, being an offence.

Clause 6(2)(b)(ii) goes on as one interprets, by way of application, the other clauses of the Bill to this clause, to attempt to allow surveillance without a warrant. Because when one reads the tail end, that is after clause 6(2)(iv), it goes on to say:

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“and any communication so intercepted may be used for the purpose of an application under section 8 or 11, but shall not be admissible as evidence in any court;”

So it clear that what is attempted to be put into this clause is a general form of surveillance for things which are not serious crimes; serious crimes being crimes which are those above 10 years’ imprisonment. But by use of a definition of a five-year imprisonment cycle as a term for a serious offence in the definition section, we have gone into a zone where you are obliged by other sections of the Bill to obtain a warrant, to report to the Minister that you need to get a warrant and those are to be had by a reflection of clauses 8(2(a); 8(3)(a)(v); 8(3)(b), 11(1)(b); 17(2); 20(2) and 23(6) of the Bill.

I am saying it quickly because this is a field day experience for any criminal lawyer. He can go to seek a statement, a declaration or a commission of an offence for persons who have not obtained a warrant but whose information comes out through some circumstance after, and that is a point I am coming to in a while—leaks.

You see, this Bill does not contemplate leaking of information, nor does it contemplate information gathered prior to the commencement of the Bill, and I am going to propose at committee stage a specific amendment to include activities prior to the commencement of the Bill, for a number of reasons which I will come to, and also leakage information, because we cannot fail to be mindful of *WikiLeaks*. *WikiLeaks* is available to everybody in Trinidad and Tobago. Anybody can send information obtained prior to the commencement of this Bill or information after the commencement of this Bill to a foreign server not subject to the laws of Trinidad and Tobago or who cannot be found and it will be there in the public domain.

So we have to contemplate the statutory loophole in this legislation as it relates to leakage of information and improper utilization of information obtained, dare I say, lawfully, because there may have been lawful circumstances for obtaining the information prior to the commencement of this Act.

On the point of lawful obtaining of information, we cannot not be mindful of the case law in the common law as it exists relative to collection of information, nor can we fail to be mindful of the fact that there is the SSA; there is other enabling legislation which would have allowed surveillance to exist; nor can we forget that the Telecommunications Act, Chap. 47:31 also contemplated the law

for interception; nor can we forget very old cases like *Entick v Carrington*, 1765, 19STTR at 10.29 which dealt with obtaining of warrants and the lawfulness of warrants obtained or not.

In fact, that was discussed in the case of *Malone*, which was the very famous case which resulted in the UK Interception of Communications Act, 1985 and also in the data protection legislation, 1984/1985, later 1998 and also the amendments to the Official Secrets Act, 1911 and then the amendments that came later in the United Kingdom.

You see, there were lawful mechanisms available to obtain information, but upon passage of this Bill we will have criminalized the activity. So the complication and litigation really arises with the passage of this legislation and we need to be careful that we are not unwittingly opening a Pandora's Box with criminal sanctions that can apply.

So it is important for us to contemplate the lacuna in the legislation as it exists. I know that my time is not very long; I am being cautioned about it, but suffice it to say that I invite careful reflection upon the contradictions as exist between clause 6 of the Bill and in particular clause 8(2)(a)(ii), clause 8(3)(a)(v); clause 8(3)(b); clause 11(1)(b); clause 17(2); clause 22 and clause 23(6).

I come next to the position of the storage of data. The storage of data is a very critical concept in this particular piece of legislation. We have a mechanism where data is automatically meant to be stored. There is an attempt in the legislation to set out certain standards of confidentiality to be observed, and they go a good way. In fact, they are borrowed from the English legislation and it is right on its track, but there is a serious contradiction that Sen. Baptiste-McKnight pointed out too, and that is that when a warrant is removed and that is that a judge considers that you no longer have the authority to continue with a warrant or he is not going to remove a warrant.

Contrary to the recommendations of the hon. Attorney General, the fact is that the Bill specifies that the information is to be destroyed forthwith. It cannot be maintained. So it is not correct of him to say—I do not think he said it mischievously, but it is not correct to say that the information can be held on to. That was her caution about the nine-month gestation period, because if the warrant expires on the ninth month—the 270th day—the information must be destroyed.

On the point of destruction of information, may I recommend that the Bill does not go far enough relative to the matter in which the destruction is to be had, because it does not make it a mandatory provision for a certification of

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destruction. You see, if we really want to make sure the information is destroyed and we have tracked the process ostensibly in the rules and regulations, why do we not go a step further to enshrining protection of rights for persons who may have been intercepted, you know, in a broad net and then turned out to be wrong, by making it mandatory for the authorized officer to certify that the information was destroyed? Because then we would know that it was dealt with and we know who to look to, and that is a very important point. I would recommend that we look to clause 20 in particular, which deals with destruction of records, and seek to introduce a certification for destruction of records.

Relative to the repeated use of the word “intentionally” in the Bill, I would like if the hon. Minister could, in his wind-up, address the fact—and I am asking for clarification, whether it also includes a reckless intention, because it may be helpful—I know Mr. Panday is very schooled in the criminal law—in our statement of the law simply for aid of interpretation and *Pepper v Hart* principles, to include whether we are looking at a reckless intention or a reckless knowledge as it is used, to convey the mental intention behind the crime.

The Bill aside—because I promised not to go through the nitty-gritty difficulties that collide between interpretations in the relative sections—

**Mr. 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. F. Hinds*]

*Question put and agreed to.*

**Sen. F. Al-Rawi:** [*Desk thumping*] Mr. President, I think perhaps two more points. I was one of those persons named as having allegedly been subject to surveillance. I was specifically named. My good friend, the hon. Attorney General, who I have had the pleasure of knowing since before law school, and through law school, has yet again treated me with some difficulty because he did not put me in the angelic light that he did—as it relates quite properly to Sen. Beckles-Robinson—

**Sen. Panday:** And there was a reason for that. [*Laughter*]

**Sen. F. Al-Rawi:** Nor did he put Sen. Hinds in that light. But the point is that, having been a person who was supposedly on a target list—and I really do not know whether I was or not. If I was, it is with some intrigue that I look to that;

if it was that I was not, well then I am grateful that the hon. Prime Minister thought me important enough to put me in. But I am sure she reflected upon the information that she was told.

But the point is that I practice law every single day, save that this Senate is now giving me challenge in that capacity because I seem to be living here quite frequently, more than in my office, and I have to burn those midnight hours. But the point is that it appears that some persons have already had access to what their files may or may not have had. It is on the record that the hon. Chief Justice has, through his attorney at law, already written for a confirmation, production and destruction of his information.

I know the law and my rights as it relates to this point. I, too, would have wished to immediately call to put right any wrong that happened relative to surveillance on me. But you know why I did not do it? I did not do it because legislation had to be debated first, and I did not do it because I would be exposing to ridicule, contempt and prosecution, persons who followed instructions and performed their duties from government, to government, to government—because it is on the *Hansard* record: from government to government to government.

**Sen. George:** Speculative.

**4.55 p.m.**

On that point, if you wish me to go through the entire debate on Friday, March 07, 1997, I will. It is here, I do not want to indulge too much of your time to the fact, but it is on the record. It is again in 2005 *Hansard*. It is not speculative. Whilst I would like to have called for destruction of information, and will on the passage of this Act, the point is, we cannot encourage a system where there is unequal access to information; secondly, where we put people's jobs on the lines.

The Attorney General spoke about demotivating the police force. He said that they were treated with scant regard by the People's National Movement. I do not know where he comes up with that point, but he is entitled to his point of view. Politics is a good thing. It is by challenge that we develop. But the point is that we have to also watch the interest of employees of the respective surveillance agencies. They cannot run. Their digital footprints would be all over the equipment. Why do we have to resort to a system of firing people instantly, sending them home? In the face of statements of a lack of confidence in the economy; in the naked statements of the hon. Attorney General of a lack of

confidence in certain aspects of the security systems in this country, Witness Protection Programme and other points; we have to jealously guard the rights of those persons who acted under instructions.

I wish to stand here to say that the policemen and the security service personnel who acted in the performance of duties assigned to them should not be punished as they have been because punishing them in the manner that they have been punished, so far, is like punishing the parliamentary staff who sit here without benefits for the very late hours that they have to stay here. I was shocked to learn that the librarian has no overtime pay for staying until 3.30 in the morning, that the parliamentary draftspersons have to travel to San Fernando at 4.00 a.m. and be back here at 10.00 a.m., again with no privileged parking, walking up the road in the blind dark of night. You see, we are treating our people with scant regard, and as I said yesterday, if I had one small opportunity to correct the wrongs to persons who cannot defend themselves, I must make my very best effort to do that. I wish to rise to the support of all of those persons who were sent home by the SIA to say [*Desk thumping*] that is a scar on their names. They acted in performance of positions. The hon. Attorney General has come on many occasions—[*Interruption*]

**Sen. Ramlogan:** Which person? Only one person.

**Sen. F. Al-Rawi:** One person? The hon. Attorney General has come to Parliament on several occasions with long lists of hit opportunities, things that he is going to tackle, names that he would call outside of the doors on the steps, promised prosecution that he is going to initiate. Eight months coming up into the saddle, I think it is time for us to move on from allegations to settling in, leaving the gun talk aside and preserving person's rights because we cannot come and "lick up people's reputations just like that because we in Parliament and we have absolute privilege." That cannot be tolerated. "Nor can we come up here, like him, doh like him, doh like the Balisier", we cannot come and disrespect people in the fashion that the Attorney General has to the hon. Martin Joseph when Brig. Sandy, the hon. Senator that he is, the distinguished gentleman that he is, sits at his side and had the courage to say in the debate on the economy and again in the budget presentation, "Well done, Mr. Martin Joseph. If I could have hired you, I would have." That sounds to be—[*Interruption*]

**Sen. Ramlogan:** That is sarcasm.

**Sen. F. Al-Rawi:** That is not sarcasm. You do not know your Brigadier well enough to be—contradictory.

Mr. President, we must have care and regard for the persons who sit to our left and right and opposite, and I wish to put on the record that I regret that statements of the kind relative to Martin Joseph were made in the manner in which they were made today, because I think that he deserves a bit more regard than that. The one thing I am sure of is that this national service that we are performing currently is one which, at the best of times is a thankless job, but it is national service. I am proud to do the national service as I know every Member is proud to do national service, but let us have a bit more regard for our fellow human beings and for those who have served this country admirably.

Mr. President, with those few words, I thank you. [*Desk thumping*]

**Sen. David Abdulah:** Thank you very much, Mr. President. Like others before me who have spoken on this very important piece of legislation, I too am grateful for the opportunity to speak, particularly so because I also, like a number of persons both on this side and on the other side, was listed as having been “a victim perhaps of the wiretapping that was illegal in terms of the violation of my rights”.

In a sense, I feel particularly vindicated by all that I did, together with colleagues in the various organizations of which I am a part, both trade union and political, to campaign and struggle against what was very clearly a growing dictatorship under the prime-ministership of Patrick Manning; Very, very vindicated by all of those struggles and all of those campaigns. Those struggles and campaigns had incidentally the benefit to some Members opposite because none of those opposite, perhaps, would have been here this evening had it not been for what we did in campaigning— [*Desk thumping*] Sen. Hinds looks discombobulated. [*Laughter*]

Mr. President, I feel vindicated by all that we did in the trade union movement, all of those campaigns and struggles, all of the statements which were drafted, media releases, the vigil outside Whitehall on two occasions for 24 hours, food campaign, the five fast days by Cipriani Statue; all of the actions including facing arrest and harassment by the police and so on. Those were small scarifies that some people have to make in order to ensure democracy. The price to freedom is eternal vigilance.

I want to quote from the Constitution as Sen. Al-Rawi did as well, but I want to quote first to you from the preamble of the Constitution inter alia:

“Whereas the People of Trinidad and Tobago—

- (d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;”

I want, in particular, to emphasize that men and institutions—and of course, this was written at a time when perhaps the gender sensitivity that we recognize today was not in focus at that time. That people and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.

What was clearly happening in Trinidad and Tobago under the Manning PNM government was a complete and utter disregard for the rule of law. [*Desk thumping*] That complete and utter disregard for the rule of law ipso facto, quite apart from being a violation of the intent and everything else of our Constitution, that violation of the rule of law led us into a situation where we were facing starkly the reality of dictatorship in Trinidad and Tobago.

I want to quote from Mr. Martin Daly SC’s column in the *Sunday Express* of November 21, 2010. Mr. Daly, of course, is a highly respected Senior Counsel. He also happens to be the President of the Law Association. He wrote in his own personal capacity and not on behalf of the association of which he is President, and he was a highly respected Member of this Senate for quite a number of years. Mr. Daly SC said, and I want to quote part of his column:

“I had hoped that I would never have to refer again to the acts and omissions of our former prime minister, Mr. Patrick Manning, simply because, like some of those in the Book of Revelation, on May 24, 2010, he was cast into the bottomless pit of severe electoral defeat, or so we thought. Unfortunately, as Mark Anthony observed in his classic political speech in Shakespeare’s *Julius Caesar*, the evil that men do lives after them.

Undoubtedly, the persistence of evil is what we are witnessing with the official revelation in Parliament that so-called national security agencies were conducting surveillance on a significant number of citizens without their consent or a shred of legal authority to do so. This was done with Manning’s knowledge and approval. He was and still is proud of what was done.”

Mr. Daly then went on to say:

“I have never been in any doubt that another Manning term would have taken us down the road to a fuller police or totalitarian state.”

So it is not just some of us on this side that share that view, eminent citizens in this country share the view that that violation of the rule of law was clearly taking us down the road to dictatorship of the state.

The hon. Attorney General in his contribution earlier today, referred as well to the statement by Mr. Manning at a press conference in which he said, and I quote:

“The way the PNM...has operated in government is that we start a programme and if the programme works well, you give it a legislative complexion.”

Mr. President, it is my view that that is a clear admission—I am not a lawyer—of the fact that you will wilfully, consciously violate the law and then subsequently try to validate it. That must be a violation of the oath of office which all Members of Parliament, and certainly all Members of Cabinet have taken to uphold the Constitution and the law, and yet we get from the other side references to shotgun legislation. Let me say that—and the record has been made very clear publicly that there was a draft piece of legislation that would have provided the legal basis for security services to intercept communications. There was a draft piece of legislation several years ago prepared by the last government.

Sen. Al-Rawi cannot, therefore, come today and talk about shotgun legislation, when, in truth and in fact, the party to which he belongs, when it was in government, had legislation prepared and sat on it for years. If I was in another place, I would have said sat on something else. But they sat on the legislation and did nothing about it. You cannot come now and talk about shotgun legislation. The People’s Partnership Government, as a responsible Government, has brought legislation to deal with a situation where citizens rights were being infringed, and we are now seeking to ensure that the rights of citizens are no longer being infringed in such a heinous manner as had existed with the practice that has been exposed by our Prime Minister on November 19.

#### **5.10 p.m.**

Mr. President, I go on to make the point that Sen. Deyalsingh—it seems that they have all deserted—in his contribution earlier was suggesting that the reason why the People's Partnership brought the legislation and made the revelations the Prime Minister did so courageously and correctly in the other place on November 19, was because we were somehow trying to change the headlines because of a number of issues affecting the country and, he claimed by implication, affecting the government.

First of all, I do not accept that position at all. The fact is that if a government has to bring legislation and do things that are necessary in the national interest, then, regardless of what is happening elsewhere, this Government will do what it has to do; and that is what we have sought to do. So, I reject Sen. Deyalsingh's assertion completely.

More than that, what could be more of an effort to change the headlines than the brandishing in another place of a photograph with a house? Was that not changing headlines? What was the purpose of that? He talked about a good politician. Was he suggesting that that particular individual is a good politician by seeking to change the headlines and by trying to distract the country from the real issues of the day? Perhaps he recognizes what his own colleague in the other place was seeking to do by changing the headlines by that terrible display in another place, brandishing photographs about housing.

Sen. Deyalsingh said he was proud to be a Trinidad and Tobago citizen. He was proud of the maturity of the citizens of Trinidad and Tobago on this issue; that people were putting country first. All of those things, Mr. President, would result in the way in which this Government and our Prime Minister in particular dealt with this matter. The Prime Minister came out openly and put the cards on to the table in a transparent way, saying this was being done; it was wrong and it violated citizens' rights. These were some of the citizens whose rights were being violated. It was a terrible thing for the governance of this country precisely because it was done in that way. That resulted not only in the bipartisan approach to this legislation, but the general response of citizens in Trinidad and Tobago.

It is a commitment to transparency and open government because one could hide secrets by talking about secrecy. That is one of the things the last government was guilty of. Things are secret; "We must know and other people must not know", and, as a result of that, transparency was thrown out of the window; accountability disappeared, corporate governance was unknown in places like UDeCott, UTT, Petrotrin, EMBDC; all because these things were secret, confidential, "We must not disclose" and so on. That culture of government which the others practised led to the kind of dictatorship that was in the making and which we thankfully were saved from on May 24 this year.

It was precisely the way in which the Prime Minister and the People's Partnership Government addressed this issue that has enabled mature debate and discussion throughout the country and the recognition that never again must we go there. It has also resulted in a bipartisan approach.

From the very moment the Prime Minister spoke, she indicated that the People's Partnership was prepared, willing and committed to engage, not only with the Members opposite, but the entire citizenry and civil society and so ensure that we get the best law possible. We are prepared to consult, engage, discuss and so on. In fact, we went on record that we wanted the unanimous support of the other side on this legislation.

I do not know how, Mr. President, one can say in one breath, as Senators opposite have suggested, that we have engaged in something that was wrong; it should have been done in another way, yet the process we have taken has resulted in this bipartisan legislation as well as in very good, informed debate throughout the society.

I am also quite surprised by some of our colleagues opposite who have suddenly become champions of workers and workers' rights when for many years “worker” was not a term with which they were familiar. As I said jocularly across the floor yesterday to Sen. Hinds, most of them have never linked arm in arm with workers in solidarity at any point in time.

We are glad that they now recognize workers' rights and perhaps the Saul to Paul conversion comes not a day too late. Suffice it to say that one cannot suggest, as Sen. Al-Rawi did, a whole host of people in the security services has been removed, particularly coming out of the revelations of the wiretapping, when that is not the case. We would hope that they do not make statements that are not substantiated, particularly when the rights of so many workers under the last administration were trampled on. I can say so without fear of contradiction from my experience in the labour movement.

Some of the other Members have stated it and some have been talking about it outside; that they were very concerned about dealing with serious crimes and the drug trade and that what has been done by the exposure of the illegal activity of wiretapping and the violation of citizens' rights is somehow now compromising national security and so on. This really is hypocrisy for the very simple reason that, for all the years that this wiretapping and the interception of communications was taking place, it was being done without enabling legislation. Therefore, none of it could have been used in any legal proceedings to bring criminals to justice.

How can they be so concerned—as they say they are—about the drug trade, crime, violence and all those things and not put in place the legal framework to ensure that the information, intelligence and evidence that could be obtained properly and legally could then be used in a court of law to ensure that those who are guilty of those crimes are convicted and sent to the place they deserve to be. It is only with this legislation that we can now move to address the drug trade, crime and violence through the use of interception of communication because we are now providing the legal framework. All of those statements really ring hollow because, if they were that serious about it, they would have ensured that the legislation was brought to the Parliament many moons ago.

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The issue of the Bill providing safeguards is very important. I am sure colleagues on this side will respond to some of the issues raised by both Sen. Baptiste-Mc Knight and Sen. Al-Rawi with respect to the process of destruction of records. This new clause 20 is a very important safeguard with respect to this particular piece of legislation to ensure that there is not hanging around somewhere—not in cyberspace but in somebody's keeping—records which ought to be destroyed. I want to say that clause 20 is a very important protection for citizens in terms of the legislation that we have before us.

I also want to say that the last Prime Minister seems to have had some kind of love affair with the State of Israel. The Attorney General referred to the fact that when equipment was acquired it was acquired from Israel, having regard to the fact that he actually made an official visit to Israel in November 2005. Just about five years and a week ago, he was in the State of Israel.

One wonders, and I would not pursue it further, what that was all about, given the fact that, as an oil-producing country, we here in Trinidad and Tobago ought really to be maintaining very good relations with a range of countries. Given the very volatile geopolitics of the Middle East, what was that particular visit to Israel about? Perhaps one of the Senators on the other side who knows better could elaborate on that. Perhaps it was that Israel is really a theocratic State and, given the proclivity of the former Prime Minister for church and God, perhaps he was enamoured by the nature of going to visit a theocratic state. I leave that where it is for the moment.

Sen. Fitzgerald Hinds made the point about government succeeding and others having to make use of usable tools—that which was there before, make it useable. It is precisely because the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT) and the functioning of illegal wiretapping by the SIA were outside of the realm of legal establishment that this Government is seeking so to do and, therefore, in a way in which those agencies were not usable in the fight against crime; in the way in which wiretapping as it had been done before was not usable in the fight against crime, this Government is now seeking to make those things usable by ensuring that it has a legal framework for interception to take place.

In truth and in fact, what the PNM was doing was having a tool that could not be used except, in the case of interception of communications. It was a tool to be used by the then Prime Minister as a political weapon against those both within his own party and those who were opposing him from outside his party. That was the only tool that existed that was usable at that time and we are now seeking to make it a usable tool in the fight against criminality, illegal activity, the drug trade

and those who engage in serious crime.

As Sen. Hinds made the point about criminals being opportunistic—and he is right—one wonders if they were not highly opportunistic when they were graced with the presence, many of them, in a conference or a meeting—as they were called, not gang leaders, but community leaders—at Crowne Plaza with the Prime Minister. Was that not giving them—I will give way to you at this time.

**Sen. Hinds:** You have an opportunity to redeem yourself. I am grateful to you. Let me correct the record. While there was a meeting at Crowne Plaza between a certain Minister of Government and these young persons, for the purpose of offering to them legitimate means of earning an income as opposed to their well-known criminal lifestyles, the Prime Minister at the time was no way there. He was not aware. That meeting had nothing to do with him. I was aware of it. I was invited. I myself did not attend, but the Prime Minister had nothing to do with it. Just to correct the record.

**5.25 p.m.**

**Sen. D. Abdulah:** Is Sen. Hinds saying that the Prime Minister never ever had any meeting with any of those so-called community leaders? Because there are many newspaper reports that have stated that there were meetings; and further than that, the then Prime Minister never sought to state what Sen. Hinds is now stating. So that—

**Sen. Hinds:** I will answer you this way. Now that you hold the reigns of the Government, you may find that, as you interface with constituents, people who are steeped in criminal activity, that it may be necessary to invite them to earn income through legitimate means. One day you will see according to the old people, “Bambai, you go see um”. At the same time, maintaining and insisting that they follow the law.

**Sen. D. Abdulah:** Well, one could only say that that was a very roundabout answer which was not clear at all. Therefore, I could only assume that that roundabout answer confirms that the Prime Minister then did, in fact, meet with these persons.

**Sen. Hind:** There you go again.

**Sen. D. Abdulah:** Mr. President, the point I was making is, was that not a signal for those elements who are opportunistic and who are involved in criminal activity to perceive a weakness on the part of the then government? I am sure the

facts would bear it out. I do not have the data in front of me but the facts will bear it out that the number of murders, number of kidnappings, and so on, increased subsequent to that particular meeting; whether it was with the Prime Minister or another senior government Minister at the time.

The number of murders and the number of kidnappings increased; the number of other serious crimes increased, so obviously, it did not result in persons who were engaged in, according to Sen. Hinds, known criminal or illegal activity shifting their lifestyle to other things, because those things persisted. In fact, virtually all of them, I think, have been killed, with the exception perhaps of one or two; but all of them have been killed. So, the point I was making, Mr. President—

**Sen. Hinds:** You know not of what you speak.

**Sen. D. Abdulah:** The point I was making is that the preying on weakness has nothing to do with the disclosure of names of persons in public life who were spied upon or had their communications intercepted in violation of their rights. It had nothing to do with that. It had nothing to do with the fact that an illegal activity was ordered to be shut down, and is now going to be put under the cloak of legality. And so, I want to refute totally any suggestion by the other side that we are either weak in response to the criminal element in this country or that we have allowed any opportunistic moment for the criminals to engage in their actions.

Mr. President, a number of others will speak after me. Suffice it to say that in the last—well, one more point. In the last election campaign, the then political leader of the PNM and Prime Minister used a slogan, or a particular line of attack—so he thought—on the campaign platform where he started off by saying, “I want to know”. Of course, my voice cannot emulate the pitch of his, but his pitch was much higher and somewhat frenzied. “I want to know” was how he prefaced it. Then he said, “I want to know X, Y, Z; I want to know this; I want to know that”, and so on.

Mr. President, I want to know from the Members opposite, when Mr. Manning said, “The way the PNM has operated in government is that we start a programme and if the programme works well, you give it a legislative complexion,” if that, in fact, is the PNM way. And we cannot accept a statement that we are not going to defend the indefensible. We need to get a clear, categorical rejection of a policy approach, as stated by the former Prime Minister, that the way the PNM—not he, the individual—the PNM has operated in government, is that we start a programme and if the programme works well, you

give it a legislative complexion.

I want to know if that is the PNM way. Certainly, that is the way in which the Special Anti-Crime Unit was functioning. Certainly, that is the way in which the illegal wiretapping was taking place. Certainly, that is the way in which the rogue elephants in the state enterprise sector were operating, and so on. I want to know. The country wants to know, is that the way the PNM had operated in government? Thank you very much, Mr. President. [*Desk thumping*]

**Mr. President:** Senators, it is now 5.30. I propose to take a break at this point and to resume at 6.00 o'clock. The Senate is now suspended until 6.00 o'clock.

**5.30 p.m.:** *Sitting suspended.*

**6.00 p.m.:** *Sitting resumed.*

**Sen. Subhas Ramkhelawan:** Thank you, Mr. President, for giving me the opportunity to speak on this Bill which has aroused much controversy in the national community. I had planned to speak later, and probably a bit longer, but because of circumstances, I am constrained to speak at an earlier time, and with, shall I say, greater brevity, if that is not oxymoronic. [*Desk thumping*]

Mr. President, I have listened to my honourable colleagues in this Senate on this particular Bill, and while I agree that there is need for several amendments to the Bill, which has been clearly expounded by my honourable friend, Sen. Al-Rawi, as to amendments, and my honourable colleague, Sen. Baptiste-McKnight, I want not to speak so much to amendments but to address the principle of the thing.

Sen. Al-Rawi spoke about shotgun legislation, and I must say that I am proud, just like my learned friends, Sen. The Hon. Karim and Sen. Al-Rawi, to come from a school, Presentation College—[*Desk thumping*]—from which others have come; and we have to reserve our pride as far as that is concerned.

**Sen. Beckles-Robinson:** Do not say others—the former Prime Minister.

**Sen. S. Ramkhelawan:** If I may, Mr. President, I part company with my learned friend, Sen. Al-Rawi, as to whether this is shotgun legislation, because I think it is not. In its absence, what will we have? I am aware of what we had in its absence. It was not shotgun legislation, but it was maverick operation. [*Desk thumping*] It was an operation by anyone doing anything, any time, at a particular whim and personal fancy, and that is not how a country like ours should ever be able to operate.

We cannot operate in a place of lawlessness, and we cannot have a situation

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where— I think the Bill was referred to by the various newspapers as the “Spying Bill”, but we cannot have a situation of spying on private citizens for no just or reasonable cause, when those persons cannot be deemed, by any stretch of the imagination, to be criminals, or understood to be involved in criminal activity. That is why I was pleased that this Bill was brought—if it was brought rather hurriedly, so it must be, because in its absence there is nothing for the ordinary citizen, the private citizen, to fall back on for his defence. [*Desk thumping*]

When we expect—if we expect these amendments, I am sure, because I have been given some assurance that the amendments will be considered and taken to the other place for finalization sometime later on this week. Let me speak to several matters that arose during the debate. It was Sen. McKnight who spoke to us on the matter of the expiry of the warrant, and what happens 270 days thereafter. The hon. Attorney General mentioned that you can have another warrant following. But there is some lacuna, from the discussions that I have heard, from my understanding of how the Bill is presented; and there is some question as to whether the information gathered can, in fact, be retained.

And so, I would ask the hon. Attorney General to have a closer look at this to ensure that there is no, shall we say, lacuna, no gap, that will cause those persons who may be perpetrators in terms of crime, in terms of operating against the national economic well-being; and in other terms, whether it be spying or otherwise, that we not allow them to escape doing damage to this country, simply because we have not covered that particular gap.

If it is, in the winding up by the hon. Minister of National Security, that he is able to convince us that what is there in the legislation is sufficient, then so be it; but I believe that some clear and cogent points have been made, and I think it would be useful to consider them very, very carefully as we sit in the committee stage.

The principle is clear. The principle is that nobody should be so high above the law, or beyond the law, that they can do things in any manner; whether it be because of hubris, or because of the sense of power that has overtaken that person to the extent that none of us is safe in terms of the information that we receive, or the information that we convey to our friends and our family as it is enshrined in our legislation, in our Constitution, that we have the right—not the privilege but the right—to enjoy.

And so, I support the Bill. I support the Bill in its general format, and it has been made clear throughout the discussions and throughout this debate that the

Members on the Opposition Bench, in general, support the Bill. All that is needed now is some meeting of the minds for any areas in which there are gaps; and, therefore, I appeal to the Government to listen carefully to those gaps which may have been pointed out during the debate so far, and we move expeditiously, as a Senate, to give effect to this piece of legislation. So that the legitimate, or shall I say, the relevant authorities can pursue legitimately this matter of interception to ensure the safety and protection of our citizens from whatever nefarious forces there are out there that would be seeking the detriment of our citizens and of our country.

I thank you, Mr. President. [*Desk thumping*]

**The Minister of Public Administration (Sen. The Hon. Rudrawatee Nan Gosine-Ramgoolam):** Thank you, Mr. President. I thank you very much for giving me the opportunity to speak on this Bill before the Senate; that is the Interception of Communications Bill, 2010. I would also like to take this opportunity to sincerely thank the Minister of National Security and congratulate him for piloting such a Bill at a time that can be best described as the information explosion age.

#### **6.10 p.m.**

If we do not take stock, this explosion will blow up in our faces and destroy all of us hence, the need to rein and manage this information horse, since it is also a vehicle to engage in crime and criminal activities. We can see communication. We can use it either for good or for bad.

I also take this opportunity to commend all my colleagues on both sides of the isle, who have contributed and those who intend to do so later this evening. It is anticipated, therefore, that after venting our views, a balanced approach would be agreed upon, in the interest of citizens, as individuals on the one hand and State as an entity on the other.

First, I want to take a few minutes to respond to the great debater, Sen. Terrence Deyalsingh, on some of the comments made. Secondly, I would like to address two fundamental issues that I believe really caused this Bill to come into effect. First, I want to respond to some of the comments made by the hon. Senator. The hon. Senator indicated in words to the effect that November 19 was an important day when this issue first surfaced. He also indicated that probably there was need to change the news, the pressures that were building up prior to November 19.

Some of the pressures he identified include Trinidad and Tobago is not an

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ATM machine. “Yuh know,” I think we need to change the culture of the way we think. Sometimes when remarks are made, it is easy for us to deflect, and making a comment like that, I believe people should reflect on what it means. It may send a signal to us; what it is we are doing that is causing a statement like that. I am sure that hon. Kamla Persad-Bissessar, Prime Minister of Trinidad and Tobago, that her statement was an extremely positive one. I want to underscore that point. A lot has been said about it but I think some of us really do not like to hear the truth, things, anything at all. We always look at the bad side of.

The goodly Senator spoke about the Airports Authority contract being awarded as another issue/pressure and runaway MPs were speaking without thinking. He said that is another pressure. The Clico issue, outstanding moneys to contractors, debt, union issue, PSA negotiations, remarks on Tomas, with respect to aid and reciprocity and the Fazeer Mohammed issue. The Senator spoke to all these issues building up in our society and, therefore, the Government needed to change the news to uncover these issues—far from the truth.

Just to indicate, in any family and any society, things happen every second, not by anybody’s design, and we constantly have to address them. So, on November 19, something also came up and we have to ensure that we put it into perspective and address it in the same way we were addressing the issues that were flushing up in the society.

This society seems to be a facetious one; some of us I should say, not the society. We always feel that there is some underlying motive, but if the motive is good, it is fine. Most of the times, many of us believe that the motive is bad. Therefore, in treating with a nation and society, one has to accept that things, on a daily basis, are going to confront the population, and any responsible government would attend to these issues as they crop up right away.

One of the Senators spoke to—was it shotgun?

**Sen. George:** Shotgun legislation.

**Sen. The Hon. R. Nan Gosine-Ramgoolam:**—shotgun legislation. Well, shotgun information deserves shotgun legislation, because it may blow up in our face, probably like a time bomb. We have to know how to respond to these issues. I would hope, when we see issues occurring in the society, a responsible government would attempt to address them as they come. It is not covering one on top the other.

The goodly Senator also spoke to the issue of referring to a former Prime

Minister, some utterances, I think he indicated, that these were made in the Parliament. These utterances made by a former Prime Minister and subsequently by another Prime Minister does not make it right; so two wrongs do not make a right. What our Prime Minister did was, when she found out, what did she do? She came right to the Parliament and addressed the issue forthwith. To come here and talk about one person did something and then another one doing it, as though to justify, does not make any sense. I would have hoped that the Prime Minister, subsequent to one the goodly Senator was talking about, should have probably come to the Parliament. Do you know something? He probably said: "Lord, is ah good way to catch them." Who knows? I do not know. I was not in his mind, so I cannot say what he was thinking, but just to note that probably the evidence subsequently shows that somebody or "somebodies" were engaging in an illegal and lawful act. That point I would expand later.

What the People's Partnership Government did is that we refuse to continue or to be part and parcel of a nefarious act perpetrated against the citizens and this country, when it comes to the law. I want to repeat; two wrongs do not make a right, no time. I think it was Mahatma Gandhi who said an eye for an eye makes the whole world blind. I guess a tooth for a tooth also makes mankind toothless.

The Senator went on to indicate what did the Prime Minister know, that is our Prime Minister, as head of the Security Council and what the Prime Minister ought to know. I have had the good experience of being on both sides of the fence, as a public officer and now in the Senate. If I put on the public office's hat, a good 36 years' experience in the public service, at least 36 and more, I am aware of the creature called the public service. I lived in the belly of the beast so I understand the plots, the subplots the Ludlum series, as we call them. When one gets into office, one has to understand and learn the system. So, all of us, including our Prime Minister, had to take time to understand and learn the system and probably, we must say, she has to be very, very good and "intelligent" to uncover such information in such a short space of time.

I had the opportunity to train the SIA two years ago, as a consultant lecturer from the Arthur Lok Jack Graduate School of Business. They were very, very young people, 23 to about 30. In my presentation—because I was there to assist them in formulating policies it is only now I can understand that why young children were chosen; probably they are minds that can be manipulated. Even when I went in with my pen drive to do my presentation, they had to take my little pen drive in a room, under such cloud of secrecy, and of course the consultant was no less the wiser. I did not know what this was all about, until it actually

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came out recently. “Yuh understand!” The whole five or six days’ expericne were as though you were in a concentration camp; granted it is security.

I understand very well how difficult it is for as a Minister or our Prime Minister to uncover information. I want to share with hon. Senators that not everything we are going to know and many of us still do not know a lot of things. We are still uncovering information. It is the very nature of the “we and them” syndrome that we have to build trust, because we are not a trusting society.

Even now I recall as a public officer, a junior one at that time, you were told that you do not go on the floor of the Minister, you must not talk to the Minister—  
[*Interruption*]

#### PROCEDURAL MOTION

**The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday):** Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of this matter before the Senate.

*Question put and agreed to.*

#### INTERCEPTION OF COMMUNICATIONS BILL

**Sen. The Hon. R. N. Gosine-Ramgoolam:** It is a culture we inherited from the colonial past. There was always mistrust. I have had senior officers tell me now: Minister, anything, if you call to get something, I have to inform others. I am not saying that it is a good thing or a bad thing; I am talking about the mistrust in the society. Therefore, my good friend could understand why we—and even when you were in government, you will not know everything right away, all the time. As days, weeks, months and years go by, we constantly uncover things as there is always a shade of secrecy. I am not going to judge whether that is right or wrong. We are there to “do a work” and we hope that we would operate in such a way to build trust. Once we know that our objectives are noble, we hope that we will engender that trust, because we cannot buy trust on a grocery shelf. Those are things we really have to earn.

**6.25 p.m.**

Mr. President, we cannot buy trust on a grocery shelf. Those are things we really have to earn. To our good Senator, through you, Mr. President, we have to congratulate our Prime Minister for the fact that, as soon as she got that information, she brought it to the public attention with much haste, to ensure that it was stopped, and rein this horse from continuing. That is why we need the shotgun legislation, if you want to put it so then it is probably needed. We do not

know what could have been happening all along. So much for our goodly Senator in responding to what he said.

This Bill has two fundamental issues; the first one is, how does the Government strike a balance between security of the State and the rights and freedoms of citizens guaranteed under the Constitution? And, secondly, it is about good governance and institutional strengthening. For me, these are the two issues that really brought this Bill forward.

Mr. President, with respect to the first, since 1976 Trinidad and Tobago has had entrenched in its Constitution several fundamental rights and freedoms yet, today, 34 years later, this new People's Partnership Government has to move urgently and swiftly to bring legislation to protect some of these rights of our citizens. Two of our Senators quoted the Constitution. I am going to quote section 4(b), (c), (d), (i) and (k) under "Rights enshrined":

- “(b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
- (i) freedom of thought and expression;
- (k) freedom of the press.”

Mr. President, all those rights in our Constitution were being violated and undermined by the illegal practices of the Strategic Intelligence Agency (SIA), as discovered recently by hon. Kamla Persad-Bissessar, Prime Minister of the Republic of Trinidad and Tobago. That is the fundamental issue. It is unlawful. We have been debating this Bill, and not for once we are thinking of an illegal act. That is the issue.

Mr. President, no one can argue that intelligence gathering by the State is not necessary in the fight against serious crimes that we have experienced and continue to experience in our country; treason and sedition, murder and kidnapping; drug and gun-trafficking; and local and international white-collar crime with all its implications for our international reputation. We are not denying the fact at all. All these crimes are within the ambit of the law, and how you treat with persons who are engaged in these activities.

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What matters most, therefore, is that intelligence gathering must be done in a manner which does not violate the rights and freedoms of our citizens. That is the key. Some of us in the Parliament—somewhere else—came and boasted about what was done and why it was done, and not for once indicated that it was an illegal act—not for once! That is the crux of the matter. We must do this within a legal framework. When a former MP, on the other side, warned about a creeping dictatorship sometime ago in Trinidad and Tobago, this insightful parliamentarian knew what he was talking about.

Mr. President, all the signs for the last five years or so pointed to the dismantling of all of our institutions and, probably, I do not know if it was deliberate by design or unintentionally, but it was pointing to the dismantling of all our institutions, and for mankind in this modern age to return to the law of the jungle. That is what it was. What I mean is replacing our institutions by Ton Ton Macoute gangs. You cannot run a country like that.

Our institutions are what separate us from the jungle with our laws, guidance, procedures, conventions and norms. Those are the things that separate us from the other animals. When one tries to tinkle and fiddle with that, it means that we are bringing human beings to a different level. If the former Prime Minister was allowed to continue, we would have seen gangs coming into our homes and breaking down our doors, and getting into our bedrooms to see what is taking place inside there. That was the next step.

Mr. President, many acquaintances have told me that the blimp was doing a good job as well. I do not know. I am still looking to confirm this. Probably, I would have to go there to find out for myself. Citizens need to be told. It is better I know that somebody is going to intercept my telephone conversation, and be guarded, rather than someone coming and doing it illegally. We have to save human beings from their own vulnerabilities.

So, we tell them, “hey, if you are going to break the law, we have laws in place, and this is what we will be doing.” Is it by random sample? Is it by gathering intelligence information or whatever? We must know that. It will probably help to keep us in check and prevent us from our own vulnerabilities. Therefore, there must be a legal framework to ensure that the rights and freedoms of every citizen in our land are not violated and, as such, this is why the legislation points to a warrant which must be applied for and issued by a judge in chambers.

Another example is the time limitation of 90 days with extension for further

periods as required; and proper Executive and parliamentary oversight provisions which is critical. This is not new. The United States of America has the CIA and they are accountable to the United States of America Senate Intelligence Committee. We have the United Kingdom with the MI5, and they are accountable to the Home Secretary, but this thing we discovered, was it accountable to anyone?

**Sen. Al-Rawi:** The Minister of National Security.

**Sen. The Hon R. Gosine-Ramgoolam:** The Minister of National Security, the former one; if I recall, the former Minister of National Security said he knew nothing about it. Am I correct? I have to be very careful about what I say, but, reading from the newspapers, apparently he said he did not have a clue. Even our former Prime Minister said he knew it was taking place, if I am to reflect on what was said in the newspapers, but he did not know who they were spying on. Now, give me a break! Does this country have a set of fools living here? I think it is an insult to intelligent people. A fish rots from its head, we must never forget that. It rots from the head. So this legislation deals with our citizens' rights and the importance of legislation to ensure that we do not violate individuals' rights recognizing that we must invoke legislation to guide us to behave properly and appropriately within the confines of the law.

The other issue is good governance. Today's exercise is also trying to rectify a much larger problem which is institutional failure. Over the last eight years, nearly all our institutions in Trinidad and Tobago have failed. We had the failure of the regulatory institutions like the Central Bank and the Securities and Exchange Commission resulting in the worst financial disaster for this century in our country and the Clico and Hindu Credit Union saga. Even when we look at our ministries over those years, the Town and Country Planning, the Environmental Management Authority, and regional corporations and the widespread flooding that we have been experiencing, it is a failure of our institutions.

In my own Ministry of Public Administration, we have the Broadgate saga that we are now engaging in. Why are these institutions failing? Mr. President, there is one and only one thing; the people, those of us who lead and manage these institutions.

So if we go back to this Bill, it is as a result of a person or persons; not the institution. Institutions are inanimate objects; they do not walk and talk. It is the people who engage in the institution and who operate the institution and make it good, bad or indifferent. We now have to turn to the issue of good governance,

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the issue of leadership; management; oversight, and not to mention leadership that must go with ethical standards of behaviour and operations. That is really the crux of the matter.

We are talking about this Bill and debating this whole issue of the interception of information, and no one is talking about the human being, because it is the human being, by our very action, that has put us presently into this situation; we human beings.

My Ministry has to be concerned about this and where institutions are falling apart. Thank God for the rescue on May 24, 2010. We are now trying to rescue or bring back a balance in our institutions that have been failing us. We are trying hard. I only pray to God that we will succeed, because there is much to be done. There is a culture to change, especially where human behaviour is concerned.

**6.40 p.m.**

We see that the heart of this issue we are debating here this evening is unethical, unlawful, behaviour by leaders whom we have placed to protect us; that is the sad part of it, persons who we trusted.

It was Deepak Chopra who said that parents are godlike figures in our childlike eyes. If we were to say it another way, our leaders that we place there are really godlike figures in our trusting eyes or probably in our childlike eyes as well. When they betray this trust, we feel very unsafe and may do things that we are not supposed to do.

We must hold our leadership in high esteem and they must reciprocate in kind by their words, actions and deeds. We must commend our current Prime Minister, Hon. Kamla Persad-Bissessar, for showing true leadership in the way she is bringing the issues to the fore and the way in which she is actually handling them.

I really have a question for accounting officers in the ministries, particularly, probably accounting officers in the Ministry of National Security at the time, because the officer is, in part, charged with the responsibility to oversee expenditure of public money, within the provisions of the Exchequer and Audit Act. I am asking: How then we are not able to account for public money spent by a state agency to purchase stuff, to pay informers millions of dollars and to purchase spying equipment? Who are these informers? How were they selected? What was the policy? We should be guided, not only by the laws, but by the policies and regulations of that particular institution. What were the guidelines for payment? Who were the signatories to receiving goods and services?

Mr. President, how do we know that this was not just a slush fund under the Ministry of National Security, at that time? We were told, reading from the newspaper, that millions of dollars were found stashed away somewhere. How did they reach there? We have proper legislation when money is printed and disbursed into the country from the Central Bank. How come it reached there? Who put it there? What kind was it?

Therefore, this Bill placed before us reeks of widespread and total institutional failure as well. It points to total institutional failure. It is an issue of trying to get it right again, because we once had strong institutions. This is not about any blame game here; it is about getting it right once again. I know it was right, once upon a time, when I was in the public service.

As a result, this Bill is founded on respect for our constitutional rights and freedoms. Given the rights and freedoms of every citizen enshrined in our Constitution and the need for good governance, this Bill—I want to quote the first paragraph, which is the crux of the matter:

“This Bill seeks to provide the legal framework within which public or private communications, which are being transmitted by means of a public or private telecommunications network, can be lawfully intercepted. An interception of communication is lawfully done only when it is done pursuant to a warrant issued by a Judge on an application by an authorized officer.”

That is the only thing we are questioning. That is really the crux of the matter of this whole Bill. The unlawful activity is taking place and this Bill seeks to rectify that situation other than institutional failure.

Therefore, in winding up, this People's Partnership Government's conviction, our Government, the country's Government, is that the State and Government must be committed to building strong institutions which provide good governance. So we will have to focus on institutional strengthening, accountability and transparency, not just oversight, but effective oversight and, most of all, ensuring that systems and mechanisms are in place so that we can operate within the law of the land. This is our contract to the people of Trinidad and Tobago, Mr. President.

If I go to the People's Partnership Manifesto on page 14, “Constitutional Reform”, some of the items are:

“Our Government will table amendments to provide for and/or strengthen provisions for the following, as may be required:

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- Checks and balances to safeguard against the abuse of power”

What we are talking about here and what we are trying to rectify is really abuse of power.

- “Respect for the voices of minorities, while acknowledging the will of the majority
- A free press unfettered by government intimidation and uncompromised by government preference
- Integrity in public life”—to name a few.

As a result, each and every one of us must recognize the importance of this piece of legislation.

Many of my friends on the other side keep saying, “Let us not play politics.” I do not know what that word “politics” means. I still do not know, because I feel that politics is a good thing. I think we should not be playing the fool; that is what it is. Support this piece of legislation in the interest of democracy, most of all, in the interest of ourselves, in the interest of our children and, in the end, in the interest of our beloved nation called Trinidad and Tobago.

I thank you, Mr. President.

**Sen. Helen Drayton:** Mr. President, I will try to be as brief as I can.

We have heard a lot about rushed legislation and let me say that for me I think it is in the spirit of the need to ensure that we make good laws. When bad laws are made, then the very intent of protecting citizens becomes subverted.

It is very important that when we are about to make laws, particularly laws that infringe our very fundamental rights enshrined in the Constitution, then we need to take care and we need to have the time for the types of deliberation and consideration that are necessary.

This was a collaborative spirit, which I laud, and I will speak to that a little later. What does concern me, however, is that this Bill is a tapestry of various laws, predominantly the UK law, and we certainly would have to make haste in putting in the necessary infrastructure to operationalize this law as we seek to balance the need to protect our citizens and that of the need for national security.

I will first deal very briefly with a few matters in the Bill. I will not bother to mention those clauses which have been so adequately dealt with by my colleague,

Sen. Corinne Baptiste-Mc Knight.

I want to draw attention to clause 5 on the very definition of “intercept”. As was said here, we have borrowed legislation from the UK and, I think, Canada and Jamaica. I find it strange that we have applied such a narrow definition to “intercept”. It speaks basically of listening and recording, when intercept should be, in fact, more than that, as defined in other laws to mean modification and monitoring or interference of the network, because when you are intercepting, it is not just a question of going to the telecommunication service providers, you are actually using very high-tech and sensitive technology that can intercept outside of that particular environment. I make mention of that; it needs to be addressed to broaden the definition.

Clause 6(2)(b)(ii) of the Bill—I am concerned. Again, if we are making laws for the purpose of balancing the rights of citizens, but also importantly, protecting our nation for disrupting and preventing crime, then I felt that this particular clause should deal with indictable offences, rather than talk about 10 years. The reason for that is such offences may be an early indication by interception of gang, homicide and other serious criminal activities. For instance, most gangs, many criminals, steal cars to carry out their criminal activities. So I am just wondering if we are being, a bit, very paranoid, given all that has happened, and I do understand the situation, and putting in legislation that would be bureaucratic and would hamper our people in protecting our borders and protecting us.

**6.55 p.m.**

With regard to clause 10, I am not going to elaborate on that too much. I too felt that there ought to be some provision that would remove the bureaucracy in particular situations, where, for instance, the warrant was applied for based on a crime such as drug trafficking where you would need to monitor and survey what is happening, not necessarily over six months or nine months, but it could be two years. That has already been mentioned by, I think, at least three or four contributors before me and I think that it warrants new consideration.

Another item that I picked up is the legally privileged information and that is an intercept that yields information, for instance, between an attorney and a client. Of course in common law such information is not admissible, however obtained, and the prosecution certainly has to prove its case without relying on such information. What I observed is that the very laws that we borrowed from made special provision whereby it is subject to a special code when the warrant is being applied for. So when that warrant is being drawn up there is a body of information that would also guide your judge. I did not see anything to that effect under clause

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9 which deals with the scope of the warrant.

Similarly, I noted that going back to the definition of intercept, an amendment was made to include both the person making and receiving the communication, rightfully so. Again, the Bill does not adequately cover—and I am mentioning all of this because this Bill is based on intercept for evidentiary purposes primarily, but it also makes allowance for intercept for intelligence purposes. So does it cover what is termed the collateral intrusion, which would be the infringement of the privacy of individuals who are not the intended target? For instance, a communication between a doctor and patient as well as journalistic sources, which was a major thing mentioned in all the legislation that I have looked at, whether it is Canada, UK, Australia, New Zealand, et cetera. I think that is a very important point, and again, in the context of the UK law the warrant application flags such occurrence.

It also goes on to say that if during the intercept operation it reaches the point where individuals, other than the subject for which the warrant was given, are identified as directly relevant to the operation, consideration is then given for applying for separate warrants. I am mentioning these things because of all the cases that I have read in the Canadian law and the Canadian law on intercept is based on intercept for evidentiary purposes whilst the UK law is based on intelligence purposes. A number of cases that I read with respect to Canada, virtually in every case it was thrown out on the basis that the evidence just could not be used because it either went too far in the judges' discretion or that they felt that the defendant had a right to have certain information to defend himself after such information was edited. So I would come back to that because I think it is very important.

Those were some of the specifics in terms of the Bill. I think it is important to say—you know you have to describe the month of November, as they would say in Latin *mensis horribilus*, which was a horrible month for the Government and for all of us. It was a month of a lot of hyperventilating and culminating in the last couple of weeks in major crimes. At the end of the day when you look back there was grace and there was a window where there was a great deal of maturity that was displayed. Because Sen. Ramlogan spoke so well with respect to trust and mistrust, one has to, at times, understand the perspective of the citizens. All over the world people do not trust governments, they do not trust politicians. Quite frankly, that is healthy for democracy, eh. You need to have a high degree of skepticism if you are going to protect your democracy. Indeed, if you do not have that level of skepticism then probably we would not discover nefarious activities

as we have discovered to the credit of the Government.

This Bill is being debated against a very bizarre—what I would term bizarre—social, economic as well as political backdrop. When I was preparing for this contribution it occurred to me that maybe there is a divine reason, other than our sheltered location, that saves us from hurricanes, because the self-inflicted events of the past month certainly came like several hurricanes, leaving a lot of rotten debris behind. We went from the regional storm where missiles were flying leaving businessmen wondering whether their Crix and their Matouks ketchup or their Charles candy would be on the shelves of supermarkets.

Before that hurricane had passed you had a ceremonial firing of a journalist and that had not died down before you had demon possession, and then of course you had the industrial activity, you had the EPA depositors and investors venting their anger and then behold, you have revelations with respect to our own version of MI5 and the CIA. Then, of course, the revelations went further when the citizens were enlightened to the fact that the SIA has been established for 16 years. Then that was not all, you had the gang warfare that started in the Sangre Grande Hospital and that sort of mushrooming, I should say, it was the signal to an upsurge in criminal activities that have continued unabated.

Let me say, Mr. President, that in no uncertain terms I condemn any type of invasion of citizens' privacy by whatever means. However, in the same breath, I think it is very regrettable; it is regrettable that successive governments failed to bring to Parliament the necessary legislation to give sanction to the operations, legitimate operations to safeguard our nation. It brings to mind the saying that the injury we do and the one we suffer are not weighed in the same scales. We should not be naive to believe that legislation in itself prevents wrongdoing, because if that was so in civilized societies then we would have no crime whatsoever. To make my meaning clear, I do not believe that the lack of legislation necessarily had anything whatsoever to do with the wilful abuse of our rights that were enshrined in the Constitution.

So you had a horrible month of slips, of slides, poor judgements, poor board games and disgrace, but we can put that aside and say that the situation was perhaps redeemed by the grace of the hon. Prime Minister and the Leader of the Opposition when they got together to put their minds to bringing this legislation which is necessary to protect our citizens. More so, it needs to be mentioned. You have got to give commendation where it is due. One must commend the Prime Minister for her acknowledgement of the leadership of the Opposition which was very generous, which was very graceful, and that confirmed her own wisdom and

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her own leadership, and the spirit that I think the citizens would like to see prevail in our democracy. What is also very commendable was the fact that the hon. Prime Minister and the Government did not use the majority in the other place to ram the legislation through.

So when our leaders rise to the occasion, I think it is necessary that we commend them and we hope that such collaboration will continue and that spirit will continue with respect to constitutional reform and with respect to election campaign financing reform. Let us leave that there for the while.

I just want to mention one or two developments that I think are very important with respect to this Bill. One has to do with a report which was given to the Prime Minister of the UK and the Home Secretary from the Privy Council, giving their views with respect to intercept for evidentiary purposes. I think it is very important because it has a lot of bearing in terms of resources.

In terms of Canada, it was only on November 01 that the Globe and Mail in that country mentioned that the Canadian Government will be bringing new legislation which would allow them to catch up to the criminals who can now plot their activities with undetectable technologies such as the pin and sms messages on their cellphones and their framework would ensure that all communication between suspected criminals can eventually be intercepted by the police, as their parliamentary secretary for public service safety said, "High-tech criminals must be met by high-tech police". It shows that there is a thinking throughout the world with respect to balancing the right of citizens and the need for security in these very dangerous time.

What was also very insightful was that the new Canadian laws would force service providers to ensure that all their new technologies can be intercepted by the police. So in other words, the providers cannot put in new technology without informing the government and without ensuring that such technologies can be intercepted.

What was important is that the report said that governments all over the world are struggling to keep pace with the rapid developments in technology and that unquestionably the criminals are ahead of the game. A critical factor in that unfortunate situation is a major issue with respect to national security and crime fighting which are the resources to fight crime. What is said is that it is not the laws that are letting down law enforcement in any situations, it is the necessary resources and expertise.

Why I selected that is that I just now want to draw your attention with respect

to the law re evidentiary purposes and intelligence purposes. What was said with respect to the document I read, the report from the Privy Council, is that much emphasis is placed on intercept for evidentiary purposes and it is the key reason why there is need for the warrant and to have a judge involved. However, all the research material on interception for purposes of evidence seem to suggest that it requires tremendous resources: human, technical, physical resources from an administrative standpoint, whether it is in gathering, documenting and storing of information, and, more so, to be used in a case. It is very time-consuming, transcribing information which could run into hundreds, sometimes thousands of documents, and this is important because this Bill is based primarily on intercept for evidentiary purposes.

**7.10 p.m.**

Now, the Privy Council Review, what it says, this report was based on the applications of intercept of several countries. They looked at Canada; they looked at Europe, New Zealand, Australia, et cetera, and it stated that whilst there is much value in using the operation for evidentiary reasons, it concluded, and I quote:

“No one has asserted that evidential use of intercept would bring about a major increase (if any at all) in successful prosecutions.”

I am quoting the Privy Council now:

“The limited evidence available suggests that there would be a modest increase in successful prosecutions, at different levels of seriousness, as a result of the use of intercept as evidence.”

We have not seen any evidence that the introduction of intercept as evidence would enable prosecutions in cases currently dealt with through Control Orders.

Against the potential benefits of making intercept material admissible in court must be weighed a range of risks that are involved, including the risks to the current use of intercept as intelligence. In other words, in using intercept for evidentiary purposes, it can hamper the use of evidence for intelligence purposes.

Again, I am quoting the Privy Council. They said:

“There are a series of inter-woven legal, technical, operational and organisational risks that need to be considered—and the legal risk—when judging whether an intercept as evidence regime could and should be devised, has to do with the compatibility with the right to a fair trial—”

Which is what I just spoke about:

“which is what a judge would be concerned with.”

It said that the protection against disclosure of sensitive techniques and capabilities is not absolute. Any quixotic ruling could set a precedent and that the trial judge is obliged to ensure the defendant's right to a trial, and this is even when considering a public interest immunity application, judges are obliged to look only at the circumstances of the case in question and to disregard any wider consequences of their decision.

The other key factors had to do with the risk of disclosure, which is causing criminals to change behaviour; voice authentication, which, with modern technology, the voice distortion, so it really cannot be used in a court, and, of course, the criminals, what they do now, they set up their own decoys in terms of voice. So at any point in time it is difficult to determine who is at the other end of that line.

Now the Supreme Court of Canada upheld the principle in several cases that discretion is with the judge with respect to the right of a person to have access to certain information once that information is edited of certain extraneous material, and that it went on to state that the UK concerns over the potential exposure of interception technology and methods, identification of informants and police and other intelligence information, that the UK concerns are very valid concerns.

So I thought I would just bring that in the debate. This is why I think it is regrettable—and understand where I am coming from, the Government is right to bring this legislation at this point in time. Call it forced timeliness or whatever, it is the right thing to do, but it is regrettable that it had to come about under these circumstances when, in fact, it is such a serious piece of legislation. It required a lot of consideration with respect to how you really balance that right and not bring a law that, in fact, would hamper our security in doing the job that they need to do.

I just want to conclude with how Brazil handled a certain situation, because I mentioned before, having the law does not stop nefarious activities. We have seen that all over the world every day in the papers, and very recently with the very *WikiLeaks* in terms of the US position and wanting to spy on the Secretary General of the UN and other senior officials. So it is not just a question of law but how you handle these situations, I think, is very important. In the case of Brazil in 2008, as reported by the *Economist* under the headline: “The top spooks eavesdropped on the top court”. Brazil’s intelligence agency recorded a conversation between the President of the Supreme Court and a Senator, and it

said that either someone ordered the bugging or, of course, I think, tongue in cheek, that the “spook” was a freelancer.

So that they had bugged the office of the President, his chief of staff and numerous congressmen, and the actions, of course, were severely condemned by the President who ordered an investigation, suspended all the key people, but, certainly, he did not come out publicly and say, “We are going to shut down the country's intelligence.”

So the lesson from that is that the legal framework does not stop people from spying and the authorities from spying, as offensive as the activities are. It is practical to balance the urgent need for continuity of the national security system and rights of citizens who are justifiably outraged, particularly given the very dangerous times in which we live. As I said, this legislation is necessary and I support it. I commend the Government for bringing it to correct the evil that was being done.

I thank you, Mr. President. [*Desk thumping*]

**Sen. Embau Moheni:** Thank you, Mr. President. This exercise that we are currently engaged in, in this Parliament, both the Lower and the Upper House, involves a very serious piece of legislation under very serious circumstances, because this Government is faced with a situation whereby we need to weigh very, very carefully the ability to treat or to chart a course between guaranteeing and protecting the rights of our citizens and at the same time pursuing the need for national or State security. When we talk about the State, the State in itself represents the population in its broadest possible terms. So that dividing line is a very thin one, if it exists at all.

In other words, the protection and the guarantee of the right of the citizens as opposed to the pursuit of state security, should, in fact, be one and the same. However, by virtue of the societies in which we live today we do need to have that dividing line. The State in itself is a construct which is represented by what we call the state apparatus, by virtue of which the entire population is oftentimes faced with situations whereby their fate, their rights, their welfare, fall in the hands of a few individuals who are, one way or the other, either designated, elected or selected to operate that state apparatus. We have seen where that dividing line oftentimes becomes blurred and the weight is shifted historically not on the side of the rights of the people but on the side of the state apparatus, as has been the case in our recent experience.

It means, therefore, that this People's Partnership Government is seeking to

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correct a situation, is seeking to put in place legislation that, on the one hand, does not trample on the rights of the citizens, but, at the same time, does not ignore our responsibility to protect the security and the safety of our citizens. We are living in a democratic society in which there should be government of the people, by the people, for the people. But democracy carries with it certain responsibilities as well as institutions and rights and privileges: the right to join a political party and to express your political views; freedom of thought and freedom of expression; freedom of association and assembly; freedom of the press.

Mr. President, what we have witnessed in no uncertain terms has been an assault on our democratic way of life. We have seen where the very institutions that are supposed to guarantee and promote democracy, such as a Presidency, religious institutions, the media, the judiciary, law enforcement, have all been subject to an invasion, not only of their privacy, but an invasion of their ability to function or to carry out their responsibilities effectively, and these are institutions that are guaranteed by our Constitution.

**7.25 p.m.**

It means, therefore, that while we are at one point discussing the introduction of legislation that ought to take our society forward in terms of that balance we need between the rights of our people and national security, we also need to take cognizance of the fact that the protection of our Constitution and our democracy is of paramount importance.

On Sunday, Mr. President, in a discussion with an individual who is a special advisor to one of our Ministers—speaking to an audience—we counted an experience that he had whereby, he embraced—a simple embrace—one of the senior members of the National Joint Action Committee at the Piarco International Airport, and as a result of which he was placed under investigation because of his association with a member of my organization—freedom of association. When a senior person in his department told him that he was under investigation, he was totally surprised and alarmed. He recounted that incident to us only on Sunday. The reason why I am drawing this reference is because we have seen, under the past administration, a tendency to abuse the rights and the privileges of citizens.

The Minister of National Security gave us his experience of being wiretapped. Mr. President, this is a sad state of affairs because we are and we ought to be alarmed by the fact that our privacy has been invaded, by the fact that there is

little regard for position, for a responsibility and for anything of importance; but that is only one aspect of the situation. We also need to sit back and reflect on what actions like these do to the very institutions that are made to engage in such activity.

The Minister of Public Administration indicated to us that she had interacted with some members of the SIA, young individuals, many of them hopeful, idealistic, with a sense of wanting to serve their country. How does a young person feel when they are put in a situation where they have to invade the privacy of the President, the Head of State of their country? How does that impact on that individual's mind to invade the privacy of the media, and then have to come out and say freedom of the press. To invade the privacy of religious organizations is sad, but it is the reality that the previous administration engaged in a process of corrupting institutions that were supposed to protect and preserve the rights of our country. [*Desk thumping*]

Mr. President, I myself was subjected to similar situations. [*Interruption*] I will not respond to that. I will not respond to the wiretapping part. I was 18 years of age and having just completed my A Levels, I began teaching in my father's school, Elizabeth's College in Tobago, and while speaking to young people like myself, an arm of the State, a law enforcement arm, picked me up and charged me with a colonial law at that time—[*Interruption*]

**Sen. Hinds:** Brig. Sandy sent them. [*Laughter*]

**Sen. E. Moheni:**—creating dissatisfaction and disaffection among Her Majesty's subjects. That was the charge. Very colonial—18 years of age. When I appeared in court and the police officer began to read what he claimed I said, not a single statement came from me. The entire statement was fabricated. It hurt me, but what did it do to that police officer who under the then PNM government—[*Interruption*]

**Sen. Hinds:** But what did that have to do with PNM? How come—[*Interruption*]

**Sen. E. Moheni:**—was made to lie in court—

**Sen. Beckles-Robinson:** PNM said that is a lie. [*Interruption*]

**Sen. Hinds:** How does that link the police officer and the PNM?

**Sen. E. Moheni:**—corrupting our institutions? Sen. Deyalsingh said that we are all culpable. I do not accept that. So if he is culpable, that is his business.

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[*Desk thumping*]

**Hon. Senator:** Let him confess.

**Sen. E. Moheni:** We on this side are, at this point in time, pursuing a pathway that they failed to pursue, enabling legislation in order to ensure that what is done is done with due process, mindful of the rights of our citizens to privacy, mindful of their rights to be able to express themselves without fear of someone eavesdropping on them, and mindful also of their rights to security from the State.

Mr. President, those on the other side had the full opportunity to bring this legislation before the Parliament, and it hurts to hear that they could still get up and talk about shotgun legislation—[*Interruption*]

**Sen. Panday:** “Ah, lets hear about that.”

**Sen. E. Moheni:**—when their Prime Minister, as usual, may have had that legislation in his back pocket.

Mr. President, this is indeed a serious situation and serious times. We need to recognize that security, the preservation of rights and privileges cannot be achieved merely by legislation, but the passing of this legislation enables that process to take place. What needs to be done, and what the People's Partnership Government is committed to, is changing the environment within which we function, so that our approach to governance could be one that will be governed by due process and by law.

I have heard a lot of talk about sensationalizing and politicizing. The hon. Prime Minister did the right thing. This was not a question of politicizing or sensationalizing, or any other such as ascribed to by the Senators on the other side. The hon. Prime Minister took the right decision in bringing the information and the legislation to the Parliament, and, by extension, to the people of this country who, in the final analysis, are the ones we are here to represent. I do agree with those on the Opposition and the Independent Bench who have indicated that there is a need to be very clinical in terms of the drafting and the framing of this piece of legislation, because you are talking about venturing into territory which infringes on the rights of citizens, necessarily so.

So it is important that we are very mindful of the rights of our citizens and ensure that we strike that balance between the rights on one side and the need for national security. We are not here to defend the indefensible. We are here to defend the rights of the population. We are here to defend the rights of the citizens.

Mr. President, I thank you. [*Desk thumping*]

**7.40 p.m.**

**Sen. Pennelope Beckles-Robinson:** Thank you very much. Mr. President, I only hope we will not make another three o'clock. I hope we will not be leaving tomorrow morning. Let me say that I am happy to join this debate on the Interception of Communications Bill, 2010.

It was yesterday that we completed Sen. Ramkhelawan's Motion on the Efficiency and Effectiveness of Parliament and I think the procedure that took place in relation to the completion of this Bill, that is to say, the collaboration between the Government and the Opposition, is to be commended. One can only hope that on the next occasion, the points made by Sen. Ali, that efforts will be made to ensure that the Independent Senators are included. Notwithstanding that, I commend the hon. Prime Minister and the Leader of the Opposition for the efforts to ensure that within the shortest possible time consensus was reached. That is a good indication for the way forward.

Having said that, I quickly move to a point made by Sen. Moheni, when he spoke about an accident when he was 18 years. I am sure none of us here would condone a police officer going to court and lying on Sen. Moheni or any individual. My concern is the implication and the suggestion that that was encouraged by a People's National Movement government.

I will tell you why. I draw to your attention an *Express* article of Friday, November 26, 2010, at page 3.

“Three cops under probe.

Illegal extra duties”

Permit me to read a paragraph or two. It is very important.

“Police probing the murder of Telecommunications Services...employee Kenny Goddard have unearthed a corrupt practice involving three of their colleagues and a TSTT employee, who was providing security for work crews in high risk areas.”—These are three police officers of the Inter-Agency Task Force. They are now facing disciplinary charges.

“Two of the officers, who are constables, were performing unauthorised 'extra duties', investigators said, near Peake's gas station...

Sources said the officers, who were not close to the work site when the shooting incident occurred, reportedly fled the scene...”—On that day they

were in plain clothes, but the day before they were in police uniform.

A little later in the article, it says:

“Police sources yesterday told the *Express* that even though there was no official record in any police diary or register stating that the officers had been given approval to perform guard duties, investigators were able (to) identify the officers.”

I had this article to use for a different example, but to use Sen. Moheni's analysis; do we blame the People's Partnership Government for this? [*Desk thumping*] Do we blame the Minister of National Security for two officers doing illegal extra duties because it happened under the People's Partnership Government? I do not understand that logic.

What is interesting about this is that it was TSTT that was paying these officers. Now, Mr. President, I am sure you are familiar and I know my honourable friend, Sen. The Hon. Panday is familiar. If you are having a fete or if you want to take some long piles to Port of Spain, you apply to the police department; you pay—and police officers tend to like that kind of activity because they are paid upfront. It is not part of their normal salary. You have a fete and you go to court and say: two inspectors, 10 sergeants, 15 constables. They get their money right away. So this issue of the extra duties is not unusual.

I hope the Minister is investigating this and I will tell you why. For the purposes of this particular legislation, if you can have some kind of arrangement between the police service and TSTT for such an activity, remember when we are talking about authorized officers and collaboration, it is the same two institutions. I say no more because I am not going to cast aspersions.

When you read this article, TSTT is maintaining that nothing was done wrong. There are all kinds of insinuations about what really took place, but I leave it to the Minister to deal with that.

**Sen. Panday:** And that will be a provider.

**Sen. P. Beckles-Robinson:** And that will be a provider. Before I get into my substantive contribution, I am sure you have seen from time to time—

**Sen. Abdulah:** Would you—you said in the article that TSTT was denying—continue to read and indicate who in TSTT was denying. I know the union had major concerns about some of the management in TSTT who have been there for quite some time. Could you just say who for the record?

**Sen. P. Beckles-Robinson:** I did not want to get into all that because it is there. It is the Head of the Public Relations Department and TSTT Vice-President who said there was no breach of protocol.

**Sen. Abdulah:** Vice-President, HR?

**Sen. P. Beckles-Robinson:** No. Edghill Messiah. I was not going to call the name. That is one of the reasons that Sen. Deyalsingh said not to call names. You call a name and it is the wrong person. Linus Rogers, of course, happens to be a member of the PNM. You knew that.

**Sen. Abdulah:** Messiah is hopeless.

**Sen. P. Beckles-Robinson:** I am not going to say that. I do not know that.

I want to link that to another matter to understand how serious that issue is. This is not even getting into my substantive contribution. I am sure from time to time you have been going home and you see persons standing by these boxes doing whatever they are doing. I suppose intercepting calls, too.

There was a client who came to me some years ago with a phone bill with some calls from Vanuatu. I did not even have a clue about Vanuatu, but he had been getting these bills for years and going to TSTT over and over. He said: "Miss Beckles, I did not even know that such a place existed." I must confess, Mr. President, at that time I did not know myself. I did my investigation and it is one of those places where you have a lot of porn; all the exciting websites. Mr. President, I am not suggesting that you visit the websites. At the end of the day, no matter how hard this client tried, TSTT claimed he made the calls. I know that is not the only person that that has happened to. This Bill will not only deal with illegal wiretapping but with a lot of other things. Many people have fallen victim to that situation. I know I do not have much time, so let me not go off course, but that is also important.

Somehow, Mr. President, November 19 seems to be a special date for Trinidadians and Tobagonians since 1989. I do not know where you were 21 years ago. People will ask: Where were you on November 19, 2010 when the hon. Prime Minister, as we would say in Trinidad, "buss the mark" in the Parliament? Others will say: "Where were you on November 19, 1989 when Trinidad failed to qualify for the World Cup?" It is clearly a special day and we have seen what has happened to football since that time. We could not even beat Grenada on Sunday.

**Sen. George:** We are in decline.

**Sen. P. Beckles-Robinson:** Let us hope that this particular activity today will cause us to be a lot more uplifted in terms of issues of national security.

At that time, I was out of the country. I had gone to the CPA conference in Canada and was on my way back to Trinidad. I would not like to state the kinds of calls, messages and concerns, because Trinidad is a very interesting society. When you do the research on wiretapping and intercepting, you really only see it in relation to criminal activity and spying.

Of course, if your name is called among other persons in terms of wiretapping and spying, as the Attorney General and Minister in the Ministry of National Security would say, and you, Mr. President, and my other colleagues in the law, when you have an inference you can draw one that is favourable or unfavourable to the accused person. In many instances, people draw unfavourable interpretations and may wonder, “what would cause the SIA to be wiretapping me.” While Mr. Warner has had the opportunity to see his file and to know his classification as being a terrorist, I have not had that good fortune. I heard Mr. Ashworth Jack say he has a big file. I do not know whether I have a small file or a big file and I may never see the file, but my concern is—*[Interruption]* I am not repeating that.

On a serious note, I do not know the contents of that file and who is in possession of that file. You do not know who has read the file and I think that the point that Sen. Al-Rawi was making was: what becomes of the contents of that file? What becomes of the President's, Prime Minister's and Chief Justice's files and the information they have collected over the last 16 years? We are dealing with it now and that is commendable, but I am hoping, as Sen. Al-Rawi suggested, that we find some way of treating with this matter.

Very briefly, Mr. President, when we talk about wiretapping, it goes way back to the 1980s. During the American Civil War, the government officials under Abraham Lincoln eavesdropped on telegraph conversations. Telephone wiretapping began in the 1990s followed, of course, by the invention of telephone recorders. This has been carried, as we know, by many other Presidents—Nixon in the Watergate Scandal. We know that his illegal tapping of private conversations figures prominently in that 1970 Watergate Scandal and resulted in his impeachment.

We also know that in relation to President Clinton, it was the conversation between Monica Lewinsky and Linda Tripp that got him into trouble. *[Interruption]* You remember that. So you are listening to me. The fact is that

Tripp recorded the conversation between Lewinsky and herself and that formed very important information for the impeachment trial. Interestingly enough, the Americans were much harder on Tripp than they were on Clinton because she recorded that conversation. He was one of the fortunate ones in that his ratings went right up, unlike my good friend, President Obama whose ratings are going right down for different reasons in different circumstances.

**Hon. Senator:** He should do a Lewinsky.

**Sen. P. Beckles-Robinson:** So, Mr. President, you see how this has been a very important and interesting situation?

**7.55 p.m.**

Now, let me just say at the outset that in terms of what has been taking place in the SIA as it relates to the illegal wiretapping, I really do not see how any of us could have agreed with it, especially when we really are not sure what they were doing with the information and, first of all, why they were even collecting it. But I must say that in fairness to some of the members of the SIA and I am glad that Sen. Ramgoolam spoke about the fact that she had the opportunity to meet some of the young people and to work as a consultant and assist in policy development.

You see, Mr. President, if we are not careful, we have, as Sen. Moheni said, a lot of young people who worked in that organization who, no doubt, worked and sacrificed probably for a better Trinidad and Tobago, and, in some instances, probably even to prevent crime and criminal activity. One is hoping that when the Minister has received his investigative report and probably has done his audit, that all the bad things that are being done and said about the SIA, at the end of the day, that may not be totally true. Because whilst I have been a victim myself, I am not of the view that everything that they would have done was so bad that they ought to be totally condemned.

I will tell you why, Mr. President. We must not forget that landmark case of Dole Chadee, that, had it not been for wiretapping, they would not have been convicted. With respect to Zimmern Beharry, who is now serving time in the United States of America, it is similarly because of wiretapping. I would not want to put either the Attorney General or the Minister of National Security on the spot, but I would say that the United States Government, the Canadian Government and the British Government have been able to convict many of their own citizens as a result of information and evidence collected by the SIA.

Our major concern, of course, is the illegality, and I am not going to defend at

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all the fact that the legislation was not brought. I am not going to defend that. [*Desk thumping*] Okay? But what I would say is that as a country which has benefited from some very good work of some of the men and women of the SIA, we need to ask whether or not we could have done things differently in terms of how the information was presented to the Parliament on November 19.

You see, Mr. President, at the end of the day, we have to remember that we have a number of men and women who may find it difficult to get jobs anywhere. Anywhere in Trinidad and Tobago they go and are asked, "Where did you work before" I do not know how many of them will want to say the SIA. Some of them may have been very dedicated, and I am sure there were dedicated officers who worked in that unit. I cannot profess to know any of them, but what I do know is that Trinidad and Tobago is a small place.

When we say that for 16 years you have had this organization existing, and so many of us in Trinidad and Tobago, especially involved in politics or otherwise, knew nothing about it, I have some difficulty with that. You know, it is interesting, as Sen. Ramgoolam said, she is now a member of the Cabinet. She had the good fortune of being a consultant in assisting them in making policy. I am sure that, from what I know of Sen. Ramgoolam, she would not have gone to offer herself to assist in policy-making in an organization, save and except she believed that it was an organization of some repute. [*Desk thumping*] Yes, she did not have all the details, and I do not think she even wanted to know all the details. She went to do a job and I am sure she did it to the best of her ability, but the fact is, there it was you have a present member of the Cabinet who actually worked with the SIA.

Mr. President, my information is that, save and except a few of the employees, all of them have been sent home. Now, those same young persons who Sen. Moheni and Sen. Ramgoolam spoke about, notwithstanding whatever we believe was happening there, did anybody call them and say, "Look, we are not happy with what has been going on here. We are the Government. We have to protect. We have to do certain things, and, therefore, until such time, you all have to go home"?

Now, I do not know whether that was done. I do not know whether that was done, but I am saying that because of one, two or three persons, we cannot just discard persons; because, Mr. President, a number of those persons who have been in that institution, I am advised, have received some of the best training in national security from all over the world, and can assist Trinidad and Tobago in the prevention of crime.

The question we must ask ourselves, therefore, is in how we have approached

this matter, and how we have dealt with this matter, whether or not, as I said, things could not have been done differently. You see, at the end of the day, a lot of the information they collected could not have been utilized in the courts because the institution itself was not legal. So, you know, I am a little, of course, perturbed about the length of time it has taken and what exactly would have been the reason. Suffice it to say maybe some explanation will be given at some point in time as to why that was not done. A lot of those young people, and even probably elder persons, have been caught up in this unfortunate situation.

I know the Minister of Public Administration said that her Government is now seeking to bring back some sensibility to some institutions. I mean, that is not the exact word you said, but I know it is somewhere along that line. And to put some institutions, I think you said, back on the right track, and that is what this Government is doing. I just want to say that, as the Government seeks to do that, they do not give the impression that everyone who has been associated with the last Government in some way has to be removed from those institutions; because, Mr. President, in some ways, we are getting the impression that that is what this Government is saying.

I just want to say that I hope that that is not the case across the border. Yes, as Sen. Ramgoolam said, this is politics, and clearly when it is politics, you are dealing with some serious issues of trust. When it is national security, it is issues of trust, and, therefore, when you put persons in certain positions, you want to be comfortable that the information you get is reliable, is truthful and is dependable. In order to do that, of course, there are certain changes that one would have to make, but those changes must not be because you feel that only because the person was appointed by the People's National Movement, therefore, they cannot contribute towards the development of Trinidad and Tobago. [*Desk thumping*]

I recall, Mr. President, when the hon. Prime Minister was sworn in, I listened to the speech at Knowsley Building and one got the distinct impression that the Prime Minister was saying, "Look, here it is we are going to try to do things differently and people must not feel that if you are of a particular political persuasion that the Government will have no uses for you." But, Mr. President, the impression that is being created now is that that is the policy that this Government is adopting, and when you do that, the likelihood is you could deny yourself a lot of good resources.

I am sure that a lot of Ministers who are sitting here today will go to ministries

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and people will tell you, “Do not worry with this one. That one is PNM. Only use this one. This one is UNC and this one is COP”, because I had that experience myself, but you, as an individual, you have to do your own assessment. You have to do your assessment and you will often find that some of the persons who will be most dedicated and who will assist you and ensure that you are the best Minister possible is not somebody of your political persuasion; and that is the truth. But if you go with this position that the only person who can help you is someone from your political persuasion, then you are going to run the risk that you are going to lose some very good resources.

You know, Mr. President, when we have, therefore, the disbanding of SAUTT, the disbanding of the SIA, the firing of the Police Commissioner, and we could go on and on and on, then that is the perception. So that in the minds of the public and in the minds of people abroad, when they saw on the front page of the newspapers that you have Mr. Gibbs going into this place by warrant and taking in other officers, supposedly from Canada, the impression that we are giving is that, in Trinidad and Tobago, we cannot run our own national security issues.

As far as I am concerned, I share and endorse the comments of Sen. Hinds that we have a very responsible Minister of National Security. [*Desk thumping*] One has to be careful about the impression that one creates when one suggests as though he did not know what was going on in his own shop, because that is the impression that we have been given. Yes, he cannot know every single thing, but in such an important institution that was collecting intelligence data, to give the impression that the Minister knew nothing at all, people will be wondering sometimes what it is really going on in Trinidad and Tobago.

Mr. President, that leads me to some important issues in the Bill, and I took the liberty of raising with the Attorney General the issue of the fine, because sometimes I prefer that that is the approach that I should take when I am not sure myself to ask him what are his views on that. He did tell me that he sought advice and they indicated that it could be done, but I still want to say, Mr. President, that I have some concerns.

Now, section 13(3) of the Act speaks to the fact that a person could be liable on summary conviction to a fine of \$1 million, and it goes on to talk about an imprisonment for some other offence of seven years. Now, Mr. President, my understanding, and I am advised that under the Summary Courts Act the magistrate does not have that power for summary conviction. What you have is that there are certain indictable offences for which an accused person has the option to decide that they want to go summarily, from which the magistrate then gets the power or

then has the jurisdiction to give that fine and/or to give a prison term, which the person would have normally gotten in the High Court.

I would be very happy if the Hon. Minister of National Security, in his winding up, could point out to me where does the magistrate get that power under summary conviction to impose a fine of \$500,000, a million dollars, and to sentence for seven years; because I really would have thought that this would happen if the offence was indictable and then the accused person takes the option, “Where would you like to have your matter tried?” “I would like to have it tried in the Magistrate’s Court.” Only then could you have the power to impose a sentence that is higher than you would normally.

I would not want, Mr. President, for us to agree to this clause and we have not gotten from the persons who are advising the Government that particular information so that I could be comfortable. Once I am pointed it out, I would be very happy. I also would like the hon. Minister, and with the assistance of the Attorney General, to clear up another clause. Now, I am talking, Mr. President, about 17(4). Now, 17(4) says that:

“In any criminal proceedings—

no evidence shall be adduced and no questions shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information;”

**8.10 p.m.**

Mr. President, that sounds to me a serious issue, as it relates to an attorney’s right to be able to cross-examine on certain issues to ensure that the rights of his client are protected. Now, I understand what the objective may be, but to actually put this in this section to me, is a serious concern that I have. The hon. Attorney General has dealt with several constitutional matters and I do not know whether he can probably assist the Minister of National Security in terms of indicating what exactly is the thinking behind this particular clause, because once you say “no evidence shall be adduced and no question shall be asked of any witness”, to me that is a serious matter that should be addressed.

Yes, I understand that it is sensitive information and, of course, there are certain sensitivities. The issue, of course, is now that we have legislation, both in the civil and in the criminal proceedings, that speaks to disclosure, that puts the accused or the defendant in a better position to be able to know what he is being charged with and how the data is being collected. When a person is charged before the court, the police will provide him with a copy of the station’s diary, a copy of the statement made and a copy of the entry with exactly what time. We

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have advanced substantially in terms of how matters are done in the criminal Magistrates' Court and the High Court, so that attorneys cannot now say that they do not have disclosure, or they do not have certain things. It is not like in previous years where it was a question where you had to wait and see and be taken by surprise. That no longer exists. At the end of the day, the question is: how does this clause impact on the whole issue of disclosure?

In Trinidad and Tobago, we now have some 300,000 landlines and some two million telephones, Digicel, one million and bmobile, one million. I do not know if a number of people are really conscious of—when you apply for a phone, a landline, what is the contract and what are some of the rules, responsibilities and terms and conditions under which you actually—what are the things that you give up when you apply for a phone. I feel that, like so many other issues, part of what will result from this Bill is the importance of us educating ourselves about what transpired. Some people panic and they wonder how people have access. Even TSTT has access, but TSTT keeps a record of all your calls for a period of three years.

Some people felt, when they talked about wiretapping—I remember going to the market in Arima and somebody said to me: “Miss Beckles, dem people really have nothing to do. They sit down whole day and listening to your conversation?” Because some people believe when you talk about wiretapping and spying, somebody is sitting by a phone listening. The technology is so advanced that you do not have to do that. A lot of it is digital and it is really by voice, so they are able to pick up things very easily.

In its preamble—all we have to do—I know most persons have never even read a telephone directory, because it is not something that people really bother about, especially when you can call 6411 and you can find out a number. That directory states all the terms and conditions that apply to you when you apply for a phone. There are one or two interesting things that I found out. The preamble says:

“The Products and...service charges, and the conditions upon which TSTT provides the Products and Services to the Customer are regulated by the Telecommunications Authority of Trinidad and Tobago...and are subject to change from time to time. In the event of any change, TSTT may advise the customer accordingly.”

You would like to listen to this one. It talks about credit.

“TSTT may use credit reference agencies to assist in making credit decisions or

for fraud protection. Customer agrees that TSTT may register information about the customer and the conduct of the Customer's Account with any credit reference agency prevention...For the purpose of fraud, debt collection and credit management..."

I wonder how many people know that is at page 57.

Clause 15 speaks of interception blocking and disconnection of calls. This is in the directory.

"Without prejudice to the right of TSTT to exercise its rights under clauses 8 and...13, TSTT reserves the absolute right to intercept, block and/or disconnect any call or transmission made by or to a Customer, where such call or transmission is made in breach of these Terms and Conditions."

It is right in the directory, Minister of National Security. Of course, TSTT is authorized, pursuant to the Telecommunications Act and the laws of Trinidad and Tobago, to operate a telecommunications network and to provide telecommunications service and broadcast services as defined in the Act.

There are certain things that already exist in the system, but what is even more important is that when someone receives a concession, as in the case of Digicel and in the case of bmobile, there are certain things that they have agreed to. I just want to share these things:

- the concessionaire has to ensure that any infrastructure, whether technically feasible, is so enabled to facilitate intelligence analysis by the Ministry of National Security or such agency as is expressly designated by the Minister of National Security for the purposes of this section. This may include, but is not limited to the installation such as necessary hardware and software with the required functionality in accordance with guidance to be provided by the designated agency;
- enabling the capability to terminate mirror transmission data intelligence to points of monitoring and surveillance in a manner as prescribed by the designated agency from time to time; and
- to provide in real time sessions, management and control information so as to allow the tracking of, origin and determination of intelligence.

It also says:

- concessionaire granting entry to authorized representatives of the

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designated agency to facilitate for the purposes of monitoring and capturing of any services provided by the concessionaire.

A lot of what we are talking about is already there, but what is more important is that, as it relates to the Ministry of National Security:

“the concessionaire, its agents and employees shall treat the condition of 36 and 37”—which is what I just read—“when it acquires that information as secret and confidential and shall not disclose or communicate to any unauthorized person or allow any such person to have access to any such information without the prior consent of the Minister of National security.”

In other words, the Telecommunications Act of Trinidad and Tobago allowed, for anyone receiving a concession, to have certain equipment put in place to facilitate automatic interception by the Ministry of National Security. Further to that, it must be confidential, so that whatever information is collected, cannot be disclosed by those persons. Therefore, when it was stated that TSTT was wiretapping and whatever, the point about it is TSTT “cyah say nothing. Dey cyah say anything”. Bmobile cannot say anything. Digicel cannot say anything, because the law says that they cannot. I would have thought that somebody in the Government would have read this Act and would have understood that, under the Telecommunications Act of Trinidad and Tobago, bmobile and Digicel are forbidden. They cannot say anything.

My concern, Mr. President, is, since you have this automatically in place and you probably would have had the SIA as the institution that would have been doing this interception on behalf of the Ministry of National Security, who is now in possession and really controlling all of this? Assuming that the SIA has been disbanded and SAUTT has been disbanded, who has the responsibility for dealing with this, what you might call, automatic interception? I would like to have an answer to that at some point in time.

I just want to get into some definitions. In the Interception of Communications Bill, “private telecommunications network” is defined as a means of communication that is transmitted or being transmitted by the sender. It goes on and on.

The Telecommunications Act defines “private telecommunications service” as a telecommunications service used within:

- (i) “one enterprise or its affiliates, to satisfy its or their internal needs and operated without any interconnection to a public telecommunications

network;”

You have the Telecommunications Act and the Interception of Communications Bill, 2010; two different definitions of “private telecommunications network”.

Under the Interception of Communications Bill as well, “telecommunications” is defined differently than under the Telecommunications Act. The Telecommunications Act simply says:

“...a system or any part thereof used for the provision of a telecommunications service.”

Under the Telecommunications Act it is a lot more elaborate.

Again, in the Telecommunications Act, under the Interception of Communications Bills, “telecommunications service” means a service provided by means of a “telecommunications network to any person for the transmission of information from, to or within the State without change in the content or form. Again, under the Telecommunications Act, there is a different definition.

### **8.25 p.m.**

So, I want to suggest that we need to look at the different definitions in both Acts, because really you should not have the Telecommunications Act having a different definition of the activities from the Interception of Communications Bill.

Mr. President, within recent times you would have noticed that many countries have sought to put legislation in place to keep up-to-date with the technological changes. I want to suggest—

**Mr. 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. S. Panday*]

*Question put and agreed to.*

**Sen. P. Beckles-Robinson:** I want to thank my good friend, Sen. Panday, and all my colleagues for the extension of time. I would try not to take up the entire 15 minutes. Mr. President, I was saying that many countries that have learnt of the technological advancements have moved forward to deal with some of the challenges in the communication industry. Whilst we may not be able to do it today, because we are trying to deal with a particular situation, I just want the

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Government to be mindful that there may be an occasion when it will have to return to the Parliament to deal with other issues, and I am just going to give you a few examples.

Now, let us take Texas, for example, where they have now passed legislation where you cannot purchase a prepaid phone. I know you are looking a little surprised at that, but there is a reason for it. What happens is that when you purchase a prepaid phone, they are now asking for your ID card and your social security number, but you can purchase a prepaid phone anonymously. As you know, Minister of National Security, if you keep changing the sim card and the phone, then it is difficult to trace. So they have realized that in Texas. It was a very controversial Bill, because of the demands they were making on individuals, since traditionally you could have gone and made your purchase, but when they looked at the kidnapping, prone human trafficking and all of those things, they said no more prepaid phones. Every time you purchase a phone, you have to give your name, ID card and so on.

We have prepaid phones here and it is difficult to trace them. You know that you can leave Trinidad and Tobago, go to India and buy the chit and you can change it and make your calls. You can do that in many other parts of the world. In Texas, they are saying they are not going to have anymore prepaid phones. At some point in time, Minister of National Security, if you really want to track the criminals, you would have to deal with this matter. They have 10 phones. They are not like you with two or three phones, they have 10. The call on this number, and they would change the sim card and the phone, and you cannot track them. Many countries have realized that they have to deal with this matter of prepaid phones. I am only making that suggestion, because the Attorney General talked about what is happening in the prison. The legislation was passed with respect to taking cellphones to the prison, but, as they would say, they understand the system so well that you have to keep ahead of them.

People must understand that some people know a lot about how a cellphone works and some people do not. Any cellphone can be wiretapped, and they can turn on your cellphone when you think your cellphone is off. They can turn on your cellphones with equipment that now exist, and they can also trace you even when your cellphone is off. They can trace you and use that chip to find exactly where you are, and that is why those who understand the system will be changing the sim card and the phone. To keep ahead of these persons, we really have much to do.

If your conversation on the phone is being wiretapped—Sen. Hinds told me

about this fact and I read about it where you have all kinds of equipment now which you can go to the United States of America and purchase to intercept calls and so on. You also have people with walkie talkies and so on all over. We need to do some serious education for people to understand that there are serious fines attached. So the use of mobile phones anonymously and prepaid phones are matters that we have to address at some point in time.

The final issue I want to deal with is Internet wiretapping. We have a very interesting situation in Trinidad and Tobago, because we do not have our own Internet gateway switch. Our Internet provider is actually going through Puerto Rico. We do not even have it in the Caribbean. So if we wanted to deal with the issue of Internet and intercepting, we do not own our technology in Trinidad and Tobago, and we do not have it in the Caribbean, and that is a matter we have to address if we are to deal seriously with the issue of the Internet. I do not have the time to go into all of that, but I am sure we will know enough about that.

In the United States of America, they have recognized that the FBI had made recommendations to Congress to put in place legislation to deal with wiretapping, as it relates to the Internet, not just in the United States of America, but they want to deal with it internationally. So if your citizens are in any part of the world, they want to be able to do wiretapping. It has not gone as yet, but it is going to be there at some point in time.

Mr. President, as I close, I want to end by saying that I am happy to be part of historic legislation that is going to serve us well for years to come. As the Attorney General said, it may not be perfect, but it is a good start in bringing some measure of comfort to the number of persons who would have fallen victim to the illegal wiretapping. I therefore want to join with all my colleagues in congratulating the committee that was established and which did a lot of work to bring forward this draft amendment of the Interception of Communications Bill. Thank you. [*Desk thumping*]

**Sen. Dr. Rolph Balgobin:** Mr. President, thank you for the opportunity to make an intervention in the debate around which is, obviously, a very important and topical piece of legislation that we are debating tonight which is the Interception and Communications Bill. I will confine my comments with, your leave, to two broad areas; the context and then speak to certain aspects of the Bill itself.

In starting, I want to observe that a government really has no higher duty than

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to protect the public. However, this has to be juxtaposed against section 4(c) of the Constitution which gives our citizens the right and respect to private and family life. In setting aside this right, we must, of course, be very careful and afford it due care and attention.

I think, by and large, what we are treating with appears to be very much the product of a very positive set of energies and effort put forward by the Government, in collaboration with the Opposition. So it is with some happiness that I note that we have a very good piece of legislation before us which, I think, in many respects, addresses the core questions and issues that have arisen in the public mind over the last several weeks as the discussion of wiretapping and invasion of privacy and so on occupied the public attention.

I want to say as well that I disagree very strenuously with the perspective that a government can consider or make a habit of considering even doing things that are, if not illegal, certainly extra illegal, and then seek to retroactively, as it were, provide it with some legislative cover. I say legislative cover, because the term used was legislative complexion, but I really do not know what colour legislation is and what it looks like in terms of colour.

I do think that this is something where everyone who has participated in bringing this Bill forward ought to be commended, because at least the Government has seen something of concern and is treating with it. I think this is the appropriate way to go rather than the reverse.

I want to agree with several of the comments made by the Attorney General, one of which stood out to me. I think Sen. Hinds also alluded to it, and that is the Trinidad and Tobago Police Service. I think, while it has its problems, it also has a cadre of young officers who are extremely dedicated to the cause, and who have done yeoman service to Trinidad and Tobago. I think the same might be true of SAUTT and the SIA.

The TTPS certainly, in my view, was starved of resources that it desperately needed in order to carry out the fight against crime. We saw significant evidence of the TTPS, inability to treat with the criminal element when we had the spate of kidnappings a few years ago in Trinidad and Tobago.

I, myself, had a relative who was kidnapped, a very close relative. When I turned up that day, of course, the police took a little while to get there, but the Anti-Kidnapping Squad did turn up and someone from SAUTT, and everybody in the house was crying. I was fine. I did, however, want to cry when the AKS came with the oldest beat-up tape recorder imaginable and put it on my family's dining

table and said, "This is the technology we bring. Could we plug this into your phone?" It is most unfortunate to see, subsequent to that, the kinds of resources that were given elsewhere, I suppose.

At the time, the well meaning SAUTT gentleman did not say much, but what I did notice is what he was doing. The police took a statement which they wrote down in their diary, and then the kind gentleman from SAUTT borrowed the police officer's diary and sat there copying everything that the policeman had written in his diary, although he was involved in the same conversation. So, in that way, we have exactly the same statement. Nobody is looking for a relative while all of this is happening. Those were the kinds of things I think would have frustrated any citizen who had been injured by a crime as wicked as kidnapping.

**8.40 p.m.**

Mr. President, fortunately we have got that under control now, in part, as I understand it, with the assistance of, amongst other agencies, the SIA.

There is one question I would like the Minister to treat with in winding up and that is: Are the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT) and SIA still operating? I assume that, at least, one of those two agencies might be and, if they are, on what basis and if they are going to continue to operate in the future, it would be interesting to know when the Government plans to bring legislation to regularize their status. This treats with the merest sliver of national security and domestic security challenges that we have in Trinidad and Tobago. While we are fixing this, we ought to take the opportunity to regularize what is going on with SAUTT and the SIA.

I want to also just point out and, again, to sort of pick up from where Sen. Beckles-Robinson left off, I do not think that telecom companies were necessarily bullied into giving information. The agreement they have with the Telecommunications Authority of Trinidad and Tobago, conditions of their licences, of course, require that they provide this access. Sen. Beckles-Robinson quoted from some of that. I would just like to share a bit more with you. There is a section in these things that says law enforcement and national security; it says the concessionaire, which is the telephone company shall, upon request made by the Minister of National Security, cooperate with the Minister of National Security in matters of national security.

They list a whole range of things that you have to do. You have to grant entry to persons authorized by the Minister of National Security and you have to allow

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any or all agencies that the Minister designates permission to position or connect monitoring equipment on or with any communications infrastructure considered necessary. It then says that the concessionaire, the telephone company, agents or employees shall treat these conditions and all information in any form which is acquired in the course of complying with such conditions as secret and confidential.

I think the provisions for wiretapping and call monitoring were in place some years ago. If no one else could tell us about it, certainly the TATT would have known something about it. I want to admit, I had some concerns when I looked at the legislation in an earlier form, that the Government was going down the evidential route, perhaps as a knee-jerk reaction to the revelations, some of which the public shared in. I have to say that concern has been put at ease, because the dichotomy that has been proposed to anybody who would look into this and do any kind of research in preparation for this debate, would suggest that you would have an evidentiary or investigative route. But the way the Government has dealt with this has turned a dichotomy into an “and”, as it were.

So you have managed to find a mechanism and structure that treats with both the kind of wiretapping that you would do for strategic reasons, as well as the kind you would do for emergencies. That emergency one, of course, is very important, because when you talk to these bright, young people in the police service who try to rescue people who are kidnapped, they would tell you that your life expectancy goes down by the hour; literally by the hour, by the hour. Sometimes the chase action carries into places where phones do not work. They risk life and limb and they cannot always wait to get written permission and all this sort of thing.

The public needs to understand that there is a channel of action. There needs to be a channel available to law enforcement officials who are actively running on the ground with information and are tapping, picking up information, following up on leads as they progress and as the investigation continues. I think this is a very commendable part of the Bill as proposed. Clauses 8 and 11 treat with this issue quite well.

I do want to suggest, however, that the scandal surrounding the \$5.9 million found in the vault of the SIA—whatever receptacle it was in—I have a slightly different perspective on that. While \$5.9 million is a lot of money, for some things it actually might not be. For some national security matters, who knows? I think Sen. Ramgoolam had a very good point. The quantum of the funds did not trouble me so much as accounting for it. Who has custody of it? What is it used

for?

Sometimes if you talk to the right police officers they will tell you that to get information on a gun, a firearm, can run you \$10,000; on a cache of weapons, it might be \$50,000, it could be \$100,000. You are doing that, you are investing, you are spending, because you are trying to prevent crime. In a sense, the public also needs to be aware that there is a price to freedom, a price that the Minister of National Security and, by extension, the agencies he or they, I should say—Sen. Panday no disrespect to you—have to pay. What is to me more important is that we account appropriately for the funds that are there.

The last general comment would be that this Bill appears to treat with interception of communications, but there is a much, much wider issue here, and that is surveillance generally. I am not sure that is covered by any one bit of legislation. It seems to be held in pieces of legislation in our law books or, in some instances, implied. There is an opportunity for us to, perhaps, rationalize that and treat with other aspects of surveillance as well, some of which might be invasive.

This, for example, covers interception of communication, but what if you wanted to bug my home or car? Placement of actual devices for the recording of conversations, I am not clear that is covered here, but it is a very important aspect of surveillance work. I have not been able to determine where else it is covered, if it is at all. I do not think it is. There is an opportunity for us to recognize that the interception of electronic communications is only a small part of what surveillance is all about and that this actually can involve a lot more. We ought to also give that the kind of legislative cover it needs to ensure that our law enforcement officials do not have any problems going forward.

Turning now very quickly to the Bill and some specific provisions in it, I commit to you, Mr. President, and my colleagues that I will not be long. I have just four or five quick comments and one major concern which would be the only thing I want clarification on, but I will get to that in a moment. Under section 5(1) the definition of “communications” suggested, but did not make explicit, that old form of communication which would be mail, post.

We are talking about email, conversations and so on. I accept that someone planning a drug deal is not going to send me a postcard about it. However, I do think that while that may be true for matters of drug transactions or some firearms things, I do think that as a broader issue for national security—right now Customs and Excise has the authority to look in your mail if they think there is something dutiable or taxable in it, but we also ought to give our law enforcement agencies

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the opportunities or the power. It might just mean including in here, writing or mail or something like that, music, speech, sounds, mail or documents, or something like that, which, at least, gives you some kind of cover for intercepting that form of communication.

Being as realistic as possible, of course, you know what the criminals do. When you tighten the borders, then they try to bring drugs, for example, through legitimate channels. So you squeeze one place and they are going to try to go somewhere else. While we would like TTPost to be competitive, we do not want any increase in their business to be as a result of something nefarious.

Clause 6(7)(1) picks up on something Sen. Baptiste Mc Knight suggested or touched on. That is about the fourth line down. We ought to define what “primarily useful” means. When we say:

“a device or any component thereof knowing that its design renders it primarily useful for unauthorized interception...”

There are headphones, for example, that stick into regular cellphones or tape recorders or whatever, that goes into your ear which allows you to hold a phone to your ear too. Is that illegal? Page 13, subsection (7)(1), the fourth line which says:

“Subject to subsection (2) a person who possesses, sells, purchases or manufactures a device or any component thereof knowing that its design renders it primarily useful for unauthorized interception of private communications...”

You might want to take the opportunity to define what “primarily useful” means so that one does not inadvertently run afoul of the law.

Moving forward, I have clause 17(5); I will not go through this Bill in exhaustive detail, because there are two persons far more qualified than I to speak to it. When I juxtapose 17(5) against 17(3), I could not quite work out what it meant, particularly 17(5)(b). When I compared that to 17(5)(a) and compared that to 17(3) which is what it refers to, I was not quite clear on what the section was trying to say. The same thing happens in section 19(3), so perhaps some clarification on that at committee stage would be very useful.

Then penultimately, clause 24(2) which speaks really to governance and oversight, as I said, this will be my penultimate point:

“The Minister shall cause a copy of the report prepared by him under

subsection (1) to be laid before both Houses of Parliament promptly after its completion.”

Earlier in that section it says the completion would happen within three months. I would like to suggest that we stipulate a time frame for this, because you have other agencies of the state that provide annual reports that can take years to come to this Parliament. I do not think that it would harm us to say within six months of the end of the year that you are reporting on, so there is some currency to the data and we could have a fairly relevant conversation about what is happening.

**8.55 p.m.**

I do recall, as a university student, having the opportunity to sit on campus council and so on. It always surprised me that the university would be in, say, 1993 but doing its accounts for 1989 and we see that with a lot of state agencies. I am just suggesting that the Government try to impose some kind of time limit on this so that we do not see the reports a year or two after, because, really, that is the worst kind of—well we are not even a rubber stamp then, it is more or less tossed over the walls to us and Parliament, and by extension the people, can do little or nothing.

That brings me to my final point and the only part of this legislation that gave me any kind of disquiet, but it is a significant concern for all. That would be section 20. My challenge with section 20 is for the destruction of records. I gather that what the Government is trying to do is ensure that there is transparency and governance applied to the practice of interception of communications, particularly electronic communications and I think that is quite laudable. I think if you really want to accomplish that, we ought to have some kind of oversight mechanism for the operation of this legislation. Particularly for two things, one would be to assess objectively the performance of all of the operations that occurred under the ambit of this legislation.

I am aware and quite clear that the current model suggests that a report be done and sent to the Minister who in turn will do his report and send it to the Parliament. However, when I look at the experience of intelligence agencies elsewhere, what I find is that, without exception, they make mistakes. Without exception they make mistakes. There are aspects to their operations that do not always go smoothly. Very often it is an error of the transposition of numbers, so I may be tapping 991—1996 but I ended up tapping 1969. I can put that error in the request for a warrant and I can actually go way down the road tapping the wrong number before I realize that I am, in fact, intercepting the wrong set of

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communications.

The current model does not contemplate the commission of any errors by the intercepting agencies. I think that it does not hurt us to have some kind of objective reporting done on the operations of this agency, because, other than that, you have the Minister being aware of everything anyway, so if it is good governance and transparency we are looking for then it probably ought not to be the Minister who is reporting on the activities that the Minister knew about over the last year. There are many mechanisms for this in other jurisdictions, but, certainly I think that it is something that bears some further scrutiny, some further attention.

The other aspect of this which I think would fall quite nicely under the umbrella of some kind of oversight and reporting mechanism for operations under this legislation has to do with the verification of data destruction. The proposed law is quite clear that the communications ought to be destroyed immediately and the three authorized persons ought to consult and then destroy the data immediately, but it is a very small society and people would obviously prize their privacy.

I think that it is not enough for us to have a situation that, even for appearances, looks like it is Caesar unto Caesar, because the same folks who are requesting the wiretapping, the same folks who are requesting the warrant for interception are the same people who are in charge of destroying the data, destroying the evidence and I do not think that that is necessarily the cleanest governance mechanism. Those are the two things that give me disquiet, because what we have done—because judges being human, I cannot presume to know what a member of the Judiciary would do—

[MADAM VICE-PRESIDENT *in the Chair*]

**Sen. Dr. R. Balgobin:** But what is entirely possible is that you would have a fairly high rate of approvals for warrant requests, and if that is so, you have a fairly unlimited range of interception actions that can take place within a 90-day horizon, so all we have done is, instead of allowing you 15 years of unfettered access, we are now cutting that down to 90 days and we are requiring some sort of judicial permission at the front end. However, I think that at the back end, in wrapping all of this up, it is very useful for us to have some kind of mechanism which says, “Okay, how has this legislation worked this year?”

In the United Kingdom in 2008 they made no fewer than 50 errors. In 2009 they made 28 [*Interruption*] sorry, 36, I am corrected. They made 36—but that is

the United Kingdom with almost infinite resources—when compared to ours. I do not think that the number of errors is going to be proportional with the population that does scanning. I think it is probably the inverse. If so, we ought to know. We ought to know! We ought not to provide unfettered rights to do this kind of work without some kind of annual reporting coming into the Parliament and I think that this person or group ought to also be able to verify the records regarding data destruction, so that when we are finished looking at someone's private life we are finished looking at someone's private life and we can then close the door on that interception or on that intervention in their lives as quickly as I suppose I can now finish my contribution.

With that, I thank you.

**The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday):** Thank you very much, Madam Vice-President. First of all I want to congratulate hon. Brig. Sandy for the manner in which he has presented this legislation and to concur with my friend, Sen. Fitzgerald Hinds, as to the character of Brig. Sandy—your brightness, the sobriety and the decency of Brig. Sandy, [*Desk thumping*] I am happy that you saw that.

I also want to congratulate all the Senators on the other side, and first of all, to take note of what Sen. Basharat Ali has said.

**Sen. Hinds:** Are you winding up?

**Sen. The Hon. S. Panday:** No, I am just responding to one thing there.

**Sen. Al-Rawi:** But not winding up, right?

**Sen. The Hon. S. Panday:** No, no. [*Interruption*] Whenever there is need for consultation we will ensure that you are invited properly to those proceedings. However, as Sen. Hinds indicated, they only ask for one or two, in his case he squeezed in to get to that second part of the meeting. [*Interruption*]

Madam Vice-President, first of all I want to congratulate the Prime Minister for bringing this legislation. There is nobody in Trinidad and Tobago who could say the Prime Minister is wrong in bringing this legislation. What they are trying to do is to say the way she did it could have been done differently. [*Desk thumping*]

**Sen. Hinds:** [*Inaudible*]

**Sen. The Hon. S. Panday:** No, I am saying, who in the kitchen does feel the heat and who in the kitchen does know what is cooking, they could see it and they could smell it.

**Hon. Senator:** “They know when it burn.”

**Sen. The Hon. S. Panday:** The Prime Minister was right in the way in which she did it. [*Desk thumping*]

A number of allegations were made against the Prime Minister, “Oh, she should have known, she did know, it was not this and it is not the first time”, merely trying to cast aspersions on the Prime Minister. There are some foolish statements that came, “Oh, this thing happened”—come back from New York, and trying to trivialize the debate by attacking the Prime Minister personally. [*Interruption*] I said some foolish statement had been made. There are some people who say, “Let us forget the past and let us lift the standard of the debate”, and immediately they plunge you into the mud. [*Desk thumping*] Let us forget the past and the moment they say, “Forget the past” they start to attack you on the past. [*Interruption*] We are watching you, we are observing and we reserve the right to respond. The Prime Minister said that the moment she found out what has happened she took immediate action. She did not know like your Prime Minister!

**Sen. Al-Rawi:** Like yours before!

**Sen. The Hon. S. Panday:** Same thing, you see how you are a revisionist and you come here and pretend and say, “Oh, let's forget the past”. [*Interruption*] Our minds are filled with mud and murk.

**Sen. Al-Rawi:** I am helping you to be even-handed.

**Sen. The Hon. S. Panday:** Yes! She did what she had to do and what she did afterwards was to come to the Parliament. You see, some of us come here pretending that we belong to that high-class society, when our minds are—I would not go there. I would not go further, but you see, society is picking up and understanding what you all are doing.

The Prime Minister came to the people's representative. This is the highest court in the land. The Prime Minister came to the highest court in the land and accounted to the people; we do not want secret Government. The Prime Minister does not want secret Government. The Prime Minister came where it was appropriate, in an appropriate forum and the Prime Minister spoke to the country. What did they want the Prime Minister to do? Hide it! Pretend it did not happen. Try to deal with it quietly. Those who you are trying to deal with will come and

say, “Victimization”. When you do not put everything on the table and let the nation see what is happening, you create the opportunity for people to say that you are discriminatory. That is what the Prime Minister did and the hon. Prime Minister must be commended for that. [*Desk thumping*]

The hon. Prime Minister had more information than any one of us and in those circumstances one must give the Prime Minister the opportunity and the respect for doing what she has done. [*Desk thumping*] This Prime Minister, you could talk to her about whatever past Prime Minister, we are in the present and we are looking into the future. I want to say categorically here that our Prime Minister, this Prime Minister, has not dealt with this matter in any clandestine way. [*Desk thumping*]

### **9.10 p.m.**

This Prime Minister is not involved in any kind of underhanded or corrupt behaviour. We on this side, Members of the Cabinet, could put our necks on the block to say that our Prime Minister is an honest, upright and decent person who has the interest of the country at heart. That is our Prime Minister. When you attack the Prime Minister like that, with innuendoes, we must stand up now and defend our Prime Minister.

I would like to tell Sen. Deyalsingh, I know you are trying to study law. You will come to a stage of Cabinet government; you will probably read Sir. Ivor Jennings sometime in the future. He speaks about Cabinet government and he says that there are two important things which are necessary: Cabinet responsibility; Cabinet secrecy and I want to add a third one, Cabinet loyalty. This is what we represent on this side here and we shall never sit on this side and allow you all to make those scurrilous attacks on the Prime Minister and let it go unanswered. We intend to defend our Prime Minister because we know our Prime Minister is an honest, upright person who has the country's interest at heart. [*Desk thumping*]

All they could say, they would have done it better, but you all were there all the time.

**Sen. Al-Rawi:** Not us.

**Sen. The Hon. S. Panday:** “Not us”? All the PNM is the same thing. I will show “yuh all ah all yuh is the same thing”. Great is the PNM, long it shall prevail. You want to disown the PNM now, Sen. Al-Rawi?

**Sen. Al-Rawi:** The rising sun.

**Sen. The Hon. S. Panday:** You want to be in the PNM and distance yourself from the PNM? What manner of man are you? You want to be in the PNM; you want to inherit what the PNM has; you want to take the goodies of the PNM and now you want to say—

**Sen. Al-Rawi:** On a point of order, 35(5), properly. Where did that come from? My friend knows better than that. He is the distinguished leader; far-ranging, wide criticism with no basis. Your ruling? [*Desk thumping*]

**Madam Vice-President:** Hon. Senators—

**Sen. The Hon. S. Panday:** You do not have to rule on that, Madam Vice-President. I withdraw, but I must say there are certain people who want to ride; they want to run with the hounds and hunt with the foxes. That is what they are. [*Interruption*] If I do that I will get in trouble; I will have to apologize. [*Crosstalk*]

We want to say we support our Prime Minister. Our Prime Minister has awakened the public's awareness to what has happened. The Prime Minister has exhibited a certain amount of transparency and what we can say at this stage is that the Prime Minister did it her way and we say that is the right way.

**Sen. Hinds:** You are neither fish nor fowl.

**Sen. The Hon. S. Panday:** Maybe I am a pomme cythere. [*Laughter*] They call me Pomme cythere Rasta. [*Crosstalk*]

Your Prime Minister, the leader of the PNM, was involved in undermining the democracy. Sen. Hinds speaks so much of preserving the democracy and up to today Sen. Hinds continues to condone this type of behaviour. When he spoke today, he said, "Look how you have fired people; look how you have poor people's names in the Parliament; the people working at SIA, they cannot go to the bank; they calling them thieves." You feel so much pain in your heart for the wrongdoers. That is PNM style. Instead of condemning that kind of behaviour, you are protecting them. That is why I say: old PNM new PNM, same khaki pants. [*Desk thumping*] Instead of condemning the wrongdoing, what did you do? You are trying, Sen. Hinds, to protect the wrongdoer: "You must not call their names in the Parliament."

**Sen. Al-Rawi:** That is not what he said.

**Sen. The Hon. S. Panday:** "What he said?"

**Sen. Al-Rawi:** He did not say that.

**Sen. The Hon. S. Panday:** You tell me what he said. *[Interruption]* You go ahead. Imagine your Prime Minister tapped judges' phones—

**Sen. Al-Rawi:** On a point of order. My Prime Minister, Kamla Persad-Bissessar, has apparently never done that, Madam Vice-President, and I regret that attack on the hon. Prime Minister, Kamla Persad-Bissessar who is my Prime Minister. *[Desk thumping]*

**Sen. The Hon. S. Panday:** I thank my friend and I know the distance between there and here is not very far. *[Desk thumping]* I am happy that you are really disowning the Member for San Fernando East, your hon. Prime Minister. *[Desk thumping]* I know the pain in your heart. Mom's pain is a pain—when a lady makes a child, she experiences a certain pain, but it is nice to see a son express the same pain for his mother. *[Desk thumping]* That is why, it seems to me, that you have embarked upon that stance of disowning.

The Prime Minister of the PNM I know he was never your Prime Minister. The Prime Minister of the last PNM government destroyed the democracy. What do you have to say about that, Sir? Great is the PNM, it shall prevail. What do you have to say about that, destroying the democracy? Not only the Prime Minister, there were other people and I will come to the Attorney General in a few minutes.

Okay, I would not say the Prime Minister any more, because I know you belong to the PNM and the PNM is who did that wickedness; the PNM destroyed the democracy. Why did you tap a judge's phone? You tapped the CJ's phone. Then you told the CJ to resign. Did you get information about the CJ when you tapped the phone? Then he told the CJ: "If you do not resign"—imagine what the PNM is doing: "If you do not resign I will embarrass you. I will put you on trial by one of your juniors", and so said, so done. That is PNM legacy.

**Hon. Senator:** And they tapped "the trial judge phone", who was trying the case, eh, Justice Narine. He was trying Sat's case.

**Sen. The Hon. S. Panday:** Yes. That is the legacy of the PNM. Then you come here and talk about legislative agenda? Let us talk real politics.

**Sen. Al-Rawi:** You have one?

**Sen. The Hon. S. Panday:** I will show it to you.

**Sen. Al-Rawi:** Show me; 17 feet away.

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**Sen. The Hon. S. Panday:** They tapped the CJ. Imagine “the Chief Justice phone” you will tap? You knew that you were gunning for the Chief Justice. That is what the PNM did. You did not only tap him. PNM, PNM, PNM. You did not only tap him. You tapped his wife and you tapped his child. How callous you can be! PNM? [*Sen. Al-Rawi rises*] Do not run, sit.

Then when they catch him, he said, “Yes, I did it. Yes, we tapped the Chief Justice. Yes, we tapped judges. Nobody is above the law.” It is democracy we are speaking about. This Bill is about democracy. What did Sen. Hinds do here today? I would not say it was disgraceful because I would be offending the Standing Orders, but Sen. Hinds tried to bring the Judiciary into a state of disrespect when he said, “Not our judges, but there are judges in other parts of the world who take bribe.” That is what he said today, justifying PNM; justifying the wrongs of your leader. But if you are saying it was not your leader, then you are justifying the wrongs of the PNM and that will live with you all forever to haunt you all.

You will come here and say, “Oh, I did not like the way the Prime Minister did it.” Compare what my Prime Minister did to what your Prime Minister of the PNM did. [*Desk thumping*] It is only when—

**Sen. Al-Rawi:** Basdeo Panday.

**Sen. The Hon. S. Panday:** Be careful, eh? It is only when it has been brought here, you attack the Prime Minister. [*Interruption*] It seems to me that the pomme cythere not working. [*Laughter*] You were not listening when I added a new dimension to Cabinet responsibility? I will repeat it, but you know the third requirement.

**Sen. Hinds:** What is it?

**Sen. The Hon. S. Panday:** Like I have to give you more pomme cythere, you know. As a matter of fact, the Chief Justice was charged. You had an Attorney General, John Jeremie, who was a part of that, carrying information to the Prime Minister and working in collusion with the Prime Minister in that regard and everybody pointing their finger at the Member for San Fernando East, Patrick Manning. I wonder if anybody has asked the question about John Jeremie, the Attorney General. He was a part of that scenario in which they persecuted the Chief Justice. Do you remember he went to the Prime Minister and talked about cut on the belly, and whatnot?

The Minister of National Security, Mr. Martin Joseph, jumped up one time

and said, “Me? They ain't report to me. So if suing come and they want to sue, I outta it.” But he did not say, “I did not know about it”, eh; he just said, “They did not report to me.” But we understand. The public is there. The public is not foolish. The public understands what is happening, using semantics to get away from legal obligations. That is what it is about.

I ask John Jeremie today: why are you ducking? Why are you hiding? You have not come out as Attorney General. A Cabinet is fully constituted with a Prime Minister and an Attorney General. The Attorney General, like the Prime Minister, is always a member of the National Security Council, because, as Sen. Deyalsingh says, the Attorney General is legal advisor to the Government.

I ask today: John Jeremie, Sir, what part did you play in this? Why are you not speaking? Do you believe that by hiding we will forget you? Because many people have asked the question: why did they tape Sen. Penelope Beckles-Robinson? Why did they tape Donna Cox? Why did they tape Dr. Rowley. As the hon. Attorney General said, what a decent lady my dear friend Penelope Beckles-Davidson is, why you will tape her? That had to be the internecine warfare in the PNM that Mr. Jeremie was trying to destroy Dr. Rowley, Penny and the other person, and that was the reason for that taping.

Members of the public's eyes are open. [*Interruption*] That is why he did not tape you. You are no value, Sen. Fitzgerald Hinds.

**Hon. Senator:** No threat; no threat.

**Sen. The Hon. S. Panday:** No threat. Because tell me, why would you tape three members of your own government if not to try to destroy them?

**Hon. Senator:** Not three, four.

**Sen. The Hon. S. Panday:** Four?

**Hon. Senator:** Yes.

**Sen. The Hon. S. Panday:** And everybody knows the role that Mr. Jeremie played in attempting to destroy the Members who were taped.

**9.25 p.m.**

We sat in this Parliament, you remember. Remember when we sat in the last Parliament, Dr. Rowley was sitting over there and he made allegations that the PNM was trying to destroy him. You remember that evening when the hon. Prime Minister, Patrick Manning—I think it was the budget debate—asked for an

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extension of time and waded into Dr. Rowley. That was war in the PNM. You remember what—[*Interruption*]

**Hon. Senator:** “Buss de mark.”

**Sen. The Hon. S. Panday:** Not yet. It was clear that Jeremie, who was the blue-eyed boy of Patrick Manning, was working in cahoots with Patrick Manning to destroy you, Madam, a good lady like you. That was why your phone was tapped. So you do not have to ask to see what is in it.

**Sen. Beckles-Robinson:** I do not want to see it.

**Sen. The Hon. S. Panday:** You do not want to see it?

**Sen. Beckles-Robinson:** No. I am just saying other people might want to see it.

**Sen. The Hon. S. Panday:** I know, but in yours all it could have is when you and Dr. Rowley talked in the evening how you all were planning to destroy him tomorrow. [*Laughter*] That is what will be in it. Nothing more than that. That is why the Attorney General said it was “macoing”. They put you there to “maco” you and Dr. Rowley, and the whole set of you all. That is the legacy of the PNM.

Why did the PNM allow the internecine family warfare to go into destroying the democracy, go into wiretapping? It is a dangerous thing. It just goes to show that the PNM has no respect for anything including institutions; no respect whatsoever. You come and tap other judges. We know why Sat Sharma was tapped. You were trying to get information to put him before the courts and use the information to gather evidence—the first half in this Bill—in order to deal with him. I do not know if they were successful, but they did put him on trial to humiliate him. Sen. Deyalsingh, you should know that. He is from Curepe where you live. As the Lord would have it, before they put him before the court on trial—maybe from intercepted information—the witness’ mouth was wired and could not give the evidence. God is good and God is great. My friend said the mouth was tied up like a “crapaud”, so he could not talk

Even after that, the Prime Minister wrote the main witness again and asked him: “You want to talk still? Why you did not talk?” He got that witness, using this interception Bill, and then tried to impeach the Chief Justice. That is the legacy of PNM destroying the Judiciary.

You do not have to see the files. Just look at the history of the PNM and you could say what is in every file. They tapped the phone of Justice Narine. As the

hon. Attorney General says, he was doing the case. What dangerous behaviour is that? The people in Trinidad and Tobago should never let the PNM see office again just because of that act. [*Desk thumping*] Your rights would be trampled upon. Your rights have been trampled upon, and to allow the PNM into power again they will further be “trampled”. PNM must never see the corridors of power again.

Why Justice Gobin? Attorney General, was she doing cases involving any perceived enemies of the PNM? Not only that, the institution they used to wiretap on—they wiretapped the Commissioner of Police. Why did you wiretap the President? Is it that you feel when you consult with him and he has to consult with someone else, you want to know who he is speaking to? What a disgrace to bring the Office of the President in hate, odium and disrepute. That is what the PNM did. [*Crosstalk*] That is one institution, but it seems to me that the PNM destroyed every facet of the society.

Tell me something. Why did you tap the phone of the Commissioner of Police? The police is there to protect and serve; not only to protect and serve the PNM, but to protect and serve the whole country. Why have you betrayed the trust of the population in the police? By what the PNM has done, the PNM has betrayed the trust of the police in the eyes of the people.

Mr. President, in 2003, there was a committee where the Opposition and the Government came together to ensure that the Office of the Commissioner of Police is an independent office. By Act No. 6 of 2006, we amended the Constitution to allow for a process which appears to be a long, tedious process for the appointment of a police commissioner. It was designed in such a way so that nobody could say the Commissioner of Police is beholden to anyone. The purpose of that, in order to deal with crime the Office of the Commissioner of Police was supposed to have appeared independent. Before that, under section 70 of the Constitution—you remember the Prime Minister had a veto and he vetoed officers until “he get” the officer he wanted. We took away that right from the Prime Minister and gave that right to the people’s representatives, the Parliament, so that when a Commissioner of Police is appointed, he is appointed by the Parliament, the representatives of all the people of Trinidad and Tobago. PNM! Having spent so much time in endeavouring to ensure that the Office of the Commissioner of Police is an independent organization, I ask now: why did you tap his phone? Answer! Why did you tap his phone, Sir?

Now, when the Bill came before the Parliament, if I remember clearly, there was some confusion where the PNM kicked Mr. Stephen Williams down because

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we were going on meritocracy, and having gone from meritocracy they reversed the acting and said, acting is not on meritocracy, it is on seniority. So you had Mr. Philbert there. Why did you tap his phone? We want to find out because he is head of the security in the country. Did you hear that he was doing something wrong? You see, what you have done here is humiliated the former Commissioner of Police. You have rubbed his nose in the mud.

When people hear we could explain why Sen. Beckles-Robinson's phone was tapped—but when you tapped the phone of the Commissioner of Police, what you have done there is put him in a position of embarrassment. Was he doing something wrong that you had to wiretap his phone? Sen. Hinds accused the Attorney General of firing him, saying that he promised to fire him and he fired him. You are trying to create confusion. We are asking the question: why? If he had done something wrong, why you did not deal with him? You continued extending his tenure by three months, three months, but you keep on tapping him. It is either you are a mad man, you are paranoid or you are with the drug lords.

**Sen. Brig. Sandy:** Manic.

**Sen. The Hon. S. Panday:** As Sen. Brig. Sandy says, “Manic man, Manic mind”. That could be one explanation, but the other explanation is maybe you were with the drug lords, you were with the money launderers or you were with the people in high society—[*Interruption*]

**Sen. Hinds:** Madam Vice-President, I feel obliged at this stage, notwithstanding all of the obvious fun that my not so careful friend has been enjoying. The Member is making those very unproven references to a Member of Parliament. Section 35 is clear about this—

**Madam Vice-President:** Yes, I hear you. Senator, please.

**Sen. Hinds:**—and I want it expunged from the record.

**Madam Vice-President:** I would tend to agree with Sen. Hinds. Please confine your contribution and rein in your language, please.

**Sen. The Hon. S. Panday:** I have the command of English language.

**Sen. Hinds:** Madam Vice-President, I am asking if you would be kind enough that those references, being inappropriate as they are, be expunged from the records of this Parliament. He was accusing a Member of this Parliament of being in cahoots with drug lords.

**Madam Vice-President:** Senator, for the purposes—

**Sen. The Hon. S. Panday:** I withdraw it.

**Madam Vice-President:** Yes, please. Could you simply withdraw the statement and ask that it be removed? [*Desk thumping*]

**Sen. The Hon. S. Panday:** Sure. I withdraw most humbly, but it was a question I was asking. You do not understand English language, or are you condoning PNM?

**Sen. Hinds:** Sen. Panday?

**Sen. The Hon. S. Panday:** No, Sir. No, Sir. I never said so. I said, is it so because we want to find out why. We are just asking why. Tell us why. We are just asking the question which people will ask. I will never be so rude and obnoxious to make allegations like that. Never will I.

[MR. PRESIDENT *in the Chair*]

**Sen. The Hon. S. Panday:** All I am asking is: tell us why. Ordinary people would be asking the question: why was the independent office of the Commissioner of Police's phone tapped? That is the question I am asking, and if Sen. Hinds is saying I am casting aspersions because I am probably making false allegations, you could tell us why it was tapped then. We ask you: tell us why it was tapped? That is all we are asking you. Tell us why the phone was tapped, because it was tapped. The Member for San Fernando East said nobody is above the law. I am asking you: do you not want questions?

**Sen. Hinds:** [*Inaudible*]

**Sen. The Hon. S. Panday:** No! No!

**Sen. Hinds:** You have more skills than that.

**Sen. The Hon. S. Panday:** I am asking you: tell this honourable Senate why was the—okay, I apologize.

“Dear Mr. Commissioner of Police,

I apologize to you for your phone being tapped.

If I have to make an apology, that is the apology I will make.

Dear Mr. Philbert,

I feel sorry for you. You held such a high office that your phone should never be wiretapped.”

That is the apology I will make, and I will ask the question: why was his phone tapped? I said why I think and I am asking questions and they are rhetorical

questions. The questions are not rhetorical. They are honest, plain and simple questions. Is it okay if you say that I was wrong to ask the question: if there was any connection between the phone tapping and drug lords? Am I wrong? Tell us, was it for national security purposes? This legislation speaks about legal wiretapping for national security purposes and, since you are getting hot under the collar, I want you to tell us why was the Commissioner of Police's phone tapped?

**9.40 p.m.**

I want to ask Sen. Hinds a question through you, Mr. President. Did any official in Trinidad and Tobago deny that the Commissioner of Police's phone was tapped? That is a serious act. So the two institutions of the State have been compromised and undermined by the PNM because, up to today, the PNM has never said it was not true. They justified the wrong, as some of us are doing here, by saying no one is above the law.

I asked the question of Mr. Jeremie. Since you all like to ask for legislative agenda, I want to ask a little question here. Look at the omnibus legislation. It was completed in 2007. There was the Interception of Communications Bill, the gang legislation that Sen. Al-Rawi asked for, the data protection legislation. It was in the hands of Minister Jeremie since 2007. You asked for a legislative agenda. We know the reason why you keep asking for a legislative agenda is to try to embarrass us. That is all you are trying to do.

We had said in our manifesto that in the first 120 days the first thing we would try to do is to deal with corruption in the awarding of contracts, and this Government introduced the procurement legislation which is now before a select committee.

Our hon. Prime Minister with a heart of gold said: "I am a mother, a sister and a grandmother and I care for the children." She said that within 120 days the Children's Life Fund Bill would be before the Parliament. Does it have to form a part of a legislative agenda? The manifesto in this case is the legislative agenda.

You keep asking every week as though you would faint if you do not get it, when, in truth and in fact, it is before you. You knew you had this omnibus package. We brought all to the Parliament. We just came into government. We split it in two. The gang legislation and the Bail Bill went to the other House and to this House we brought the Evidence (Amdt.) Act and the Interception of Communications Bill. So when you are asking for legislative agenda, you must not be so myopic; you must be big-hearted and generous and fair and look at the whole scenario before you try to destroy us.

I am coming back to this point. All these pieces of legislation were there since 2007—the Firearms (Amdt.) Bill. Why did you not bring that legislation? You are accusing us of not having a legislative agenda, but you had legislation drawn up. You had it on your desk. Why did you not bring it? Until you all answer that question, I do not want to hear any one of you in this Parliament asking for a legislative agenda again. We will ask you why you did not bring this legislation.

I asked Sen. The Hon. Jeremie as he was then. You were advisor to the Prime Minister. You, Sen. Deyalsingh, through you, Mr. President, have attacked my Attorney General, a man of class. Did you ever ask the PNM why they had such important legislation to deal with crime and did not bring it? Unless you answer that, do not attack us.

Many people are saying that the legislation was not brought for one reason. They knew what they were doing and were afraid it would come back to bite them. This is like a monster to bite you all. That is why they did not bring it. You knew you were doing wrong. You knew that you were undermining the democracy of this country and you knew what you did? You said, “If there was no legislation, we could do as we like.” As the hon. Attorney General said: thank God for May 24. God has stepped in and saved this nation from you, the PNM. [*Desk thumping*] We thank God for that. If you did not have the legislation, nobody could do you anything.

The Special Anti-Crime Unit legislation, the Attorney General said you were trying it out to see if it was working and if it turned out to be good, then you would bring legislation. Is that the way the PNM runs a government? Is that the way you bring legislation to the Parliament? Is that the foresight the PNM has? These are questions we must ask.

Today when you come to the Parliament, nice phrases, doing research, attacking the legislation, but you never brought it. It is the PNM that has SAUTT in the position it is today. They were doing good work, but you never brought the legislation to legalize SAUTT. You are talking about a legislative agenda. SAUTT was started in 2003. From 2003 to 2009, six years, the PNM sat on its hands and never brought the legislation. While you sat on your hands and never brought legislation to legalize SAUTT, the murder rate went up in 2008 from 99 to 550. I thought when you saw the murder rate climbing like that you would have at least had some conscience and brought that legislation. No, you sit it out.

Mr. President, do you know what is the big joke? Six years they sat on it, not moving forward, and the hon. Member for San Fernando East said: “I was

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waiting. I intended to call an election and after that I would have brought the legislation to the Parliament.” That is what he was saying. He was the same man who called an election in 1995 early and lost it; called another one in 2010 and lost it again. He knew full well that he was going and we had to take this job and that we would do it without fear or favour.

So, Mr. President, this Government is serious about crime. We have a firm Minister of National Security. He is not only firm, but this Minister has a big heart in that he is approaching the issue of crime in a holistic manner. We invite you, Sen. Hinds, to one of our concerts of hope on St. Barb's basketball court on Saturday, December 04, 2010. We are dealing with crime.

**Mr. 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. L. Oudit*]

*Question put and agreed to.*

**Sen. The Hon. S. Panday:** Thank you very much, Mr. President. I know that my friend, Sen. Hinds, said no because he says that when he goes up to Laventille all he sees is people putting guns at somebody's head. This Minister, when he goes up to Laventille he brings the people together, putting his arms around the people so that we can deal with crime.

Mr. President, it is late and we want to finish this Bill tonight. I would like to go into some of the fine details of some of the issues which were raised by the other Senators. All the contributions, including that of Sen. Hinds, were good; some better than others.

I want to address some of the things Sen. Baptiste-Mc Knight was speaking about when she spoke about the five-year—I go to page 8, under the definition of “offence”:

“‘offence’ means where the penalty, whether on summary conviction or conviction on indictment, is imprisonment for five years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;”

Mr. President, that is the offence. As we said, if we had put a schedule every time we pass legislation, as the hon. Attorney General said, we would be coming with human trafficking and other laws; and we would have to come here periodically to amend the legislation. That is why we use a penalty as the basis for the

classification of crimes.

Sen. Hinds spoke about clause 6(2)(b)(ii) for the prevention and detection of an offence for which the penalty on conviction is imprisonment for 10 years. You were saying that there needs to be some synchronization in the terms of imprisonment.

What happens is that the first one was an offence. This was an exception. If one reads the—I am certain that you know legal interpretation—you do not read only one or two words in a section. Not only the subsection, but try to read the whole section and if you do not get anything from it, then go to the whole Bill.

I do not think we have to go to the whole legislation; just subclause (2).

“Notwithstanding any other law, a person does not commit an offence...”

In the first case, he is speaking about a person who has committed an offence and creates the offence. In this case we are saying:

“(2) Notwithstanding any other law, a person does not commit an offence under this section if—

(a) the communication is intercepted in obedience to a warrant issued by a Judge under section 8 or 11;”

Those are two different scenarios. I thought I would bring that to the floor.

The other question Sen. Hinds spoke about was clause 8(1). I thought that when he was speaking about this subclause he was merely speaking about the language in the clause. Sen. Hinds indicated:

“Subject to this section, an authorized officer may apply ex parte to a Judge—”

You probably view that as clumsy; I do not know, but I think you said “may make an application to a judge”. I humbly submit that is probably legalese and that this legislation is made for the man in the street that is why we say “an authorized officer may apply”. When you say ex parte, we know what that means. You do not have to inform the person upon whom you are trying to get the warrant—to a judge—for a warrant authorizing—you are saying that they may apply to a judge ex parte to get a warrant to authorize the person named in the warrant. The difference is really a preference of style and that was the style of the person there.

Sen. Baptiste-Mc Knight spoke about the 90-day and the 1990 and the evidence must be destroyed thereafter, but that is not so.

**9.55 p.m.**

Section 20 deals with the destroying of records, and the impression I got from when she spoke was that, after the term of the warrant had expired, the evidence had been destroyed; but section 20, on the issue of destruction, should not be read in isolation but should be read in conjunction with section 8(2) when we speak of the warrant. The warrant is necessary for the prevention and detection of any offence where there are reasonable grounds for believing that such an offence has been or was about to be committed, and where in section 8(2)(b) information obtained from the interception is likely to assist in investigation concerning that matter for mention in those circumstances, it would appear to me that once the evidence has some use, there is no need for that to be destroyed.

Then we had the other section which was of grave concern to Members on the other side, when I think it was Sen. Al-Rawi who was speaking about the issue of disclosure. First of all, I want to say that if that issue which Sen. Al-Rawi spoke about was section 4(5) of the Constitution, the right to privacy, I wish to indicate that in the event that we can chip with that in that way, that is why we have this legislation requiring a special majority. In the event that we are interfering with any rights, that is the reason for the special majority.

I want to humbly submit that when we look at the disclosure—I think it is 18—you were asking, Sen. Balgobin, I think it was 18 thank you very much which spoke about disclosure; but in any event, you were asking whether it will infringe, in any way, the law as it has been developed in criminal proceedings in relation to disclosure. The criminal law has developed in such a way that they are preventing, or they are trying to deal with the issue of trial by ambush. So now the Prosecution has to make disclosure to the Defence prior to the commencement of the matter.

In this legislation I see here, it says at section 17(1):

“In any criminal proceedings, no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information.”

And there is a definition later on in the Act which speaks about sensitive information, and “sensitive information” means the method of collecting the information and the person who supplies you with the information.

In the present law of disclosure as it stands at this point in time, you cannot ask the Prosecution to adduce any evidence as to the methodology or the person, the informer, who gives you that information. It is clear that the reason for that is to protect the informer in order to deal with crimes.

I want to thank my dear, good friend, Sen. Fitzgerald Hinds, for his magnanimous contribution in this matter and that we are *ad idem* on the purpose of this legislation in that—

**Sen. Al-Rawi:** That is the gentleman we know.

**Sen. The Hon. S. Panday:** You see this gentleman thing? Just hold on a little while for that. [*Laughter*] You will appreciate, Sir, that in the past, what we are trying to do, or what the Government has been trying to do, was to put themselves in a position, the prosecution, so they could obtain convictions without using human evidence. You remember we had passed as somebody had indicated, somebody sees a crime and when they see a crime, you spoke of the witness protection programme; witnesses get killed, witnesses are threatened, and witnesses, for other reasons, come to the court and indicate they had forgotten the evidence.

Remember in this Parliament only last month or a month before, when we passed the amendment to the Evidence Act, we spoke in that piece of legislation of videotaping evidence of the accused and also of the witnesses? We even went as far as to speak about videoing the evidence of children. The reason for that is we are trying to get that evidence in such a way, and we say that that evidence is admissible in court so that, if the witness changes his mind or something happens, we could use that evidence.

Remember we passed the DNA Act in the last session? And when we passed the DNA Act, the aim and objective of that piece of legislation was really, if you have scientific evidence, you proved your case by scientific evidence. This here is not the culmination, but a step in that direction where you have evidence, in this legislation, you have for intelligence gathering. We have also, as you said, created the dichotomy where you can use the evidence for intelligence gathering or you could use the information, on the obtaining of a warrant, as evidence. Therefore, when you produce that evidence in court, Sen. Hinds was saying, that is cogent and compelling evidence, that any jury hearing that evidence will at least bring a verdict, if they are properly directed, of guilty.

This piece of legislation deals not only with protecting the democracy. This legislation does not deal with the abuse of the officials. This legislation really is to protect the society, and we want to say that we have the greatest confidence in the Trinidad and Tobago Police Service. We have the greatest confidence in the institutions that support the Police Service and we shall do, under the guidance of Sen. The Hon. Brig. Sandy, everything whatsoever to give the police all the tools

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and to give the prosecution all the tools so that we will deal with crime.

If you look at this legislation, Mr. President, what can you use this legislation for? For the economics, and also national security, and for anything which will interfere with the economic state of the society. So what this legislation has done is it has gone one step further to deal with the money launderers; white-collar crime. This legislation is so all embracing that it does not only deal with wiretapping, but the consequences are so far-reaching that we can deal with every level of crime; because there are some persons who say you are only going for the small fellows and you are letting the big fellows off.

Thank you, Mr. President, for giving me the opportunity to say these few words. [*Desk thumping*]

**Sen. Dr. Victor Wheeler:** Thank you, Mr. President. Again, I am speaking at such a late hour. First of all, I would like to note that the Bill before us today is the culmination of a lot of hard work by the Members of Parliament of both the Government and the Opposition in the Lower House, and this brought about a collaboration where the two political parties in Trinidad were able to work harmoniously to achieve something that is worthwhile. The evidence of this is that all the Members of Parliament voted in favour of this document in the Lower House.

It is hoped that there will be continued collaboration between the Government and the Opposition as we go forward, because we are aware that there are troubling times ahead for this twin-island state of ours. Having said that, with specific reference to Tobago, I would also like to see collaboration taking place between the two opposing parties in Tobago, because Tobago is in even more dire straits than Trinidad.

First, I want to see no more lip service between the two parties saying that they are going to work together and this does not actually happen. Please permit me just to stray for two seconds while I mention that collaboration is required in Tobago to improve the health sector, to improve tourism and also in the completion of the outstanding projects that are yet to be completed.

Now, with specific reference to the Interception of Communications Bill that we have before us today—the local term for that is “domestic spying”—many people would think that domestic spying or interception of communication really helps in fighting crime. I certainly believe so and there is a lot of evidence to suggest that that is the case, but it is a balance of privacy of the individual versus

the need for the State to fight crime.

We have seen the benefits of spying activities abroad not necessarily intercepting communications, but the use of closed circuit television that has shown to be effective in not just fighting crime but preventing crime. It is possible that the local knowledge that you may have your communication intercepted by the forces of the State may make some people think twice before they engage in some activity.

Having said that, it has been said that possibly the increase in the murders that have been occurring of late may be a result of the possible shutting down of SAUTT and the SIA, because, even though the activities may not have had legal cover, the functions of these units may have contributed in some respect to reducing crime; certainly with respect to kidnapping.

The national community, however, needs to be convinced that the tools of interception of communication should not be abused. It should not be abused for personal gain and it also would not be abused for political gain. So, it is in this respect that some effective oversight or some checks and balances should be introduced, and it is within this framework that I want to mention the work of someone by the name of Michael Walzer who developed the theory of just war. Michael Walzer is a Jewish American political philosopher who devised a theory of warfare which said that there is some moral reality to fighting war.

Michael Quinlan, who is a top official in the British Ministry of Defence, applied it in practice and basically said that legitimately collecting information on criminal activities is allowed if such activities might lead to unjust injury to those for whom the nation has responsibility. The moral course of those activities, however, also needs to be weighed against the value of the intelligence collected.

**10.10 p.m.**

This legal framework had identified four or five components to it. One of it is just cause, in that you must have sufficient cause for allowing the interception.

Looking at the Bill before us, we see that in clause 6(2)(b)(ii) and in clause 8(2), it certainly satisfies this. There must also be just intention, in that, the information you are gathering should not be used for, as I have said, abuse, to disseminate information to the public and also for political gain. This is also addressed in this Bill. There must also be a right authority. That is, there must be some lawful authority with accountability within a chain of command. The Bill also addressed this in clause 5(1). The other thing that is mentioned is that recourse to secret intelligence- gathering must be a last resort over less sensitive

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and less intrusive methods of data collection. I believe the Bill also addresses that.

There is one area in which I would like to point out the experience in Jamaica with wiretapping where there was a famous case of Christopher Michael Coke, also known as “Dudus”. The Jamaican Government had claimed—there were claims—that the US Department of Justice submitted evidence to the Jamaican Government to obtain his extradition. Some of this evidence—at least some of the evidence that was provided to the Jamaican Government by the US authorities—was actually obtained by wiretapping that occurred in Jamaica. It was alleged that the US Department that presented this information actually contravened the Jamaican wiretapping laws.

The Jamaican wiretapping laws actually allowed the police to intercept communication. They had an order that was duly authorized by a judge. The policeman who obtained the information gathered it legally, but it seems that he did not have the legal authority to pass that information on to the Americans. That was why it was claimed that the case—and this is actually what contributed to a bit of toing and froing between the Jamaican Government and the United States authorities.

I heard it said before that the SIA and the intelligence agencies in Trinidad have passed information on to foreign agents. I hope that any information that is passed on to foreign agents, when this law comes into effect, we would not experience a similar episode as that which occurred in Jamaica. It certainly is not apparent in this; that that is the case. I would certainly like the Minister of National Security to clarify this for me, please.

Just to go on to the Bill itself, I just have one little concern not concern but suggestion—for an addition in clause 23(2), where it speaks to a person who is intentionally disclosing the contents of any communication. It says a fine of \$250,000 or imprisonment for three years. Presumably, this penalty will come into effect after the law comes into effect, but there was a lot of information gathered by interception, prior to the introduction of this Act, and I do not know if the law will cover those bits of information, because we do not know what information has been obtained before. We really do not know who has that information and for what purpose they might put it to use.

I do not know when this law comes into effect, I would like the Minister of National Security to address it. If information was obtained by persons before this law comes into effect, will that be subject to the penalties of this law? Having made those brief comments, I would like to thank you for allowing me to contribute today. Thank you.

**Mr. President:** I wish to inform hon. Senators that there is dinner being served. We are going to continue the proceedings, but hopefully you would not reduce your numbers below 10. In the meantime, we will continue.

**Sen. Lyndira Oudit:** Mr. President, I thank you for the opportunity to add a few points and my contribution to, what I believe is historic legislation.

In 2007, the United Kingdom Commissioner of the Interception of Communications, Mr. Paul Kennedy, identified that the power to intercept is a valuable investigative tool. In fact, he went on and said:

“...interception may play a key role in ‘the prevention of murders, tackling large-scale drug importations, evasion of excise duty, people- smuggling, gathering intelligence both within the UK and overseas on terrorist and various extremist organizations, confiscation of firearms, serious violent crime and terrorism.’”

All of that, before 1984—I think Sen. Al-Rawi and other Senators spoke of it—interception of this nature was being done, but outside the purview of legislation. In 1984, as was mentioned, the European Courts of Human Rights declared that the practice in the United Kingdom, of intercepting communication, violated the human rights of the individuals. Again, what was brought out in 1985? You did have the Interception of Telecommunications Act in the UK and subsequently other countries followed. What that pointed to was that, while there is the right of nations to gather intelligence, it must never be outside of the law.

I want to refer to probably what was a very sobering experience for President Bush, as was identified in the ABC News on December 19, 2005 and in it Stephen Saltzburg, former Deputy Assistant Attorney General, indicated that while the law in the US gives the President power to wage a military campaign against terrorism, it makes no reference to spying on US citizens. This came directly out of the fact that President Bush at that time had indicated that he had been “given the legal authority to spy on U.S. citizens without a court order, when Congress authorized a war in Afghanistan.” In fact, he was supported by the then Vice-President, Dick Cheney who said— again it is reported in the ABC News—that was “consistent with the resolution by the congress after 9/11.”

However, it comes back to the use of this type of technology outside of the law. According to the Deputy Assistant Attorney General, he said:

“‘There’s nothing in the legislation to suggest that Congress authorized the president to eavesdrop on American citizens without judicial supervision...’”

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He went on:

“The founders of the Constitution understood profoundly that power corrupts and absolute power corrupts absolutely and they wanted to check it and they did.”

Unfortunately, the President insisted and he said that he needed the power to eavesdrop without a court order, so that he could wiretap suspected terrorists.

President Bush is no longer in office and possibly the history of that will show that no country allows for any one individual to operate outside of the law. There is no doubt there is need for this legislation. Nobody is questioning the need for this particular legislation. The issue is: where does the right of the State to gather such intelligence end, or where does it start, in relation to the right of the individual for privacy or family life? So, it must never be unconstitutional, illegal or outside of the law.

One of the Senators spoke about a reduction in kidnapping. Of course, my question first of all is: what is the source of the data? I am against—someone else stated that he is a student of research. I share that view. I too looked to research and statistics. There is a whole idea of theory of why in fact there may have been a reduction in the kidnapping statistics. It is possible that the low detection rate of the police officers was combined with the fact that many businesses—and this was in the public domain—were paying what they call protection money. A number of factors were combined to ensure that statistics went down; crime statistics. As you all know, crime is not only actual statistics; it refers to reported and unreported statistics. A lot of statistics were not there, simply because people stopped reporting when their loved ones were kidnapped.

Firstly, the police detection rate was too low and secondly because of their family name or business connections. Many of them paid, and unfortunately many of them did not get back. In fact, there was a whole notion of people migrating from Trinidad. There were a number of areas, but I want to get back to the statistics.

The CIA Fact Book look at the homicide rate of the Caricom region, 13 countries in the Caricom, over the period 2005—2008. In it, on a ranking of one being the worst, in terms of the number of homicides per capita, 1:13, Jamaica was first, St. Kitts/Nevis second and Trinidad and Tobago third. The only reason St. Kitts/Nevis was second, was because of a population of just over 40,000. They had 64 homicides and so their percentage was .0015, going down the road, and they came in second. Trinidad and Tobago, over that period, for a population of

1.229 million people, had 1,693. That put us in the rank of third, in the number of homicides per capita over the period 2005—2008.

In fact, the CIA identified that violent crimes in this region engender fear among the citizens of a country. This fear is exacerbated because of a low detection rate and cases dealt with by the court; seen in Trinidad and Tobago and St. Lucia cases respectively. Fear is manifested in people feeling unsafe and afraid to go out at night; even in their own homes.

When we talk about statistics—the question was asked—in fact I have to say that I feel Sen. Panday’s contribution today is what I refer to as a heart and soul contribution. I think Sen. Panday really gives life to why this legislation is so important. In the heart and soul, the question was asked—in fact the Attorney General about Vijay Persad—where was the interception technology?

The Caricom Regional Task Force on Crime and Security in 2006 identified, and I am quoting:

“Trinidad and Tobago was selected as a case study, as it has seen a particular sharp rise in firearm-related violence over the last few years.”

**10.25 p.m.**

Mr. President, that is the Caricom Regional Task Force. It continues:

“The trend toward increased use of firearms in the commission of crime began in the 1970s in Jamaica...”

“In Trinidad and Tobago, this change began in 2002. Before 2000, firearms were responsible for less than one-third of all homicides, but by May 26 this percentage had risen to 74 per cent.”

Mr. President, let me translate that to you into numbers.

According to information coming out from the Trinidad and Tobago Police Service for 2001—2006, murders committed in Trinidad and Tobago using a firearm: From 82 murders committed with a firearm in 2001, it went to 273 in 2005. The figures continue; 102, 158, 182 and 273, increasing every year from 2001; the total number of murders corresponding 151, 172, 229, 259 and 386 in 2005, representing a 71 per cent increase.

Mr. President, so when we talk about the fact that the SIA might have being doing some work that led to a reduction in kidnapping, we have to be careful how we are quoting these statistics. If you do not have the source, then we have to be careful when we are quoting part of the information.

Again, when I talk about kidnapping, I refer to reported kidnappings as against actual kidnappings. I also talk about the homicides and the use of guns in criminal activity. Is it that whilst all these statistics were available—this came out of the Caricom Task Force Report—what was lacking was the political will? Is it that the political will was not there? I am not here to answer that question. In fact, the nation will answer that question.

On February 20, 2009 in an article in the *Newsday* written by Clint Chan Tack, there is a headline: “Government bringing intercept laws” and it says:

“National Security Minister Martin Joseph yesterday, said Government plans to introduce intercept legislation...

Checks by *Newsday* revealed...may include legalised wiretapping, although Joseph insisted this would not be part of the proposed intercept laws.”

This article went on to say that Minister Joseph was asked if wiretapping legislation was included in the intercept package:

“Joseph replied: ‘I said intercept legislation’”.

Again the article is very telling.

The article referred to the Friday previous to that in Parliament. The then Chief Whip was Ramesh Lawrence Maharaj SC and in February 2009 he identified a building in Port of Spain from which the Government was tapping telephones. The article continues:

“Responding to Maharaj in Parliament last Friday, Prime Minister Patrick Manning said: ‘That assertion is absolutely false. Matters of national security are not discussed in the public.’”

That assertion was absolutely false!

Mr. President, that article ended with the admission of the then Minister of National Security saying:

“...illegal drugs and guns are entering the country ‘at a faster rate than it has been coming before.’”

If this admission by the Minister of National Security was, of reeling under this level of crime, guns, drugs and murders and a host of criminal activities, why is it now that the conclusion has to be drawn that there was some effort to impede the state machinery from legitimately dealing with securing this nation?

When we look at this particular Bill—a Bill is never by itself, especially one of this nature; a stand-alone piece of legislation. This Bill makes reference to telecommunications. One of the Independent Senators spoke about telecommunications, and I want to refer this Senate to the connection between the definition of telecommunications network and telecommunications service as it refers to Act No. 13 of 2009, which is an Act to establish the Financial Intelligence Unit of Trinidad and Tobago.

The reason this Act is connected to this Bill is that in section 8 of the Act, it gives the function of the FIU, which says that:

“The FIU shall be the primary institution for the collection, analysis, dissemination and exchange of financial intelligence and information among law enforcement authorities, financial institutions and listed businesses in Trinidad and Tobago.”

Part (2) went on to say that:

“The FIU shall also receive suspicious transaction and suspicious activity reports...in accordance with this Act.”

Mr. President, the relationship with this interception and wiretapping, is very critical. When one looks at this Interception of Communications Bill at clause 6(2)(b), while this Bill has come about because of what the nation may see as an unfair invasion of their personal life, there is some justification for this piece of legislation. Again, there is need for this, but it must never be outside of the law.

It is very clear, because in clause 6(2)(b)—Sen. Dr. Wheeler briefly identified it—says this communication is not considered an offence. A person does not commit an offence if communication is intercepted in the interest of national security. It went on to say, “for the purpose of safeguarding the economic well-being of the State” and “for the purposes of giving effect to the provision of any international mutual assistance agreement”—this is where the connection is. As with other pieces of legislation, Trinidad and Tobago has an obligation to transfer, transmit and to share information.

When we look at the reference to the Financial Intelligence Unit, at section 8(f), (g) and (h), it identifies that you must facilitate the sharing of information among local financial institutions and prosecutorial authorities, as well as disseminate at regular intervals financial intelligence information to local and foreign authorities and affiliates within the intelligence community. So we have a contractual agreement under the Financial Intelligence Unit to pass on information. So,

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therefore, Trinidad and Tobago is obligated to have intelligence gathering capability so that we are able to work in conjunction and meet the requirements of the Financial Intelligence Unit.

Mr. President, on page 10 of this Bill “terrorist act” has the meaning assigned to it by section 2(1) of the Anti-Terrorism Act, 2005. Mr. President, the Anti-Terrorism Act of 2005 is referred to as Act No. 26 of 2005, and this is why this legislation is so critical. It is critical because it is one of the tools that a government would use in its fight against terrorism. The Anti-Terrorism Act refers to a terrorist act. The Anti-Terrorism Act which is Act No. 26 of 2005 says a “terrorist act” means, an act whether committed in or outside of Trinidad and Tobago which causes or is likely to cause prejudice to national security or disruption of public safety including disruption in the provision of emergency services or to any computer or electronic system or to the provision of services directly related to banking, communications, infrastructure or financial services”, et cetera.

It went on to explain what “terrorist property” referred to and, according to the Act, it says “proceeds from the commission of a terrorist act or property which is likely to be used or is being used to commit a terrorist act or which is collected for the purpose of funding”.

Mr. President, there is a link between the Anti-Terrorism Act, and it is related here in the definition for “anti-terrorist” and it says that any person who knowingly enters into an arrangement which facilitates the acquisition, control and retention of property is liable on conviction or indictment to imprisonment up to 20 years.

We have to be very careful that we understand not only that we need to protect the private lives of our own citizens, but the financial and global responsibility against terrorism. We have several international examples of terrorist acts perpetrated on all sides of the globe. More and more, countries are reaching out and forging international links. So it is incumbent on this Government—I have to say that credit must be given to the original drafters of this piece of legislation. If it is that it was done under the former Minister of National Security, as was identified by Sen. The Hon. Subhas Panday, then the legislative idea and objective behind the Bill was good, and credit must be given. It is not so much what you have—because omnibus legislation was referred to by Sen. Panday, where several pieces of legislation were drawn up, but nothing was done. In fact, to use his words, he said, “They sat on their hands with it.” So, Mr. President, it is not what you have, but what you do with it.

**10.40 p.m.**

If the interception legislation under the former administration was in any way able to help any victim of crime in this country, then certainly it would have helped; even one, far less for 1,000 or 1,500. It does not matter the numbers, if it was able to help one, then it would have had some good use, but for over three to four years this legislation was sitting, doing nothing. Again, it has been said throughout, the horrors of the victims of criminal activity.

The question that the national community is asking is that if all these resources, financial and otherwise, went into the sustaining of this particular agency, why is it that we did not see a meaningful drop in criminal activity? Why did we not see it in the gang related activities or in the use of drugs or guns? Why is it that the detection rate for police officers in conducting their searches, even following a car—we have been told unofficially that when a car is stolen, they take the car number, they follow the car; people could tell you from point A to point B to point C where they have followed and tracked the car, and for some strange reasons, helicopters, blimps all over, and you would never be able to retrieve this vehicle; and this is just a car, far less for somebody's child. The Attorney General in his contribution spoke about the movement of a person in a barrel on a truck on the roads of Trinidad and Tobago.

Mr. President, my contribution today is going to be very short, but I wanted to draw reference to the network as it exists with this piece of legislation and why it is important nationally and internationally for us to have it passed and enacted. I do agree with the call from the Opposition to have this enacted and passed by the President as soon as, quickly, so that it becomes law. I support that call; I think it is a good call. So it is simply that we do have a duty, as a Parliament, when legislation comes to us to enable our State to be empowered.

We have a responsibility to look at this legislation and bring amendments, should there be the need for amendments, but if there is not, we have to understand and recognize why this piece of legislation is so important, not only nationally but internationally.

There must be the gathering of intelligent work. It should never be outside of the realm of the law or the Constitution and it should never be at the cost of individual freedoms. Sometimes we need this type of legislation, because of our freedoms, but it should never be at the cost. The Attorney General in his contribution did refer to the checks and balances within this Bill.

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As I close, I call on the national community to recognize the significance of this piece of legislation. Certainly I do call on this Parliament to support and give teeth and give the power to the State to protect it.

I do thank you.

**Sen. Elton Prescott SC:** Mr. President, before I commence my contribution to the debate on this Bill, may I, for the purpose of the record, invite the House to note that today is the anniversary of the independence of Barbados, November 30. I trust that it is not inappropriate to do that.

I should start by borrowing from the words of the National Anthem of Trinidad and Tobago: "God bless our nation". It is the place I choose to start, because I recall in 1990 we were told, some people said, that there was a violation of the Constitution for the very first time. Some people regarded it as a loss of virginity, but that was a violation; it was unilateral.

Today we are once again violating the Constitution, but this time it appears there is some consensual arrangement to have it done. Notwithstanding the violence of the language, that is something to be admired, that the opposing parties in office should find the time to collaborate on a piece of very important legislation.

Notwithstanding all that, the Bill really does seek to authorize the Government to invade the privacy of its citizens, so much caution is called for in how we approach this piece of legislation. At the end of the day, chances are everyone would feel that it ought to be supported, but there are some requirements for safeguard that we ourselves ought to take into account now, while there is time to do so, without having to come back to this Parliament for amendment.

As we all know, the Constitution poses a philosophical competition for us between the obligations of the State to protect the citizens, the property and safety of the citizens, against the rights of the individual to respect for his private and family life. It is that competition which brings us here today, because we know—and Sen. Oudit just used the word that there are freedoms. It is because of those freedoms that we actually have to legislate in this fashion, because some people do take advantage of their freedom.

The Bill, we must confess, seeks to abrogate, to infringe, the constitutional guarantees that the citizens have, and it is for us the lawmakers to ensure that when we dot the "i"s and cross the "t"s, we have done it all in the best interest of the citizens themselves.

The Minister in introducing the Bill said that this interception was permitted for the purpose of intelligence gathering. But I am inclined to ask: who will protect the citizens from the unscrupulous and the malicious and those who are in positions of privilege and power? Somebody needs to look after such protections, and it does not appear from the Bill that any emphasis was placed on offering those protections.

I return to the theme. We are invading privacy, we know that we are invading privacy, but legislators ought to take into account that in so doing it is necessary to provide the safeguards. The Bill hopelessly does not address this question of who will protect the citizens from the unscrupulous and the powerful.

Secondly, what are the avenues for redress? If a citizen, as this Bill permits, should find his communications intercepted unlawfully by a person in position of power, how does that person go about finding redress in this piece of legislation? Does he have to seek a fiat from the Director of Public Prosecutions to prosecute? Does he have to bring a constitutional motion to get damages? Or do we think, well it is only an invasion of privacy, we have only interrupted one of his communications, there is no value to that?

The instinct of the lawyer is that if you have infringed the right of the citizen, then he ought to be compensated for that infringement. This Bill does not address it at all. We have come here clearly with the thrust that we are doing things to protect the citizen, but the protection falls short in that regard, I respectfully submit.

The country has reached the state where, if I may state, it would be naive of us to continue to presume that there is regularity among state officials, that they would discharge their duties honestly and in accordance with the law. So we emphasize that there must be some kinds of safeguards introduced into the legislation and, therefore, I am about to embark on some suggestions for such things.

In the first place, I should like to see a commission or a sole commissioner if it becomes necessary, with power to issue the warrants in this Bill. I think the hon. Attorney General attempted to justify the approaches used in the legislation. One of the bases for his justification was that the pool was too small. But we all know that even in those circumstances, even in the midst of adversity, one must try.

We found chairmen of boards; we found chairmen of integrity commissions; we found commissioners of police. There are citizens here who can do these things. We know that there is a limited number of retired judges, but regrettably it

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is there we must look and there are not too many who are sufficiently in control of their faculties, that is, we cannot rely on them. There are people of integrity all over the society. Each change of government produces a whole new batch. *[Laughter]* *[Desk thumping]* One only has to look.

The reason people do not come forward is because those very people are concerned about their standing in society and their privacy, but they are all concerned for the safety of this country and so we can attract as many people of integrity as there is need for them. So I am proposing that we should look to a commissioner; if not a sole commissioner well put it the other way; if we cannot establish a commission with the power to issue warrants, then we must find a sole commissioner who may do so. It is not unheard of.

I have here the benefit of a bit of research which, if you will permit me, I should read from it. It comes to me via an institution in the country. It comes out of Hong Kong and it was research on interception of communications in selected jurisdictions.

In the United Kingdom, the research says that the Home Secretary does it. The Home Secretary, to the best of my recollection, is a politician. He is a parliamentarian who has sought and secured elective office. But there are some offices, some individuals in the society, who are quite capable of being able to fill the role themselves, and there is no reason why we should continue to shortchange ourselves and say that there are not persons out there who are capable of doing it.

They do not all have to live in Port of Spain. I do not have to speak for certain parts of the country; everybody knows my position on that. The US uses judges, we are told, and so does Hong Kong. They use retired High Court judges and their capacity to do the work is satisfactory to the countries from which they come.

The second suggestion I should like to make is that we should consider introducing something in the nature of a National Security Ombudsman or a tribunal, the purpose of which is to provide a mechanism for hearing and determining complaints of citizens who feel that their communications have been unlawfully intercepted, and there would be many of those. The way the legislation is worded, one may think that people do not have a right to protect their communications, but it seems to me that we should have started off on the basis that we are invading that very right and, therefore, there will be wrongs.

**10.55 p.m.**

There will be those who will unlawfully intercept. They may do it unwittingly,

they may do it because they do not understand the legislation and they may do it because they made some procedural error in getting the warrant, but if it is wrong it is wrong, and because it is wrong citizens ought to feel that this wrong should be remedied. One does not need to say more than that, but I say it in any event, because if you have intercepted communications not in conformity with the warrant issued, where in this legislation does it say that the citizen, either, will know about it and if he knows about it he can satisfy himself by seeking compensation for the wrong?

What if the interceptor, the authorized officer, wrongly retains the intelligence? What if it comes to the attention of the person whose communication it is? Should that person not feel that he can approach somebody—I am suggesting that it could be a national security Ombudsman or a national security tribunal—and say, “I have been wronged”? You may think it is not worth anything to you, but it is the fact of the intervention, the fact of the unlawfulness of the intervention that empowers me to say that you must compensate me in some way. Judges have a way of determining what it is worth so that we do not have a difficulty in getting there at all.

Once again if I may turn to the research which I have for the benefit of all, Mr. President. I am saying that we are not reinventing the wheel here. In the passage, “Monitoring by the Judiciary” it says that:

“An Interception of Communications Commissioner has been set up or a Supervisory Authority who must be a Justice of Appeal appointed by the Head of Government from among nominations submitted by the Chief Justice”.

Now, certainly this is not beyond us at all; a Chief Justice who says, “Here are my nominees from among Justices of Appeal”.

You would permit me to digress a bit. I know that our Chief Justice may be regarded as a person who would now be in a position of some kind of bias, he having been, according to the newspaper, the victim of some kind of interception, but nonetheless we can expect people such as he to stand above that kind of concern and make a proper recommendation, an acceptable recommendation for a supervisory authority of the sort that I am recommending. If a contravention, may I say, it is found to have occurred, that statutory authority has the power to quash the relevant warrant, to direct the destruction of the intercepted materials and to order compensation to the complainant.

In the United Kingdom the power to hear and determine complaints rests with

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the investigatory powers tribunal. Mr. President, ad nauseam, I make the recommendation once again. Let us consider that insofar as we are intervening in people's lives and abrogating their rights, there ought to be somebody—a body above all the cut and thrust—that will determine whether the intervention, the lawfulness of it, warrants some kind of compensation, some kind of apology even, to the citizenry. That body I am recommending should have an oversight power on all of the activities of the authorized officer under the legislation and should focus on monitoring misuse of the power.

The legislation seems to be framed on the basis that there will be no misuse of the power, but we all know that there will be, because the temptation is probably unavoidable in the hands of those to whom the power is given. So if we introduce the Supervisory Authority—call it what you will—Ombudsman, tribunal, what have you, that body or person should oversee what is happening, monitor the use or misuse of the power and when the need should arise, that body should have the power to revoke the warrant, cancel the warrant.

There is provision, Mr. President, in the Act for revocation and it is to be found at clause 11, which is for those who wish to follow on pages 18 and 19 of the Bill, and if I may read bits of it please; clause 11(1):

“Where a Judge is satisfied that the urgency of the circumstances so requires—

- (a) he may dispense with the requirements for a written application and”—a declaration and if he is satisfied that a warrant is necessary he shall issue the—“warrant”.

Clause 11(3) says:

“Where an applicant has submitted a written application and”—declaration—“in accordance with subsection (2),”—that is to say he has got his warrant ex parte, he has submitted the relevant application and declaration and the judge has it before him—“the Judge shall review his decision”—clause 11(3)—“to issue the warrant and shall—

- (a) make an order revoking the warrant if—
  - (i) he is not satisfied that the warrant continues to be necessary as mentioned in section 8(2); or
- (b) make an order affirming the warrant, if satisfied that the warrant

continues to be necessary...”

Clearly, Mr. President, there is left to the judge that discretion to determine, “Was I misled? Did I do the right thing in permitting this warrant to be issued?” So he is given the power to revoke the warrant if he is not satisfied that the warrant continues to be necessary, but one would have said that the power really ought to be to revoke the warrant if he is not satisfied that he was given the facts, as they were at the time he was told about the need for this warrant, they were capable of being justified when the time came to provide him with the declaration.

When you provide the details to the judge, the judge ought to be able to say, “I am not satisfied that when I issued this warrant”—under clause 11—“I had before me all of the facts or these facts were accurate ‘and or’ reliable.” It should not end with him saying, “The warrant does not continue to be necessary therefore I am revoking it”, because the tail would therefore be wagging the dog. [*Desk thumping*] Mr. President, I may not say that I am not supportive of any tail wagging being done in that fashion, or dog wagging, forgive me.

The same could be said of 11(3)(b), that it ought not to be reliant only on the authorized officer satisfying the judge that there is need to continue the warrant and that is why the judge must affirm it.

The power of the judge to order destruction also, if I may invite you to turn to that, clause 20, and clause 20 can be found at page 32. It says:

“An authorized officer shall ensure that any record of information obtained from the interception of communications in pursuance of section 8 or 11 that is not related to the objective of the interception is destroyed immediately.

An authorized officer shall ensure that any record of information obtained from the interception of communications in pursuance of section 8 or 11, being information that relates wholly or partly and directly or indirectly to the objective of the interception is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.”

Now, Mr. President, what clause 20(2) does, is leaves it to the authorized officers who know that there is no time limit on criminal proceedings to destroy such information any old time. Once again I return to the topic, if we are invading people’s privacy ought the draftsman not to change his focus a bit and ensure that this authorized officer is obliged to destroy and obliged to destroy within a specific time? It seems to me that that would be the Parliament’s way of saying to

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the citizen, "It is your interest that I am concerned about". This Bill appears to be located in how does the authorized officer exercise his power to intercept communication. I am saying that it should be located in another place. How do we protect the citizen notwithstanding that we are invading his privacy? Because if we overdo it, if we misuse it, there must be some way of providing redress. I am urging that in tweaking clause 20 a bit we should provide that kind of protection.

Let me move on, once again by way of offering that further protection that further guarantee to the citizen of protection of his rights. Should the owner of the intercepted communication not be informed that his rights have been violated? Should a judge not be able to say, "I find that you were wrong to have sought and obtained this warrant, and if in those circumstances rights have been violated"? Should there not be an obligation on some power, somebody, the authorized officer even, to inform the citizen accordingly? It may be a strange thing for a legislator to say. However, if you have found that a constitutional right has been infringed, the citizen need not be kept in the dark about it. Tell him! Because he is entitled to approach the judicial body and say, "I require redress", put the cards on the table; face up so that the citizen knows that somebody is protecting his interest and his rights.

Mr. President, one further point on this. Have you found in this legislation any requirement that the person accused of a related offence has access to the information which might be useful to his defence? I overheard Sen. Beckles-Robinson, I think, speak to that point that today the criminal laws permit the accused person to have that kind of information so that he can properly prepare his defence. Does the accused person in this circumstance, who is being prosecuted for a related offence, not have those rights? This legislation does not address that at all, and far be it from me to pretend to know all that are available to the accused person in the criminal court, but it seems readily understandable and to be appreciated that if he is to prepare his defence properly, fully, then he must know what information is being held against him.

I know that there are provisions in the Act that treat with non-disclosure and no obligation to disclose, but at the very least the man who is charged with an offence under this Act must be permitted to defend himself fully. We cannot simply take away that right from him and there must be a mechanism for permitting it to come to his attention. What is the information? Maybe the source need not be disclosed.

I move on, Mr. President. I want to deal with this thing called the urgent

application which clause 11 provides for, page 18. Clause 11 says:

“Where a Judge is satisfied that the urgency of the circumstances so requires—

- (a) he may dispense with the requirements for a written application and a declaration and proceed to hear an oral application for a warrant; and
- (b) if satisfied that a warrant is necessary as mentioned in clause 8(2), he shall issue a warrant in accordance with this Act.”

My simple question is, how much longer is it going to take the authorized officer to write up the application? Is this something that he is going to call the judge and say, “Judge something is going down”? How long is it going to take him to—the form; if you look at the form it is set out in Schedule I, I think—I trust that I am right—the application for a warrant. This is a one-pager:

“I.....Chief of Defence Staff hereby apply to a Judge of the High Court under the Interception of Communications Act”—I am assuming that you can have these forms in some computer somewhere and you are just going to fill things in. I do not know what the proper language for it is—“I pray that the Warrant be issued to authorize x”—and named person—“to intercept, in the course of its transmission by means of a public or private telecommunications network, the following communication”—now you are going to type something in—“communication x sourced on”—so and so date, et cetera.

**11.10 p.m.**

“And I further pray” these words can be there on a set form “that the (Name of Person) be authorized to disclose the intercepted communication to (Names of Person) in the following manner:”

Presumably a short sentence of three or four words.

“This application is supported by a statutory declaration...”

If this is all this authorized officer is required to put into writing, could there be any matter that is so urgent that could prevent him doing this in less than five minutes? If I am right and it will take only five minutes to do, why is clause 11(1), in the face of my plea that we should have regard for the rights to privacy—and I better not say it wrongly—the right to protection of his private and family life, why is that right being given up so that the authorized officer does not have to do anything but telephone a judge, or walk across to the Hall of Justice

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and ask the Registrar to identify some judge for him? It is not going to take long. Does it take any longer that it takes to write up the warrant? Answer: no.

I am reminded that—and I had stopped deliberately in Schedule 1 and said, well—sorry, let me go back to Schedule 1. Schedule 1 went on to say it is supported by a declaration. But if there is urgency, then maybe we can tweak the legislation so he does not have to provide the declaration at that point, but he would have said in his writing to the judge, “I have some good reason for doing what I am doing.” He will provide the declaration later.

You see the declaration, Mr. President, is a much longer and more involved document, but the citizen needs to know that somebody took the time to put into writing for the benefit of a judge to say, “These are the short, brief reasons why I need to act. I have a communication; I know it is useful to what I have to do and I want to be able to go in and get it.” And judges have enough good sense, both of what is going on in the world and in their profession, to make a firm determination on that. In any event, the legislation permits for the applicant to return before him with the declaration and the declaration will either be complete and good in itself or a complete waste and the judge will know what to do. So that I am urging this Senate to note that the urgent application, the provision for it, is a major environment for abuse and that we should not facilitate the further invasion of privacy if we can afford to avoid it.

May I now invite your attention to clause 10(5), which is on page 18 as well? Clause 10 is the section that includes the revocation. It says a warrant shall be issued for a period not exceeding 90 days and it may be renewed— clause 10(2)—and further renewed, clause 10(3). It says:

“An application for a renewal ...shall be in writing and accompanied by a declaration...”

But clause 10(5) is what I wish to focus on for the moment. It says:

“If, at any time before the end of any of the periods referred to in this section, a Judge is satisfied, after hearing representations made by the authorized officer, that a warrant is no longer necessary as mentioned in section 8(2), he shall revoke the warrant.”

I am urging that the authorized officer should be obliged by the legislation to apply to have the warrant revoked once it is no longer necessary. It is a slight difference but it is a noticeable difference.

Clause 10(5) says:

“If, at any time before the end of any of the periods...”

In other words, he may wait until the 90 days have expired if he wishes.

“If, at any time before the end of any of the periods....a Judge is satisfied...”

Judges are not normally required to initiate action of that sort. Maybe it is intended that somebody should come before him, but it does not say so. The Judge if satisfied on his own initiative “after hearing representations made by the authorized officer”—or somebody he may call, I presume, or who may go before him—“that a warrant is no longer necessary as mentioned...he shall revoke the warrant.”

What I am urging is, if the warrant ceases to be necessary on the second day, then he must be obliged to appear on the afternoon of the second day before the judge and say, “I no longer need this warrant. We shall no longer invade the privacy of this citizen.” That is the thrust that I am offering, that the invasion of privacy should be minimized down to the minutest detail, if it is possible. It would not always be; we cannot bury our heads in the sand, but the authorized officer has the panoply of investigative powers, human resource, technology and he knows if he has made an error or if the warrant ceases to be necessary. He ought not to hold onto it for the next 88 days just because we have failed to say in clause 10(5) that he is obliged to appear immediately thereafter. The revocation of it is equally important to be done as the obtention of it.

I am urging that if an application is to be made under clause 10(5), he must once again address the judge on why was it necessary to obtain the warrant *ex parte*. He is always under an obligation to explain every step that he takes. He comes before the judge in clause 10(5) to say, “This warrant is no longer necessary.” If he remains silent the judge may think, “Well, maybe they did not find what they were looking for”, but that is not good enough. He must say, “Remember when I came to you *ex parte*, I told you that I had overheard a certain conversation and I needed to take a further step? Well, it turns out that I was wrong; my source was wrong and, therefore, my interception of that communication was wrong”, ergo, or QED, if you like. The citizen must be told that he had been the victim, unwittingly, if that is the case, of an interception. But he is entitled, if he so chooses, to seek and obtain redress from the courts.

May I just say, by way of reference to clause 24, and it is those applications to revoke, they should be included in the annual report as well. We need to know

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how many times the authorized officer has either made an error or seen it fit to say, “I no longer need this warrant.” I am sure it is going to be an important statistic for those who like statistics, but the annual report, when I come to deal with it a little further, is something of value to the society and to those who are required, as I had urged previously, to monitor the interception of communications. May I just say that it is my view also that even a modification of the warrant should also appear in the report required under clause 24. There is no reason why it has not been included and I would urge the Minister to give thought to that as well.

May I invite your attention to clause 9(4)? Clause 9(4) appears very innocuous, but to me it is quite an offensive clause. Clause 9(4) reads as follows:

“Where the applicant (of a warrant) intends to seek the assistance of any person or entity in implementing the warrant, the Judge shall, on the applicant's request, direct appropriate persons or entities to furnish information, facilities, or technical assistance necessary to accomplish the interception.”

Now, this is once again the legislator saying, “I am here to facilitate interception.” But does not clause 9(4) remove that safeguard of legal professional privilege? If a person is named in a warrant or directed by the judge in the warrant to provide information to the officer, and if that person should be an attorney who has received privileged information, are we lightly going to remove that protection both of the attorney and of his client? It is something that grates on the tympanum to suggest that one simply has to tell the judge, “I need for you to include some people here who must provide me with information”.

To move a step further, it contains an element of oppression, because it is a direction that is going to be applied against an unsuspecting and innocent person in many cases and it is going to order that person who is not involved, not suspected of being involved in any criminal activity at all, to comply with a warrant at pain of a fine of \$1 million. This society has not yet moved to the point where, if a policeman tells you to move, you move. It has not moved to the position where, if a policeman tells you, “Give me what you have in your pocket”, you will give it to him. You must at least give him some talk. And the fine for that is \$1 million.

This might be a good time to ask, although I will ask it again—the lawyers here should know, those who practice in the criminal court: Can magistrates, with their summary power, fine people \$1 million? If they can, then what is the point in having indictable charges? I suspect that it is wrong to do that, but I would be

corrected if that is the case.

Clause 9(4) goes on with this oppression in this way. It says—well, let me read it again:

“Where the applicant intends to seek the assistance of any person or entity in implementing the warrant, the Judge shall, on the applicant's request...”—do certain things—“direct appropriate persons”, et cetera.

Can we impose—let me not put it by way of a question. We should not be imposing a fetter on the judge's power to refuse the applicant's request. We simply should not. It cannot be that we should simply say “The Judge shall, on the applicant's request, direct appropriate persons”, et cetera. The focus in this legislation is too much on giving power to the authorized officer and, weighed in the balance of that power and the right to privacy. The right to privacy is affected. It loses. Let me just say that I know that we do not have a specific right to privacy; it is the right to enjoyment of private life and family life.

But if we are going to intervene in it; if we are going to violate it, let it be with such safeguards that the citizen does not feel that it has been taken away from him. He has submitted to the act of intercourse but he does not want to be violated, and by intercourse I am referring to the interception in what he is doing.

Finally, under clause 9(4), it says:

“...the Judge shall, on the applicant's request, direct appropriate persons or entities to furnish information...”

I make one simple recommendation, that instead, even if the judge is obliged to do it, he should insist that they identify the appropriate person and name that person in the warrant. The person to whom the direction is given to furnish information ought to be named. If it is lawyer X name lawyer X and that person, the one who is now directed to furnish the information, he too should find that his reasonable expenses are reimbursed by way of legislation. He should be entitled to say, “I am complying with this direction but it is going to cost me something and somebody ought to pay.” Because, remember, he is furnishing facilities, technical assistance and/or information and to me there is a cost to at least two of those, if not all of them.

Finally, in regard to the warrants, I am urging that those who draft this legislation should take the time to say specifically that the warrant is to be issued under the hand of the judge. It does not say it and I know that people infer that if

we say it is issued by the judge, it can only be issued if he signs it.

**11.25 p.m.**

But I would prefer, just to be cautious, that the legislation require the warrant to be issued under the hand of the judge and the same should be said for the renewal and the modification of it, and at each step of the way the judge must say, "I have applied my judicial mind to it and I am prepared to issue or renew or modify this warrant on that basis and I will put my signature to it." It might be necessary to write a whole new clause for it, but it is my recommendation nonetheless. Maybe a new clause 13 might suffice.

I wish move to another issue, Mr. President, and it is clause 23 at page 35. I am grateful to Sen. Anmolsingh-Mahabir for having raised this with me. Let me read of the relevant passage:

"23(4) A person who intentionally has in his possession communications intercepted under this Act and who is not authorized to have such communications commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and...imprisonment for two years."

When you read (5):

"A person who intentionally has in his possession communications intercepted under this Act and who is not authorized to have such communications and who discloses such communications commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years."

Now the focus in subclauses (4) and (5) is on possession. If you have it intentionally, you are susceptible to being found guilty of an offence. If you have in your possession intentionally communications that have been intercepted, no question of whether you know that they are unauthorized.

Such a person who has in his possession communications that are intercepted under the Act and who is not authorized to have such communications may find himself imprisoned, worst if he discloses it. But what if this is a member of our responsible media? Is it not an attack on press freedom that we say to him. "Once information comes into your hand you are likely to find yourself guilty of an offence"? The media man may not know that he is not authorized to have that communication. His source has told him this is what is happening, and we know that there are jurisdictions in which sources are protected as though it was a

constitutional right, and it probably is.

So, the media person—let us substitute it, the journalist, who has in his possession—knowingly, intentionally having it in his possession because the focus is on possession; “intentionally” is the adverb to having in possession—a communication which is intercepted under this Act—he has no idea how it has come to the source; he has no idea at all. All he knows is that he has this information—can be found guilty, a fined \$100,000 and sent to prison for two years; worse if he should disclose it to someone else, as he would do because that is his job. He will put it in the papers, “A reliable source has told me that X has been said.” It may not be something gossipy. It might be really serious, valuable information and one responsible journalist having got from what he regards as a reliable source, he knows that he has it, but he does not know that he is not authorized to have it. I am not going to flay that horse anymore, but I trust that those who understand what I am saying are listening, or those who are listening understand at I am saying.

I return to the question of destruction of records, Mr. President, clause 20 at page 32. Clause 20(1) reads as follows:

“An authorized officer shall ensure that any record of information obtained from the interception of communications in pursuance of section 8 or 11”—that is to say that he had a warrant—“that is not related to the objective of the interception is destroyed immediately.”

So it contemplates an authorized officer erring; if he has a record of information obtained where he has intercepted and it has nothing to do with the objective of the interception, it is said that it must be destroyed immediately. If we go to clause 20(6), we will note that Commissioner of Police has to consult with the Chief of Defence Staff, the Director of the Strategic Services Agency and, where he considers it appropriate, the Director of Public Prosecutions, prior to the destruction.

So it goes through the door immediately.

If you tell me that the authorized officer, namely one of these three persons, must destroy the communication immediately upon him determining it is not related to the objective, then when is this consultation going to take place between knowledge and destruction if it is going to be immediate? It is probably an oversight. Probably the anxiety to get this ready this may have just slipped its way in, but because it works against what clause 20 seems to have set out to do, I

would urge that it be revisited and the appropriate correction put in.

Secondly, under clause 20, I am urging that clause 20 should speak specifically to a duty on the authorized officer to report on the nature and the quantum of the records that would have been destroyed. It should find its way into the annual report as well, and he must certify that he has destroyed it because it was not related to the objective of the interception. [*Desk thumping*] It is the quintessence of monitoring that he should be required to place the cards on the table and say, “This was one of my errors”; slip-ups or what have you.

I go back to clause 20(6), Mr. President, and lament that I cannot find any reason why the Commissioner of Police has a duty to consult with the Chief of Defence Staff and not the other way around. It says that:

“The Commissioner of Police shall consult with the Chief of Defence Staff, the Director of the Strategic Services Agency and, where he considers it appropriate, the Director of Public Prosecutions, prior to the destruction.”

Presumably prior to the destruction of information that he has, but what if the Director of the Strategic Services Agency, who himself is an authorized officer, has communication in his possession that is not related to the objective of the interception? Does he not have to consult with the Commissioner of Police? If this is an oversight, then what might have been intended is that they are all required to consult, required by law, have a duty to consult with each other before they do the destruction. I am unable to question, or to guess rather, what renders it necessary for them to be consulted about it, but I am sure there are others who are better informed and would know why that would be so.

Mr. President, I invite your attention to clause 22. It says:

“The Minister shall be informed—

- (a) of an interception under section 6(2)(b) within ninety-six hours of the commencement of the interception;
- (b) of an application under section 8 by the authorized officer...;
- (c) ...of an application under section 11.”

One may casually think that clause 22 has imposed a duty on the authorized officer to inform the Minister, but this language is inappropriate to do that. Should I repeat that, Mr. President?

**Mr. President:** I understand what you are saying.

**Sen. E. Prescott SC:** Thank you very much, Sir, but I will do it for Sen. Al-Rawi. The language is “the Minister shall be informed”, and I am simply urging that we must put the subject before the predicate. Somebody should inform the Minister. Do you remember subject and predicate?

**Sen. Al-Rawi:** Yes.

**Sen. E. Prescott SC:** Good!

Mr. President, it is not inconsistent with what I have been saying about the premise on which this legislation should have been drafted, that there should be attendant penalties and sanctions for failure to inform. We require the authorized officer to be on his toes at all times because he is being monitored—if my suggestions are accepted—and should he fail to comply with the duty under clause 22 to inform the Minister, certain penalties and sanctions should be applied. Otherwise, clause 21, which is just above it, will provide you with a defence every time. He would simply have to say, “I forgot in good faith. I failed to report to you in good faith.” Clause 21 says:

“An authorized officer shall not be liable for any act done by him in good faith pursuant to this Act.”

So when the Minister calls upon him, he says, “Oh my God. Good faith” and the Minister's hands are tied. I have heard enough good things said about this Minister to know that he is very stern, but sometimes you cannot defeat the law. If the language of the law does not permit him to do it, it will be a waste of his blood pressure.

There was up until November 24 a requirement that the Minister be informed within 48 hours—clause 22(a). I would have liked to know why the period has been increased from 48 to 96.

**Mr. 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. F. Al-Rawi*]

*Question put and agreed to.*

**Sen. E. Prescott SC:** Mr. President, I am indeed very, very grateful. Thank you, Sen. Al-Rawi and colleague Senators. I was enquiring if there is an answer to

it. Why has that period been increased from 48 to 96 hours within which the Minister must be told? I can think of many cynical reasons why the Minister should be kept out of the loop, but I do not want to go on the record as having said it. I am merely enquiring why has it been increased.

I now turn to the powers of renewal, revocation and modification given to the judge. Because of the shortness of time I would merely give the relevant clauses: power of renewal, clause 10(2)(b); the power of revocation, clause 10(5); and the power to modify the warrant, clause 12. I would like to urge that these should be made conditional and the judge being satisfied that the interception is proportionate to what is sought to be achieved. That language is used in clause 8(2)(e). I observed the frown and I will take one of them just as an example.

If we look at clause 10(2)(b) on page 18, it says:

“A judge may—

(b) if satisfied that a renewal of the warrant is justified in any particular case,

renew the warrant for such period as he may specify in it...not exceeding ninety days from the date of expiration of the initial period.”

What I am urging is that, as in clause 8(2)(e) on page 15, the judge should, before doing so, renewing or revoking or modifying, satisfy himself that:

“the interception of communications to be authorized by the warrant is proportionate to what it sought to be achieved...”

You want to renew it, satisfy me again about proportionality. You want to modify it, satisfy me again about proportionality. All these are steps taken to satisfy the citizen, that, although I am invading your privacy, I have the greatest regard for your rights.

**11.40 p.m.**

Clause 6(2)(b), and this is the clause that commences to give the great power to the authorized officer says:

“(2) Notwithstanding any other law, a person does not commit an offence under this section if—

(a) the communication is intercepted...—

(i) in the interest of national security;

(ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for 10 years or more,

and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty...;

- (iii) for the purpose of safeguarding the economic well being of the State; or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement,"

The question I ask is: are there subjective tests for (i), (ii) and (iii)? Is the person who is intercepting permitted to himself say, "I am intercepting because this is in the interest of national security"? Or should there not be an objective test that he must be required to satisfy some official on an objective basis that he intercepted the communication in the interest of national security and can prove it to anyone?

If we look at the criteria for the issue of a warrant in clause 8(2), which is page 14, we see:

"A Judge shall not issue a warrant under this section unless he is satisfied that—

- (a) that the warrant is really necessary—
  - (i) in the interest of national security;..."

Remember that clause 6(2)(b) is saying that the officer or anybody may intercept a communication in the interest of national security. I may do it if I had the capacity, intercept anybody else's communication and when you come to arrest me, my answer would be: "I did it in the interest of national security"; and because I am an accused person, I ask the question: is there a burden of proof on me that this is for national security or is the prosecution required to prove or disprove that when I did it, it was not done in the interest of national security?

As I understand the criminal law, the prosecutor who has me before the court for intercepting contrary to section 6(1) must disprove that I did so in the interest of national security. I for one would be defending myself on that basis. I would be saying I am doing this to safeguard the economic well-being of the State and I defy any prosecutor to demonstrate to the contrary, because it appears to be a subjective test of that issue.

In clause 5, the word "intercept" is defined and I should like to see the words "reading" or "viewing" included in the definition of "intercept". I am treading on ground I do not know enough about, but I will read it briefly. It says:

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“‘Intercept’, in relation to a communication, means listening to a recording, by any means, such a communication...”

I would like to say that it should also go on to say “or reading or viewing it.” I know things like emails and images permit reading and viewing. We seem to want to prevent eavesdropping for malicious reasons. It is something that is provided for in Australia in their Telecommunications Interception (Amdt.) Act, 2004. I urge a consideration of that.

Clause 13(3) at page 20—this is the question I had asked before about whether magistrates are empowered to impose million-dollar fines. Clause 13(2) refers to clause 8(3). Mr. President, it is probably just an oversight, but permit me that one excursion—13(2) is to be found at page 20. It says that:

“A person or entity directed to provide assistance by way of information, facilities or technical assistance under section 8(3) shall, without delay, comply...”

However, you will find—and think I am right in saying—that there really ought to be a reference to section 9(4). This is so because clause 8(3) merely speaks to what is necessary for the purpose of applications. Clause 9(4), on the other hand, gives the judge that mandatory order to direct an appropriate person. Maybe someone should look at it again and change that clause 8(3) to 9(4). The same seems to be the position in clause 8(3)(vi).

Next are clauses 17(3) and (5) at page 26 which baffled me. I confess I cannot find what is meant by those provisions. I sought assistance from a Senator here who I think is way more intelligent than I, and overnight he could not find the meaning. Clause 17(3) says it comes under the rubric “Admissibility of evidence”:

“Where a warrant issued in accordance with this Act is revoked in accordance with section 11, the contents of any communication intercepted under that direction shall be inadmissible as evidence in any criminal proceedings which may be contemplated.”

You cannot speak of it if the warrant has been revoked. Clause 17(5):

“Subsection (3) shall not apply to any criminal proceedings in respect of an offence under this Act...”

In other words, you can refer to it. It is admissible, but if the court is satisfied that the disclosure of sensitive would jeopardize the course of any investigation being

carried out by authorized officers and the parties to the proceedings would not be unduly prejudiced thereby, the court may exclude such disclosure.

Because it does not make sense, I am not going to say anything more. It does not make sense to me and at least two other persons on this side. There may well be just a simple typographical error or a spelling or grammar error. Could it please be looked at? For some strange reason, this is the first time this is happening to me, time is running out.

May I go forward on this a bit, please? Clause 22(b) on page 34, commencing on page 33 it reads:

“The Minister shall be informed—

- (b) of an application under section 8 by the authorized officer who has made the application as soon as is practicable after the making of the application;”

Now the Minister’s signature is required there, according to clause 8(3)(b) on page 15. There will be a bit of cross-referencing. Clause 8 on page 15 says:

- “(3) An application for a warrant under this section shall, subject to section 11, be in the form set out in Schedule 1 and be accompanied by—
  - (b) a written authorization signed by the Minister where the warrant is applied for on the ground of national security, authorizing the application on that ground.”

Clause 22 (b) says:

“The Minister shall be informed...

- (b) of an application under section 8 by the authorized officer who has made the application as soon as is practicable after the making of the application;”

So here he is required under clause 8 to sign the certificate, but the authorized officer need not tell him anything after he has got the warrant. It could not be that they intend to treat the Minister in that fashion. It may be an error and I am prepared to say have a look at it. [*Interruption*] It can go to the judge without the Minister signing it because you can go ex parte.

Just in the event that they are unable to go along with my submission, if we may just go back to page 15 8(3)(b), the language in (b) really is pathetic. May I suggest this, because I do not have the time, that instead we should put a new subsection (4) and say:

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“For the purposes of clause 8(2(a)(i), a statement signed by the Minister that the warrant is necessary in the interest of national security shall be prima facie evidence of that fact.”

What is written here does not belong among secondary level education people.

**Sen. Baptiste-Mc Knight:** This new lot will have laptops; they will be able to do it.

**Sen. E. Prescott SC:** Very well. I stand corrected. Mr. President, I invite your attention to Schedule II, statutory declaration. Just for a bit of lawyers’ law, I think that the statutory declaration should say two things: that the deponent swears to the truth of what he claims to know in the declaration. If you look at item 3 of Schedule II, it says:

“(3) A Warrant is required because...”

They then they set out the facts or the allegations giving rise to the application. If he is putting something there of which he claims to have knowledge, he ought to say: “I swear to the truth of it”, and if as in item 6, he is saying: “I am informed and verily believe”, then we know that he does not have to give the source, but that is a format that can be used.

Mr. President, I fear that time does not permit me to deal with anything else. Thank you very much for the opportunity.

**The Minister of National Security (Sen. The Hon. Brig. John Sandy):** Mr. President, I wish to thank all the Senators for their valuable contributions to this debate on the Interception of Communications Bill. Distinguished Senators have all expressed their opinions; some rather vociferously on this issue, but they have all agreed to a large extent that the end justify the means. We all agree that the Interception of Communications Bill fulfils a larger purpose from which we can derive many benefits.

The types of communication available to individuals in the 21st Century are versatile and based on the ever-expanding and ever-developing range of technologies. Voice communication services have evolved from a fixed network model to include wireless technologies such as cellular telephones and Internet-based exchanges. Voice over Internet Protocol (VOIP) and data services have developed as well, spanning video, fax services, short messages, SMS, email image transmissions and other services.

Internet-based communications have become ever prevalent and have grown far beyond their initial potential of email to include instant messaging, peer-to-

peer (P2P) networking, chat services and low-cost voice communication through a variety of competencies and emerging technologies.

Mr. President, we are all aware of the dynamism of technology. So often we are faced with situations where, in quick time, items become obsolete before you. As a consequence, we must take cognizance of the fact that those out there are intent on doing wrong. I do not know of their initial potential to include instant messages networks and chat services through the variety of competences and emerging technologies. We are all aware of technology and so often we are faced with situations where, in quick time, items become obsolete. As a consequence we must take cognizance of the fact that those intent on doing wrong have all the technologies at their disposal. The nature of the Internet also suggests that new and innovative tools will be developed in the future to extend communications options in arbitrary ways.

Amidst this plethora of communications options, national security organizations and law enforcement agencies need mechanisms and proven techniques to detect criminal activities and terrorist operations.

**11.55 p.m.**

They are going to continue to use it. They have nothing else to do. With the technology at their disposal, they will take full advantage of it. We must keep up with them. The need for a lawful enforcement solution is growing, even while the dynamics of the telecommunications market and the legal and regulatory framework continue to evolve. The global vast expansion of communication technology creates significant challenges for national security and law enforcement organizations responsible for battling various forms of crime and terrorism.

Mr. President, the sophistication of criminal enterprises in abusing communication channels has increased with the rising popularity of these channels, posing a very real challenge to organizations responsible for protecting public safety and reducing the impact of crime on our communities. Given the broad availability of communication options and the relative ease with which criminal networks and terrorist groups can exchange information across these channels by both data and voice communication, the drive to intercept illegal exchanges and monitor the operations of criminal enterprises is both strong and persuasive.

Countries have created legislation that facilitate lawful interception of communications which take place across communication channels in response to

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these growing threats; rising crime and international terrorist operations as well. In order to meet the ethical requirements and privacy obligations of the heart of lawful enforcement, the Government of the People's Partnership must prevent any activities involving illegal interception and illegal access at all levels.

Mr. President, my dear friend on the other side, Sen. Al-Rawi, repeatedly used the term that this Bill is shotgun legislation. I do not think I need to remind the learned Senator that the Interception of Communications Bill had been drafted some years ago under the previous administration. It remains to this day quite a mystery as to why the former regime did not bring the Bill to Parliament to legalize the interception of communications. Instead, the Bill sat in abeyance while the private communication of law-abiding citizens continued to be listened to covertly and the crime wave continued. But I still did not understand, because one voice was accusing us for not bringing the legislation to the Parliament, and the other voice, you are saying that it is shotgun legislation. I think we need to get some medium here.

Mr. President, when this Government discovered that such illegal activity was taking place, we were filled with consternation and could not sit idly by and allow such gross invasion of privacy to continue. Rather than viewing this Bill as shotgun legislation, it should be viewed for what it rightfully is; a strong measure to seek to bring about a proper regulatory framework within which to intercept the communications of those citizens who are involved in serious crime and violent offences.

This Government vows and we guarantee, Mr. President, that the process of interception of communications will no longer take place at the whim and fancy of any political leader of the day. No longer will the rule of law be trampled upon and the rights of law-abiding citizens of this blessed nation be violated in such a manner. It is for this purpose that this Bill has been introduced, and here again, Mr. President, I wish to extend our appreciation to those Members of the Opposition and the Law Association who met with us, not bilaterally, but trilaterally; [*Desk thumping*] the input of the Law Association, for which we are grateful, to assist us in coming up with what we have arrived at at this point.

This Government, Mr. President, recognizes that intercept is a useful tool to combat illegal activity and we, therefore, need to be proactive to continue to battle the crime that faces this country. The faster that this Bill is enacted into legislation, the faster our law enforcement agencies can legally gather intelligence and evidence against those nefarious elements in our society who continually seek

to attack law and order and national security in Trinidad and Tobago.

Mr. President, I now wish to touch upon a few other issues that were raised by some of our colleagues on the other side. Sen. Deyalsingh, unfortunately and sadly so, associated this most important national issue with other matters, some of which were inherited from the former establishment; things like Clico and PSA. We came and met that and I thought it ought not to have been piled with what is happening now; what we are trying to achieve this evening.

Was he suggesting for one moment, Mr. President, that upon detection it should have been left to continue? I doubt it. Knowing him as I do, I doubt that is what he thought. And then he contradicted himself when he was speaking about cooperation of telecommunication carriers, and then he spoke about them being duty-bound; so I was not sure which angle he was coming at and where his arguments resided. From a legal perspective, he was making the point that, you know, there is nothing saying that it was illegal; but not being illegal, are you saying then that it is okay? It was wrong. It was wrong. It may not be illegal, but it was wrong. I know he did not mean that. I know he would accept that it was wrong.

As far as anonymity is concerned, this is why we have 6(2)(b)(i) to deal with that. We are speaking about the adverse relationships with respect to the SIA, and there are no adverse relationships as a result of that. Trinidad and Tobago continues to contribute to the Caricom effort. We were talking about what made it questionable. At no time did the director report that the people listed were being electronically monitored, in response to the point that you raised. I mean, in hindsight, we can look back and say okay, it was not done properly, but I disagree with that pronouncement. There is another issue about the man's life that I would not go into.

Sen. Ali, we dealt with the bipartisan aspect of it. As I indicated, the President of the Law Association himself was there and contributed handsomely to the final—well not the final document, but the document that went to the Lower House. With respect to the interception of the communication and the inclusion of a commissioner, that was raised and it was discussed at length, and it was felt that, because there is a cadre of judges at our disposal, rather than use one person, it would be better to use the judges at our disposal with respect to that commission.

Sen. Hinds compared us with a number of countries that brought legislation to their respective Parliaments, but I simply say to him that those countries were not faced with the leader, the past Prime Minister, and what he was trying to do to this

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country. Those countries that he mentioned were not faced with somebody like that.

With respect to the risk that operatives take, I do not think there is anybody in this august Chamber who is more aware of those risks than I. At no time, at no time, Mr. President, were any of those operatives or any of the employees of the SIA identified. He also indicated that our citizens found that the manner in which it was revealed was outrageous. I challenge that. I think it is the abuse of the citizens by invasion of their privacy that was found to be outrageous, [*Desk thumping*] as did some Members of the Opposition themselves.

He spoke about the five years and the offences with 10 years or more, and in comparison. I am advised that with the Prevention of Corruption Act, Chap.11:11, section 6, a person who commits an offence under sections 3, 4 or 5, notwithstanding section 105 of the Summary Courts Act, is liable whether upon summary conviction or upon conviction or indictment to a fine of \$500,000 and to imprisonment for 10 years.

Similarly, the Dangerous Drugs Act, Chap. 11:25, section 3, says that a person who cultivates, gathers or produces any marijuana, except where he does so under a licence granted under section 4, or where he is acting under the supervision of a person having such a licence, commits an offence and is liable, (a), upon summary conviction to a fine of \$50,000 and to imprisonment for 10 years.

I thought, Mr. President, it was insensitive to refer to the death of anyone as collateral damage. I do not think you would want to tell a grieving mother that.

**Sen. Ramlogan:** Quite so.

**Sen. The Hon. Brig. J. Sandy:** With respect to SAUTT, the training that he spoke about being attributed to some of the other arms of the service, that training is continued. Nothing there has changed. [*Desk thumping*]

**Sen. Ramlogan:** The training component is intact.

**Sen. The Hon. Brig. J. Sandy:** With respect to Sen. Baptiste-McKnight, the Senator made valuable contributions, and I humbly thank her for that. [*Desk thumping*] I wish to indicate, however, that the exchange of information among our neighbours and international friends has not been interrupted. There are other means of interaction and sharing. With respect to the Commissioner of Prisons or the Comptroller of Customs that we spoke about, there was also the suggestion that, at those meetings, the Commissioner of Prisons should be included among

those authorized officers.

The issue was canvassed in the consultation meetings with the Members of the Opposition, and you see, initially, the initial legislation, or the initial draft carried about six authorized officers. When we discussed it initially, it came down to one. We said it should be the Minister. During the meetings, during the discussions, it was felt that it ought to be these three, and this is what was discussed at length, and we came up with the Chief of Defence Staff and the Commissioner of Police and the Director of the SSA.

The post was considered for inclusion. However, it was felt that, with all due respect to that office, the authorized officers currently listed in the Bill were the ones best poised to conduct intercept exercises, as they had the relevant training and capabilities. As such, the office of the Comptroller of Customs and Excise was omitted from the list of authorized officers, as was the Commissioner of Prisons.

With respect to intelligence versus evidence, the learned Senator is quite correct that there is a difference between the use of intercept for gathering intelligence versus the use of intercept for evidential use.

**12.10 a.m.**

Section 6(2)(b) was included at the Opposition's behest, during the informal consultations/meetings. Members of the Opposition felt that the interception of communications, for the purpose of gathering intelligence, was an integral aspect of the usefulness of this Bill. We on this side agreed and, therefore, borrowed from the UK legislation the four aspects of intelligence-gathering, which you see before you, clause 6(2)(b) of the Bill.

The goodly Senator, indeed, exhibited great legal acumen in her interpretation of the Bill, in this regard, as she was correct when she determined that there is no need for the application of a warrant for the purposes of intelligence-gathering. She rightfully determined that in such cases, especially where there is a critical illness, the process to apply for a warrant may be too long and, as such, there is no need to apply for a warrant in this instance.

Mr. President, some of the Senators took issue with the fact that storage of documents is not dealt with in the Bill. The subject of storage of intercepted materials was raised during our consultation meetings. It was decided that such administrative matters will be dealt with, in the regulations that are to be made by the Minister, under clause 25 of the Bill. Other jurisdictions such as St. Lucia, which we have partially based our model on, deal with the issue of storage and

applications, affidavits and intercept documents and the processing and translating of intercepted material in their regulations.

Sen. Baptiste-McKnight also alluded to the short wave radios, which a lot of us remember from our childhood days. Of course, we have had—there was a joke where we would say: “Yuh cutting in like ah Spanish radio station.” This was because you would get all these bits and pieces of communication coming in, from time to time, involuntarily.

She looked at clause 7 of the Bill, which criminalizes the possession, sale, purchase or manufacturing of interception devices or components thereof and gave the example that the person may be innocently listening to a Bob Marley or Buju Banton and may then accidentally pick up a police communication or other form of communication. It happens. Sometimes you are on your phone at home and something cuts in. If you are on your radio, you can pick up police communication, or it could be a T&TEC wireman’s communication, and things like that. These things happen. I think it has to do with something—I am no expert myself—with the airwaves and things like that. These things do happen, as was said by the Senator.

I wish to point out, however, that the interpretation of the section is clear. The prosecution must first prove that the person knew that the design of device rendered it useful for unauthorized interception and must also show that the design of the device renders it primarily useful for unauthorized interception. If one has a short wave radio which, by its primary design, is for the purpose of listening to music and has no intention of using it to intercept communication, then one is not captured by the clause. If, however, the device is sold or advertized for sale as a device which has a capability of picking up communications, and an individual buys the device for this purpose, then he has the necessary intention and may be held liable under the clause.

We went on to deal with destruction of records. Some hon. Senators wish clarification on the issue of the destruction of records, which is dealt with at clause 20 of the Bill. My dear friend, who is not here, Sen. Al-Rawri, said that he believed when a record is removed, the Bill specifies that the information is to be destroyed; it cannot be maintained.

Under clause 20(4) of the Bill, it states:

“Where a warrant issued in accordance with section 11 is revoked or ceases to have effect, any record of information obtained from the interception of communications in pursuance of the warrant shall be destroyed immediately.”

I remind hon. Senators that clause 11 deals with an application for a warrant in

urgent circumstances where an applicant has 96 hours within which to submit all relevant documentation to a judge in order to have that warrant affirmed.

There was another issue raised during our meeting with the Members of the Opposition and it was mutually agreed that such information gathered under an urgent application would be of no evidential benefit, especially where the warrant ceases to have effect.

Thus, I refer you to clause 17(3), which states that the contents of any communication intercepted under section 11 shall be inadmissible as evidence in any criminal proceedings which may be contemplated. Therefore, with the intercepted material being inadmissible into evidence, it was thought that such material should best be destroyed, as it would have been gathered under a warrant that is either revoked or ceases to have any effect.

Under clause 20(5):

“An officer who intercepts a communication in pursuance of clause 6(2)(b) shall ensure that any record of information obtained from the interception that is not related to the objective of the interception is destroyed immediately.”

This clause therefore alludes to that instance, under clause 6(2)(b), where communications are intercepted for the purposes of gathering intelligence. Note that it does not state that information gathered under surveillance or for intelligence is to be destroyed. It makes the distinction that information gathered under the intelligence-gathering regime, that is not related to the object of interception, is to be destroyed. In other words, inconsequential information intercepted, while gathering intelligence, will be destroyed. In any event, there shall be consultation among the authorized officers and even the Director of Public Prosecutions, before any destruction of information takes place, as it is recognized that this consultative process may better divulge what may be truly useful intelligence for the purposes of fighting and solving crime.

My dear friend, Sen. Al-Rawi, spoke also about the authorized officer, and I dealt with that earlier. In particular, in his instance, when he suggested that, quite apart from the Chief of Defence Staff, the Commissioner of Police and the SSA, there ought to be others similar to what had been raised by Sen. Baptiste-McKnight. I indicated that, at our consultation, initially there were five, it came to one and then it went to three. I trust that will satisfy the goodly Senator.

He also spoke about the destruction of information after 20 days clause 20(1) and (2) refer. He spoke about reckless intention, which I could not understand, not

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being a legal myself, where he was coming from with respect to the reckless intention aspect.

My dear friend spoke about a list of persons sent home from the SIA. I wish to state categorically that there is no list of persons sent home from the SIA. [*Desk thumping*]

Then Sen. Ramkhelawan agreed that this is not shotgun legislation. He made the point that it is necessary and timely and that we should move expeditiously to enact this piece of legislation, because of its importance, and I want to associate myself with those remarks.

Following Sen. Ramkhelawan, we were educated by Sen. Drayton. She agreed, but was cautious, with respect to making laws, especially those affecting constitutional and fundamental rights. I totally agree with her in that regard. She indicated that we must assure that we do not let the law hamper us. With your help, Ma'am, it will not.

She also spoke about intercept and required more details on offences. I know that was taken care of by the hon. Senator. Is he asleep? He is attentive.

Then the Leader of Government Business, Sen. Beckles-Robinson—  
[*Interruption*]

**Sen. Panday:** Opposition.

**Sen. The Hon. Brig. J. Sandy:** My apologies. It is late.

**Sen. Panday:** Early Wednesday morning.

**Sen. The Hon. Brig. J. Sandy:** The goodly Senator spoke about phone registration, with respect to cellphones, and I thought that was quite a brilliant idea and is something that we need to look at, especially with respect to what is happening with our technology and crime outside there. She spoke also about the magistrate's authority for sentencing and we dealt with that earlier on. She also raised the issue of disposing of files, which is something we need to look at urgently, because this is something—at present, there is the possibility of having to do that urgently.

However, I was taken aback and somewhat disappointed by the utterances of the Senator when she spoke about SAUTT, the disbanding of SAUTT and the disbanding of the SIA, which is totally erroneous. There is nothing near disbanding of SAUTT and the disbanding of the SIA. We know the worth of those two units and that is not on the cards. People were sent home; this it is not so.

She also indicated that the Minister did not know anything. I never said that. What I did know, or did not know was that I was subject of a Power Point security briefing. I did not know that, sometime in October 2007, prior to the general election. That is what I found out. I must admit that it was of extreme concern when I found it out.

**Sen. Panday:** As somebody in the protective services.

**Sen. The Hon. Brig. J. Sandy:** Sen. Dr. Balgobin spoke about catering for possible errors, which is a valid point. He identified—sometimes we dial a number and somebody answers: “Hello” and it is not the person you want to get, because you may have put a 9 where you should have put an 8 or you put a 6 where there should be a 9. That is a valid point and something that we need to consider, with respect to our communications.

You raised the point about mail, and, as I have indicated to you earlier when we discussed it, I thought that this deals more with electronic mail, as opposed to paper mail. If you are thinking in terms of letter bombs, there are letter bombs. Probably that is something we need to take cognizance of as well and packages. Sometimes someone delivers a package—

To Sen. Dr. Wheeler, I would say the same, SAUTT and SIA, to use your words, have not been shut down. They have been shut down.

**Sen. Dr. Balgobin:** would I ask a quick question, given your repeated assertions at this point? Could you confirm whether any interception of communication activities are going on now?

**12.25 a.m.**

**Sen. The Hon. Brig. J. Sandy:** Senator, even if they were, I would not tell you. I would not tell the nation that. I did not expect you to ask me a question like that.

With respect to the contributions from Sen. Elton Prescott SC, most of them are in the legal realm, and I would prefer to allow my legal minds to assist in that respect.

Mr. President, I further believe that this Bill shall be an exceptional and constructive weapon in our fight against crime, and shall be mutually beneficial in the interest of both private citizens, as well as the nation’s security.

My learned friend on the opposite side alluded to the great book *The Art of War* by Sun Tzu. I wish to go further and quote from that book wherein it was

*Communications Bill*  
[SEN. THE HON. BRIG. J. SANDY]

*Tuesday, November 30, 2010*

written. I do not know if you are aware that basic officer training requires you to read all of Sun Tzu, [*Desk thumping*] so, I am more than acquainted. I would like to leave one of his quotations where he says: “Seizing the enemy without fighting is the most skilful.” [*Desk thumping*]

Interception of communication by its nature is covert and is operated surreptitiously. It does not put our law enforcement operators at risk, or in the direct line of fire. With the ability to produce such communication into evidence, we no longer have to rely solely upon eyewitnesses who are fearful of appraisal and intimidation. The risk of harm is, therefore, minimized and the reality of capturing the offender is greatly increased. [*Desk thumping*]

Mr. President, the lawful perception of communication will help our law enforcement agencies in the prevention and detection of serious crime, the prevention of terrorism and the safeguarding of national security.

Mr. President, this Government intends to safeguard the rule of law and the Constitution of Trinidad and Tobago, and protect the rights of the nation's citizens. This Government is also duty-bound to protect the citizens of this country from risk, harm and danger and to protect their well-being, as we intend to do with the passage of this consequential piece of legislation.

Mr. President, with this, I beg to 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.*

*Clause 1.*

*Question proposed, That clause 1 stand part of the Bill.*

**Sen. Baptiste-Mc Knight:** Mr. Chairman, will the Government reconsider putting the Comptroller of Customs back—

**Mr. Chairman:** Sorry, we are on clause 1, Senator.

**Sen. Baptiste-Mc Knight:** Or, sorry. It is 5(1) I am talking about.

**Mr. Chairman:** We will get to it.

*Clause 1 ordered to stand part of the Bill.*

*Clauses 2 to 4 ordered to stand part of the Bill.*

## Clause 5.

*Question proposed,* That clause 5 stand part of the Bill.

**Sen. Baptiste-Mc Knight:** Mr. Chairman, could someone explain which of the authorized officers will then be responsible for intercepts that the Comptroller of Customs and Excise would need to have applied?

**Sen. Panday:** The authorized officers are the Commissioner of Police, the Chief of Defence Staff or the Director of the Strategic Services Agency. It was felt in the committee that those three heads would have been sufficient for the purposes of the legislation.

**Sen. Baptiste-Mc Knight:** That is not an answer to the question I asked.

**Sen. Panday:** What is the question?

**Sen. Baptiste-Mc Knight:** I asked which one of them would be responsible for dealing with problems emanating from the Comptroller of Customs and Excise.

**Sen. Panday:** The Commissioner of Police. I apologize. The first time I did not hear it properly.

**Sen. Drayton:** Mr. Chairman, the definition of “intercept”, we have to broaden that definition. I think it was mentioned, when the hon. Minister was winding up, that an amendment was made there.

**Mr. Chairman:** There was the question of monitoring, reading or—is that acceptable?

**Sen. Al-Rawi:** Before the question is actually answered, relative to the intercept, not only is there the suggestion of monitoring for your consideration, but also perhaps that of modifying insofar as there may be a risk of modification. This is just on the floor for thought.

**Sen. Drayton:** The words were actually “modifying, monitoring and interfering with the network”, which is similar to the Jamaican and the United Kingdom legislation.

**Sen. Prescott SC:** Mr. Chairman, I had also suggested that the words “reading or viewing”—

**Mr. Chairman:** “Monitoring, reading or viewing” is what is before the floor.

**Sen. Prescott SC:** Forgive me.

**Mr. Chairman:** It is a question of whether it should include “modifying”.

**Sen. Al-Rawi:** Mr. Chairman, the context is that there can be manipulation and wickedness out of that. That is certainly the context—not wickedness, but the point is that modification of electronic material is actually an easy thing in today's world. [*Interruption*] I know that is why I put it very gently in the original words for, at least, your thought.

**Sen. Panday:** Our advice is that they do not want to monitor the communication, but what they want to do is intercept it.

**Sen. Al-Rawi:** Monitoring is a form of interception. That is the point. Monitoring may imply interception from time to time on a basis, but it is not interception.

**Sen. Panday:** In any event, monitoring would open it too wide. We think that the legislation as is, is couched in very tight language.

**Sen. Al-Rawi:** Sorry, I catch the point that we want to be careful, and you are suggesting that intercept should be the term, but we are looking to the definition for “intercept”. And, insofar as listening is a continuing activity, recording is, perhaps, a continuing activity and monitoring is also a continuing activity.

**Sen. Panday:** My humble view is that listening to and recording is sufficient to create that definition of “intercept”. In any event, monitoring means the same thing.

**Sen. Al-Rawi:** Mr. Chairman, just to bring the law of technology into play, it is conceivable that there may be instruments that do not actually listen and do not actually record. When we are looking at what communication includes, we are looking at data as well. There is a subset for data packages and quantum inscription technology, and the use of monitoring would, in fact, capture that. So, we are moving beyond the realm of thinking as a natural person listening to the thing. What if we have an automatic monitoring mechanism, as in the case of the United States of America, that catches key words and other bits? It is conceivable that it could be wider.

**Sen. Ramlogan:** I think the concept of receiving which was inserted during the course of our deliberations, at the request of the Opposition, was specifically amended to cover all of that, because to receive the communication is the point at which the interception actually occurs. You can neither monitor, “or view”, or read without first receiving. If receiving in itself, is the point at which the crime

was committed, to merely receive—you cannot monitor it, view it or read it without receiving it. So receiving in its widest sense would incorporate all of these lesser sins, and that was the thinking of the Opposition which we agreed to. I think it is a policy decision, and, having agreed with the Opposition on it, I do not think that we would like to depart from that at this stage.

**Sen. Al-Rawi:** Just to bear me out, borrowing from the law of copyright, receiving is a very particular concept in law.

**Sen. Ramlogan:** Except that we are not dealing with copyright.

**Sen. Al-Rawi:** I understand. Do you wish to truncate me on my first three words? Receiving is a very careful concept of law. Where does one receive? Who receives it? Could someone else have received it other than the person who is monitored? There are fine distinctions that can arise. Now, the context in which discussion occurred, I think we can accept it as a narrow one. While we are here in the Senate and we have an opportunity to make ameliorations to the definition, I do not see why we should confine ourselves to not, at least, consider it.

**Sen. Ramlogan:** Sen. Al-Rawi, we have considered it and the point is we feel, having agreed with the Opposition, the concept of receiving is wide enough to import all of the lesser sins that would be sufficient. I see Sen. Hinds shaking his head in agreement. Can we move on?

**Mr. Chairman:** Are there any other definitions?

**Sen. Prescott SC:** I would like to address the word “offence”. I think I would say instead: “except where otherwise specifically provided in this Act any offence where the penalty...”

**12.40 a.m.**

**Sen. Prescott SC:** My reason for this is that in a number of other sections, clauses 8, 6, 13(3), 16(7), (9) and 23 there are offences with different levels of punishment. Maybe the draftsman does not mean to include those in the definition of offence. The Bill now says that “offence” means any offence where the penalty is imprisonment for five years or more and includes an offence where death, et cetera, is the penalty fixed by law. If you look at some of the other sections in the Bill—

**Mr. President:** What are you recommending, Senator, I understand the point?

**Sen. Prescott SC:** That it says:

“...offence except where otherwise specifically provided in this Act means any offence where the penalty”, et cetera.

**Sen. Ramlogan:** This was a point that we considered as well. The insertion of the five years was at the request of my learned friends on the other side. The rationale at the time, which makes sense quite frankly, was that “offence” here means five years or more and the words “or more” will be captured. When you look at the other sections in the Bill to which you refer, you would see that we actually stipulate the term of imprisonment so that there would be no confusion on inconsistency, because the offences that are mentioned in the Act elsewhere are actually above the five-year bar and it is actually stipulated that it is 10 years or seven years, as the case may be. So the “five years or more” captures it.

**Sen. Prescott SC:** Permit me to draw your attention to the ones I am speaking of. If you look at page 25, for example, clause 16(7), you would see an offence for the fine of \$100,000 and to imprisonment for one year, then clause 16(9) on page 26, they are both for less than five years. I was urging that you should look again, because it seems to me that these would not be regarded as offences if you look at the definition, unless there is some other proper explanation. Clause 13(3) says \$1 million, but makes no reference to imprisonment, and clause 20(3)—all these clauses have different—

**Sen. Ramlogan:** I am with you.

**Sen. Prescott SC:** Would you like to look at these again?

**Sen. Ramlogan:** Had we the luxury of time, I would have loved to. What I would say is that the specific would override the general and because the offences that are referred to are actually very specific in the creation and definition of the offence, it would override any confusion that would arise out of the definition section.

**Sen. Prescott SC:** Are we not doing the same things if we simply way “except otherwise provided”?

**Sen. Panday:** AG, further to that argument, when we spoke about offence, we meant the offence which would emanate from the communication. If what you were trying—to bump or to commit an offence, it is there that five years came into the argument. So if during the intercept you are discussing something about trying to commit an offence where the penalty could be five years or more, that is what we were thinking about.

**Sen. Hinds:** But in light of the fact that the definition in some places on the inside are not necessarily more than five years, we have seen examples where it is not, then the simple amendment, “except where specifically stated” would deal with all of it.

**Sen. Ramlogan:** That would be implied if you have a specific which would override the general in statutory interpretation. So there is no need for it, because the specific would override the general as a matter of law in any event. That is why we did not really see it fit to go through it. I accept, it may be a little inelegant.

**Mr. President:** Why not put a capital “O” for “offence” here, wherever offence is?

**Sen. Ramlogan:** That might be a suggestion we could take on board and treat it as a typographical; put a capital “O” for offence in the definition section and treat it as a typographical.

**Sen. Al-Rawi:** Mr. Chairman, if I could ask, is it Sen. Prescott SC's position that because there are sections in this Act which we would wish to have as offences in terms of the definition of offence, but these sections are prescribed, in one instance, no imprisonment at all in one and others, one for two years and one for one? There is an alternative if it is to try to capture those offences, as offences within the meaning of offence as defined in this section, we could say, as we have here, that offence means, “any offence under this act or where a penalty”,—include it as an offence under the Act itself, if you want to capture the offences in the Act, in addition to offence in general.

**Sen. Ramlogan:** No, I understand Sen. Prescott SC's point. The suggestion of using the capital “O”—this offence was really meant, it would appear, Sen. Prescott SC, to deal with the two offences in respect of which interception is permitted, that would be the offences that would be five years imprisonment or more and the where you get the judicial warrant, and the other one for 10 years or more, where you do not need the warrant. By putting a capital “O” and treating in those sections with it as a capital “O”, would avoid the need for an amendment and, at the same time, allow us to push on. That is a suggestion we will accept.

**Sen. Al-Rawi:** But something drops out of that. If you wish to surveil somebody who is committing an offence under this Act for which we prescribed heavy penalties, \$1 million, \$500,000, \$250,000, but that offence under this Act is only one year or two years or, in one instance, there is no jail time at all, that person cannot be surveilled. They cannot be surveilled under clause 6(2)(B), because it is not above 10 years and they cannot be surveilled because it is not an offence over five years.

**Sen. Ramlogan:** That was the intention of both the Government and

Opposition.

**Sen. Al-Rawi:** So nobody is guarding the guard on that point?

**Sen. Ramlogan:** No; you have to have a cut-off limit because the principle of proportionality is one that comes into play. It was felt that the offence must be sufficiently serious, and that is to say over five years in the case of a judicial warrant, and 10 in the case of ordinary criminal intelligence.

**Sen. Al-Rawi:** Would you accept that the fines prescribed in this Act, \$1million, \$500,000, \$250,000 indicate the seriousness of the crime, even if the jail term does not? In other legislation where you would see offences arising, you would notice that the jail time is, in fact, a lot more and the fine a lot less.

**Sen. Ramlogan:** I think you misunderstand the point you are making, Sir, with respect.

**Sen. Al-Rawi:** I misunderstand my own point?

**Sen. Ramlogan:** Yes. That is what I am trying to explain to you. What you are speaking about is the grades of offences that are created in this Act when you commit an offence under this Act. What I am simply trying to tell you is that the five- and 10-year rule has nothing to do with an offence committed under this Act. The five- and 10-year rule really applies to what is the criterion you would use to guide whether you can intercept with a judicial warrant, so any crime in the law of Trinidad and Tobago which carries a term of imprisonment over five years, you can intercept with a judicial warrant.

Any crime in the law of Trinidad and Tobago that carries a term of imprisonment of 10 years or more, you can intercept without a judicial warrant, but you cannot use the intercepted material as evidence in a court of law. So all this about the fine being \$5 million or \$10 million, that is an offence created by this Act and it is either—in any law, it is either it falls five or 10 years.

**Sen. Al-Rawi:** The point is quite simple. I have not misunderstood my own point, as you put it across. This Act seeks to create certain offences which are serious offences if you look to the statement of the value of the crime. All I am saying is that we will not be allowed to surveil anybody who has committed an offence under this Act, at least in three instances. I am pointing out, is that our intention?

**Sen. Ramlogan:** Yes it was, because you do not want to intercept their communication to see whether they would commit an interception offence. That was not the intention at all. It is either five or 10 years and that is the end of it.

**Sen. Prescott SC:** Mr. Chairman, would you permit me one more intervention having regard to what the hon. Attorney General is saying? He has now introduced the word “crime” as a substitute for the word “offence”. I was wondering whether we could not, in the definition section, define crime as being “one for which the penalty” et cetera, et cetera, instead of the capital “O” suggestion? Where we have the word “offence”, put in its proper line up, of course, we use the word “crime”. So we say crime means any offence for which the penalty is—summary conviction, et cetera.

**Sen. Panday:** With the greatest respect, it is not committing the crime, but committing an offence in the Act.

**Sen. Prescott SC:** I do not like the capital “O”. It sounds like a kind of hodgepodge, makeup thing. I do not like it.

**Sen. Ramlogan:** Mr. Chairman, that is the position of the Government on this matter.

**Mr. Chairman:** I understand there is an undertaking from the Government side that there is a typo and they will replace that typo with capital “O” for offence and where that was meant to occur within the Bill itself, it would appear as a capital “O”.

**Sen. Baptiste-Mc Knight:** May I seek to get clarification. We are already into Wednesday. Can I ask, through you the Government side, whether they are willing to accept any amendments at all? Because if you are not, let us just proceed to the vote. We are wasting time if you are not ready to accept any amendments, and this thing is flawed with a W, F-L-A-W. If you are not going to amend it, I am not going to be a party to bad legislation.

**Sen. Al-Rawi:** Relative to offence I could propose the following. Without the statement of the capital “O” and typographical, it would meet what I am suggesting to say, “offence means any offence under this Act or”—and continue with the rest of the language, because that would take care of being able to surveil persons who have run afoul of this Act as well. [*Interruption*] Everything I say is rubbish and dismissive? Come on.

**Sen. Hinds:** What Sen. Al-Rawi is saying is that even if we get the capital “O” to resolve one part of it, it means that the offences where there is no imprisonment, the one offence, and the two offences where the term of imprisonment is less than that which is defined at the front with the capital “O”, “in those circumstances you would not be able to surveil.

**Sen. Ramlogan:** I understand perfectly well what he is saying. But the problem is that was a policy decision already taken. The policy decision was that you wanted to have proportional response and you have to draw the line somewhere. The line that was agreed to by both parties was five years in one instance and 10 years in the other. We cannot go back on that now. If we go back on that, we run the risk of the Leader of the Opposition saying that we betrayed him. I cannot do that to Dr. Rowley.

**Sen. Baptiste-Mc Knight:** So what are we doing here then?

**Sen. Panday:** Initially we said one year and it was the Opposition who asked for five years. We had said one year and the Opposition asked for five years and we conceded as a policy position.

**Sen. Al-Rawi:** What I am suggesting is simple. Proportionality is accepted as a solid policy point. The only thing that I am suggesting is if you are suggesting that an offence under this Act which can attract a \$1million and \$500,000 fine, that is well in keeping with proportionality.

**Mr. President:** I understand the policy to be that.

**Sen. Panday:** Senator, if you speak to the Leader of the Opposition and come back, we will be willing at that time probably to review it.

**Sen. Drayton:** If I may, I do not think our Constitution ever intended that because a Bill was approved in the other place, it must be accepted in this place. This place was meant to be a check and balance. The reason for that is so we make good law to promote good governance. After spending a day, if it was the intent that there will be no amendments, then we really should not be sitting here near one o' clock the following morning.

**12.55 a.m.**

**Sen. Ramlogan:** Mr. President, we are wondering if it would be possible to have a short break so that we can confer with our colleagues on the other side. The circumstances of this particular Bill are well known to both sides and we would prefer to have an opportunity to confer with our colleagues so that we can see whether we can make some faster progress on this matter.

**Mr. Chairman:** How long would you need?

**Sen. Ramlogan:** No more than five minutes or 10 minutes.

**Mr. Chairman:** Do you want us to suspend the Senate?

**Sen. Ramlogan:** Yes, for 10 minutes.

**Sen. Prescott SC:** Mr. Chairman, before you make a ruling on that may I seek a clarification? Does it involve only two sides or do the nine Independents now have participation in all of this?

**Sen. Ramlogan:** Everybody! You are our colleagues.

**Mr. Chairman:** This committee would be suspended for 10 minutes, we could always double the time, and we would resume at 1.10 a.m.

**12.57 a.m.:** *Committee suspended.*

**1.14 a.m.:** *Committee resumed.*

**Mr. Chairman:** So we are on the interpretation clause and we were at the question of “offence” when we broke. What is the position on that, Attorney General?

**Sen. Ramlogan:** Sorry, Sir?

**Mr. Chairman:** We were last on the question of what is the definition of “offence”.

**Sen. Ramlogan:** Yes. Sen. Prescott SC, I believe, had a proposal on the definition of “offence” and—did you all take a note of it? [*Interruption*]

Except as otherwise defined in this Act—[*Interruption*] Sir, the proposal from the technical team is “Offence means any offence under this Act or any other offence. So it would now read “Offence means any offence under this Act or any other offence where the penalty...”, et cetera. [*Desk thumping*]

I believe Sen. Baptiste-Mc Knight had a proposal with respect to the definition of “intercept”.

**Sen. Baptiste-Mc Knight:** It was Sen. Drayton.

**Sen. Ramlogan:** It was Sen. Drayton, I beg your pardon, Ma’am.

**Sen. Drayton:** Basically, what I was saying, I found the definition here narrow, very narrow.

**Sen. Ramlogan:** Yes, you wanted monitoring, viewing or reading.

**Sen. Drayton:** No, it was monitoring—

**Mr. Chairman:** You talked about modifying.

**Sen. Drayton:** Modifying and interfering, you see there is a distinction there

with intercept in that with modern-day technology you can interfere with the network in order to intercept. It is not a question of going to the provider and the provider, necessarily—you know, you can do this externally. The best analogy I could draw here, I can steal from you but it does not necessarily mean that I break and enter the home.

**Sen. Ramlogan:** I think we are prepared to accept “viewing or read”—“monitoring, viewing or reading”, but not the altering part.

**Sen. Drayton:** Okay.

**Sen. Ramlogan:** Okay, so we will go with monitoring, viewing or reading.

**Sen. Panday:** Could you kindly read the whole thing so everybody could pick it up? Mr. Chairman, could you read it?

**Mr. Chairman:** I would have to do it formally.

**Sen. Panday:** Okay, sure.

**Mr. Chairman:** The question is that the definition of intercept in clause 5(1) read:

“‘Intercept’, in relation to a communication means listening to, monitoring, viewing, reading or recording, by any means, such a communication in its passage over a telecommunications network without the knowledge of the person making or receiving the communication;”

*Question put and agreed to.*

**Mr. Chairman:** The definition of “offence” in clause 5(1) of the Act be amended to read as follows:

“‘Offence’ means any offence under this Act or any other offence where the penalty, whether on summary conviction or conviction on indictment, is imprisonment for five years or more, and includes an offence where death, imprisonment for the remainder of a person’s natural life or life imprisonment is the penalty fixed by the law;”

*Question put and agreed to.*

**Mr. Chairman:** Any other definitions in clause 5(1)?

**Sen. Prescott SC:** Mr. Chairman, I am not certain about this, I wanted to introduce an amendment to the word—rather a definition of the word “network”. Is that appropriate at this point? It is not included in the Bill.

**Sen. Panday:** Since we are on definitions, probably, this is the time.

**Sen. Prescott SC:** The definition for the word “network”, I am unable to tell you what the definition should be.

**Sen. Panday:** Okay, could we come back to that?

**Sen. Prescott SC:** Indeed, yes.

**Mr. Chairman:** Are there any other definitions?

**Sen. Ramlogan:** I just want to point out, Senator, that we have “private network” and “public network” defined, so I do not think we need to go any further.

**Sen. Prescott SC:** I am being told that it is my own ignorance of the word “network” and I shall—

**Sen. Ramlogan:** Right, I am obliged. [*Laughter*] I would not have put it that way, but I am obliged. Confession is good for the soul. [*Laughter*]

**Mr. Chairman:** Are there any other definitions?

*Question put and agreed to.*

*Clause 5(1), as amended, ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed, That clause 6 stand part of the Bill.*

**Sen. Baptiste-Mc Knight:** Mr. Chairman, could I have clarification on clause 6(2)(b)? At the end of subclause (iv) in (b), it says, “and any communication so intercepted may be used for the purpose of an application under section 8 or 11, but shall not be admissible as evidence in any court”. Now, does that mean that if a warrant is obtained it still cannot be used as evidence?

**Sen. Ramlogan:** The idea was, that, because this is communication intercepted for the purpose of gathering criminal intelligence, you may find that you can gather criminal intelligence without a judicial warrant and in the process of gathering that criminal intelligence you may then decide that. “Look, I want to go now for a judicial warrant so that I can have evidence which is admissible, because evidence which is obtained without a judicial warrant is not admissible.” What we are saying there is that the information you would have gathered during the criminal intelligence gathering phase without a judicial warrant, you can use that to make the application for the judicial warrant.

**Sen. Baptiste-Mc Knight:** Yes, but I do not think that is what this says here.

**Sen. Ramlogan:** Well, why not? It says, “any communication so intercepted may be used for the purpose of an application under section 8 or 11 but shall not be admissible as evidence in any court”.

**Sen. Baptiste-Mc Knight:** It says you can use it for making an application but it is still not admissible as evidence.

**Sen. Panday:** Yes, what happens is, the process—in the communication process you can listen to it and when you suspect you have enough information, then you use that to put on your application to go to a judge, because you have to convince the judge that you have sufficient cause to apply for a warrant. So if you listen to that evidence, then you use that evidence to go for the warrant under sections 8 and 11.

**Sen. Baptiste-Mc Knight:** Then, should we not rephrase this to say, “it shall not be admissible except where it is used to make the application”?

**Sen. Ramlogan:** The application will—

**Sen. Al-Rawi:** If I could just interject for a moment. Sen. Baptiste-Mc Knight, I too had some initial concerns on this and then re-read very carefully. The intent, as I understand it, I think is achieved, subject to any corrections that others may have, because this section is designed to allow for monitoring or surveillance, for what you call serious offensives, I am, forgetting national security for now.

**1.25 a.m.**

You can monitor or listen for anything which is an offence 10 years and above. If you choose to act upon it, then you take the next step. If you want to get to the point of using evidence in court to convict, you are going to go to a judge and take the warrant approach. However, if you choose not to act upon it and you are not going for a warrant, you already having under other terms of the Act informed the Minister of National Security, “Look I started surveillance because the Schedules provide for that” the next step that you are going to take is, if you do not go for the warrant you must destroy it and the destruction section actually speaks specifically to destruction of evidence under clause 6(b). So whilst I had some initial concerns like you, relative to it, on a second read I feel comfortable with it as it is and I am hoping that the explanation helps you some.

**Sen. Prescott SC:** Mr. Chairman, may I offer my own version by way of assistance probably to Sen. Corrine McKnight? If instead, clause 6(2)(b)(iv) were to say, “shall not be admissible as evidence in any criminal proceedings”, would that assist her?

**Sen. Ramlogan:** Sorry, I am not hearing you.

**Sen. Prescott SC:** Pardon me. If, instead of the way it is written now, clause 6(2)(b)(iv) were to say, “but shall not be admissible as evidence in criminal proceedings” I wonder whether that will clear the issue up for Sen. Corrine Baptiste-McKnight.

**Sen. Baptiste-McKnight:** Actually, I understand now that the “but” does not mean that it is excluded altogether. So I will live with it. If the lawyers are happy with it, I will live with it.

**Sen. Panday:** Thank you very much.

**Sen. Prescott SC:** I will just press it a little further in that you have already used that language in clause 17(3) and clause 17(2) “shall be admissible as evidence in any criminal proceedings”.

**Sen. Ramlogan:** In the interest of time and moving on and because I really want to make Sen. Baptiste-Mc Knight happy this morning, I will add in the “criminal proceedings”.

**Sen. Baptiste-McKnight:** Lovely, lovely.

**Sen. Ramlogan:** Very good. So we shall accept that: “in any criminal proceedings”. I want the Senator to be happy.

**Mr. Chairman:** You are deleting the word “court”.

**Sen. Ramlogan:** We will delete “court” and put “criminal proceedings”.

**Sen. Prescott SC:** Fair enough.

**Mr. Chairman:** Can I ask, Attorney General, if in (b) it should read, “the communication is intercepted by an authorized officer”?

**Sen. Ramlogan:** No, because you can only have interception by an authorized officer.

**Mr. Chairman:** I heard Sen. Prescott SC say that he would run this defence, because he was just a person who was acting in the interest of national security.

**Sen. Prescott SC:** I will stand by it. I do not need a lawyer for that.

**Mr. Chairman:** You see, in (a), it can be intercepted under a warrant. That is an authorized officer. In (c) it is intended if you believe that the person—all the others do not relate to an authorized officer, but I think (b) was intended to be an authorized officer. Sen. Prescott SC has intentions of intercepting in the national interest.

**Sen. Ramlogan:** The reason this was left so open-ended is because, if you used "authorized officer" there, it is very restrictive and does not take into account all the possible permutations. For example, if you look at (iv) "for the purpose of giving effect to the provisions of international mutual assistance agreement", that is a matter that falls under the purview of the Ministry of the Attorney General. It would not be an authorized officer within the definition of Act. There may be the customs point; there may be immigration officers and there may be other officers and the policy position agreed was that we will leave it open-ended so that when it comes to serious crime you can have a little more flexibility to gather criminal intelligence. So that once the criminal intelligence is gathered, that will pass it on to one of the authorized officers for the purpose of making the application for a judicial warrant thereafter, if you have something to justify such a next step.

**Sen. Prescott SC:** Mr. Chairman, question for the Attorney General. Hon. Attorney General, let us look at subclause (2) together. If a person, namely me—

**Sen. Baptiste-McKnight:** Sen. Prescott, you will have to pull that mike a little closer. You are speaking down and we are not hearing you.

**Sen. Prescott SC:** Forgive me. When I am not sure I take my time and speak softly. If a person, namely me, under subclause (2) intercepts a communication for the perceived purpose of safeguarding the economic well-being of the State let us say, for example, I had heard a conversation between the chairman of Clico and his CEO and I thought, "My God, we are about to have a run on this country" and I, "for the purpose of safeguarding the economic well-being of the State", told it to Tony Fraser of the news and he puts it in the newspaper, have I committed an offence of this clause 6(2)(b)(iii), or am I protected?

**Sen. Al-Rawi:** Mr. Chairman, could I ask learned Senior to contemplate on the usefulness of a court in sometimes coming up with interpretation? Because I share the Attorney General's view that if we were to make it too restrictive in this point, we might be removing some of the flexibility which we may at a future date wish we had.

**Sen. Ramlogan:** I think if we could probably find a halfway house position because I understand Sen. Prescott SC's point. Would we be prepared, perhaps, to say, "a person designated by the Minister of National Security"?

**Sen. Prescott SC:** To me, that is what you want to say. You want to say, "Notwithstanding any other law, a person authorized" et cetera, or whatever the word is—

**Sen. Ramlogan:** The problem is that it is felt it is too limited. That is the problem.

**Sen. Prescott SC:** “A person acting on the authority of an authorized officer”.

**Sen. Ramlogan:** May I solicit the view of Sen. Hinds on this and get your assistance, Sir?

**Sen. Hinds:** We already have the definition of “authorized officer”, so to say a person—it is problematic. I think it would be better if we leave it as is and leave that matter for the court. Because in any event, whatever the person feels about how the justification is, whether it is in the interest of economic well-being or national security, the bottom line is, he is not so authorized. We want to keep the flexibility that you so properly describe. So I will leave it as it is, only for those reasons.

**Sen. Ramlogan:** I shall accept the view of the Opposition on this particular issue, having regard to the extensive discussions we had on it, and I will go along with Sen. Hinds on this one. We shall, perhaps, leave it as is for now.

**Mr. Chairman:** Hon. Senators, the question is that clause 6(2)(b), in the last line of that clause, the word “court” be deleted and replaced by “criminal proceedings”.

*Question put and agreed.*

*Clause 6, as amended ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed, That clause 7 stand part of the Bill.*

**Sen. Hinds:** Chair, where are we, on clause 7?

**Mr. Chairman:** Yes.

**Sen. Hinds:** In clause 7(2 (b), it should be “purposes” rather than “purpose”. Is that correct?

**Sen. Ramlogan:** I am told they draft in the singular.

**Sen. Hinds:** Say again?

**Sen. Ramlogan:** Singular includes the plural, so they draft in the singular.

**Sen. Hinds:** Fair enough.

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 8.*

*Question proposed, That clause 8 stand part of the Bill.*

**Sen. Hinds:** Chair, I was suggesting during the course of the debate that clause 8(1), I would say “an ex parte application” rather than, “Subject to this section, an authorized officer may apply ex parte to a Judge.” I think it is the application. I would simply have said, “may make an ex parte application”.

**Sen. Panday:** “may apply ex parte” and “ex parte application” is basically the same thing.

**Sen. Hinds:** Okay. It is just a matter of style.

**Sen. Ramlogan:** It is a matter of style.

**Sen. Hinds:** I will leave it for the drafters.

**Mr. Chairman:** I have heard that you have said from time to time that, of course, additional warrants can be applied for after this is expended. I just wondered after “may” you want to put in “from time to time”.

**Sen. Ramlogan:** Yes. I am told that the drafting technique is such that the use of the word “may” already imports “from time to time”.

**Sen. Prescott SC:** Mr. Chairman, forgive me for being slow, but I have an observation to make about clause 8(3)(b), page 15. I had suggested that, assuming that it remains—because I am not sure it makes sense to have it remain. Maybe I should address both things at the same time?

**Mr. Chairman:** It makes sense to do so.

**Sen. Prescott SC:** Thank you. Clause 8(3)(b) says the application for the warrant under section 11,

“be in the form set out in Schedule 1 and be accompanied by—

(b) a written authorization signed by the Minister where the warrant is applied for on the ground of national security...”

I have pointed out that the Minister, however, under clause, I think it is 22(b), does not become aware of this until the authorized officer feels like it.

**Sen. Ramlogan:** Until the authorized officer what?

**Sen. Prescott SC:** Feels so inclined.

**Sen. Ramlogan:** To inform him?

**Sen. Prescott SC:** To inform him, yes.

**Sen. Ramlogan:** So what is your suggestion?

**Sen. Prescott SC:** I suggested that (b) should have been removed altogether, but if it is going to stay I also have a form of words. Do you prefer to take it off or to leave it?

**Sen. Ramlogan:** You mean on page 15, (b)?

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan:** No, because you see, the authorization is only needed when the application is predicated on the ground of national security, and it was felt the Minister of National Security should reserve the power to so certify when the application is being made on that ground.

**Sen. Prescott SC:** May I suggest this form of words, because I was not happy with—and I think somebody made the observation—the thing saying, “a written authorization authorizing”. So I was recommending instead—sorry, let me read it again:

“(b) a written authorization signed by the Minister (where the warrant, et cetera ) authorizing the application...”

authorization signed by the Minister authorizing the application—and maybe we could use a different form of words. “For the purposes of clause 8(2)(i), a statement signed by the Minister, that the warrant is necessary in the interest of national security, shall be prima facie evidence of that fact.” Does that capture what you want to say?

**Sen. Ramlogan:** We are happy with it as is, because it is really a matter for the court as well to decide. We do not want to hamstring the court in terms of saying that it is prima facie a determination of it being a matter of national security.

**Sen. Panday:** And in any event, prima facie is really for the judge to decide.

**Sen. Prescott SC:** Yes, but you are comfortable being read in London, say, as having said: “a written authorization signed by the Minister authorizing the application”. You do not mind if they read that in Cambridge.

**Sen. Baptiste-McKnight:** They know that the English is their language, not ours.

**Sen. Prescott SC:** Do you not feel a little uncomfortable with that? I am on clause 8(3) (b) and I am saying, are you not a little uncomfortable with the language that reads in the Privy Council, “a written authorization signed by the Minister authorizing the application”?

**1.40 a.m.**

**Sen. Ramlogan:** Would you be happy with “supporting”? I agree. Would you go along with the word “supporting”?

**Sen. Prescott SC:** “support the Minister”?

**Sen. Ramlogan:** “a written authorization signed by the Minister”—  
[*Interruption*]

**Sen. Dr. Balgobin:** Can he approve?

**Sen. Ramlogan:** No, he is not approving.

**Sen. Prescott SC:** I do not know what he is doing.

**Sen. Ramlogan:** Remember we took away his power to approve. What is the situation?

**Sen. Prescott SC:** Okay. So we need a word—[*Interruption*]

**Sen. Baptiste-Mc Knight:** Can you just leave it at the national security full stop?

**Hon. Senator:** That is fine.

**Sen. Baptiste-Mc Knight:** “a statement signed by the Minister”.

**Sen. Ramlogan:** All right.

**Mr. Chairman:** So the definition will remain as “a statement signed by the Minister”.

**Sen. Prescott SC:** That is a wonderful intervention, Mr. Chairman.

**Sen. Al-Rawi:** Mr. Chairman, on a separate point—that is just for clarification, through you, Mr. Chairman. At clause 8(2), is it the specific intention when we deal with (2)(a), and we are dealing with (i) and (ii), that we are seeking to leave out specifically “for the purposes of safeguarding the economic well-being of the State” and “for the international mutual assistance agreement”? Is it that we will never have warrants issued for those matters set out at section 6? Because right now clause 8(2) says:

“A Judge shall not issue a warrant under this section unless he is satisfied that—

(a)” and here we deal with only—so that is the intention?

**Sen. Ramlogan:** That was the intention because we come back to the bar being five years and 10 years.

**Mr. Chairman:** But now that you have 6(2)(b)—you see, you had to talk about the interest of national security for a warrant, but now you do not need a warrant at all. So I do not think you intended—having brought in 6(2)(b), you no longer want “in the interest of national security” as one of the—because you never go to the judge on those matters.

**Sen. Al-Rawi:** No, but you may, as I understand it. Clause 6(2)(b) is I can monitor, but in the event that I want to use the evidence I can then go for a warrant. So what I am asking is specific. Right now clause 8 which deals with the issue of a warrant at subclause (2) only deals with national security and serious offences, if I could call it that. So is it that one will never go for a warrant for economic interest and for mutual cooperation and international treaty? Is that the intention?

**Sen. Prescott SC:** May I offer an explanation that might satisfy Sen. Al-Rawi? What clause 8(2)(a)(i) and (ii) are requiring is that the judge’s minimum threshold will be (a)(i) and (ii). You can satisfy him on the other things like economic safeguard, et cetera, but his minimum threshold is (a)(i) and (ii).

**Mr. Chairman:** I am grateful. The question is that clause 8—you have another correction?

**Sen. Ramlogan:** There is a typo in clause 8(2)(c), subparagraph (i) that we would like to correct. It should be “successful in obtaining” not “attaining”.

**Mr. Chairman:** So the question is that clause 8(2)(c)(i), the word “attaining” in line two be deleted and substituted by the word “obtaining”.

*Question put and agreed to.*

**Mr. Chairman:** Clause 8(3)(b) be amended by deleting the words “written authorization” in line one and substituting the word “statement”.

*Question put and agreed to.*

*Clause 8, as amended, ordered to stand part of the Bill.*

## Clause 9.

*Question proposed*, That clause 9 stand part of the Bill.

**Sen. Al-Rawi:** I recall that Senior had an observation relative to clause 9(4) and that is an apparent removal of judicial discretion. Just to look at it and see what you think. Clause 9(4) currently reads:

“Where the applicant intends to seek the assistance of any person or entity in implementing the warrant, the Judge shall, on the applicant’s request, direct appropriate persons or entities to furnish information...”

And the points raised by Sen. Prescott SC included the fact that they left no room for judicial discretion there, firstly, and secondly, that may procure breeches of the law. The example he used, for instance was, the breach of legal professional privilege which has to be specifically waived, as we know. So just looking at that section there—

**Sen. Panday:** So are you suggesting “may”?

**Sen. Al-Rawi:** Yes, “may” would import—*[Interruption]*

**Sen. Panday:** Well, the drafters said “may” includes “shall” and “shall” includes “may”.

**Sen. Ramlogan:** The use of the word “shall” in any event, cannot oust judicial discretion and the judge will have to be guided in any event before they make such an order.

**Sen. Al-Rawi:** I think that is a little awkward.

**Sen. Prescott SC:** Let us say “may”.

**Sen. Al-Rawi:** “May” is by far more cautions.

**Sen. Panday:** People would not die with that.

**Sen. Ramlogan:** It does not take it too much further.

**Sen. Prescott SC:** And may I suggest that—one of my recommendations was that where he should direct appropriate persons or entities, that such persons should be named.

**Sen. Ramlogan:** One would expect that as a matter of course that would—I would not want to go down as far as that, because judicial discretion may be—you might want to say servants and/or agents of, you know, so I would leave it at that, if you do not mind.

**Sen. Beckles-Robinson:** Subclause (4), the second line where you have “implementing the warrant”, is that correct?

**Sen. Ramlogan:** The same subclause (4) that we just dealt with?

**Sen. Hinds:** Yes.

**Sen. Ramlogan:** “Where the applicant intends to seek the assistance of any person or entity in implementing the warrant...”—[*Interruption*]

**Sen. Panday:** My view is, having the warrant executed, that is what it really means.

**Hon. Senator:** “Why you use that word ‘implement’?”

**Sen. Beckles-Robinson:** “Implement” is a strange word to use with a warrant.

**Sen. Panday:** I do not know if the word “executing” might be too narrow?

**Mr. Chairman:** Executing might be serving upon [*Crosstalk*] and I think implementing governs a whole different—[*Interruption*]

**Sen. Ramlogan:** That is correct.

**Sen. Panday:** Executing is really very narrow.

**Mr. Chairman:** The question is that in clause 9(4), line three the word “shall” be deleted and be replaced by “may”.

*Question put and agreed to.*

*Clause 9, as amended, ordered to stand part of the Bill.*

*Clause 10.*

*Question proposed, That clause 10 stand part of the Bill.*

**Sen. Baptiste-Mc Knight:** Mr. Chairman, a question. Since clause 6(2)(b) is a part of the warrant—

**Sen. Ramlogan:** Clause 6(2)(b)?

**Sen. Baptiste-Mc Knight:** Yes. It comes under the warrant—when you need a warrant for 6(2)(b). I am a bit worried about the—[*Interruption*]

**Sen. Ramlogan:** No, you do not need a warrant under 6(2)(b). Those are the exceptions.

**Sen. Baptiste-Mc Knight:** Yes, but where would you apply for a warrant under 6(2)(b)?

**Sen. Ramlogan:** No, you could never apply for a warrant under 6 (2)(b).

**Sen. Baptiste-Mc Knight:** When you apply for a warrant in cases that come under 6(2)(b)—[*Interruption*]

**Sen. Panday:** As a result of information obtained about clause 6(2)(b)—[*Interruption*]

**Sen. Baptiste-Mc Knight:** Clause 10 limits the period to three months, three months, three months, but since it is sort of intelligence related, the three months might be a little too restrictive. If you have to apply for a new warrant after the nine months and dispense with all of the information at the end of the first nine months and start again, you might be defeating the whole purpose.

**Sen. Ramlogan:** Well, I think that will be a policy matter because it is either you keep having recurrent extensions in perpetuity or you have a cut-off point having regard to the invasion of your right to privacy and come with a fresh application which may end up before a different judge and who will look at the matter afresh. It was felt that because you are invading someone's several constitutional rights, after 90 days if you do not find anything that could lead to the commission of an offence, it is either you go back to a judge and persuade him or you allow the person to be free to live their life freely as intended by the Constitution without this restriction imposed by the State upon them.

**Sen. Baptiste-Mc Knight:** We are talking about a case of national security here and you have a certain amount of evidence, but you need time to complete—

**Sen. Ramlogan:** In a case like that, you can go back before the judge at the end of the 90-day period.

**Sen. Baptiste-Mc Knight:** Two hundred and seventy days.

**Sen. Ramlogan:** Yes, but you go back to the judge and say, “Look, on the application this is what we have picked up thus far. We feel out of an abundance of caution” or, “based on this, we want to monitor this person for a little while longer”. And the judge in the exercise of his discretion, may say, “Well, look, that is a rather saucy, romantic conversation, but it does not lead to any criminal offence”, or the judge may say, “That sounds like something in the criminal realm. I will give you a fresh set of time periods”.

**Sen. Baptiste-Mc Knight:** But the evidence that is already obtained, does that not lapse at the end of the—[*Interruption*]

**Sen. Ramlogan:** No, no, no, not at all, not at all. The answer to that is in 20(2). The evidence, no. It does not.

**Sen. Al-Rawi:** Just to lay Sen. Baptiste-McKnight's concerns somewhat to rest. You do not have to wait until the warrant has expired. You can actually approach the judge for the issuance of a second warrant because it is not the same first one. It is not the same warrant that has been continued. So there is nothing to say that you could not have warrants out and, therefore one comes before the other one expires. Where anticipate that you do not want to destroy the information. So I think we have adequate safeguard there.

**Sen. Ramlogan:** The answer lies in clause 20(2), Sen. Baptiste-Mc Knight. I am obliged. Mr. Chairman, there is one change that we wanted to have in clause 10.

**Mr. Chairman:** Sorry? So are we going back to clause 10?

**Sen. Ramlogan:** In light of the concerns expressed by some members on the Independent Bench, we felt that it might be wise to make it clear that you can, in fact, make a renewed or fresh application upon the expiration of the first period. So I just like to insert something to make it clear, or clearer, to satisfy some of those concerns that were raised. [*Crosstalk*]

It will be 10(6) which will now read:

“Where a warrant has expired under subclause (3) an authorized officer may make an application for a fresh warrant.”

**Sen. Prescott SC:** Attorney General, here is a suggestion. Notwithstanding anything in subclause (3), an authorized officer may make an application for a new warrant.

**Sen. Ramlogan:** That is fine.

**Sen. Al-Rawi:** And that would avoid the difficulty of being obliged to destroy the information under clause 20.

**Sen. Ramlogan:** Just repeat it, Sen. Prescott SC, and let us move on.

**1.55 a.m.**

**Sen. Panday:** It is much more elegant.

**Sen. Al-Rawi:** And that would avoid the difficulty of being obliged to destroy the information under clause 20.

**Sen. Ramlogan:** Just repeat it, Mr. Prescott SC, and move on.

**Sen. Prescott SC:** Notwithstanding anything in subsection (3), an authorized officer may make an application before a judge for a new warrant.

**Mr. Chairman:** The question is that clause 10 be amended by adding an additional subsection (6) reading.

Notwithstanding anything in subsection (3), an authorized officer may make an application for a new warrant.

*Question put and agreed to.*

*Clause 10, as amended, ordered to stand part of the Bill.*

*Clauses 11 and 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Sen. Al-Rawi:** Just a question for clarification relative to 13(2). Is the description there in clause 8(3) correct? Should it be 9(4)?

**Mr. Chairman:** The question is that in clause 13(2), line 3, the reference to “section 8(3)” be deleted and replaced by “section 9(4)”.

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*Clause 14.*

*Question proposed, That clause 14 stand part of the Bill.*

**Sen. Baptiste-Mc Knight:** Are we at 14? This seems to be the only place in this Bill where any arrangement is made for storage of information. Is there not need for a statement on storage other than this?

**Sen. Ramlogan:** That will be dealt with in the regulations. That was the intention.

*Clause 14 ordered to stand part of the Bill.*

*Clause 15 ordered to stand part of the Bill.*

*Clause 16.*

*Question proposed, That clause 16 stand part of the Bill.*

**Sen. Prescott SC:** Mr. Chairman, there is a minor typo, if you like. Subclause (7) on page 25, in line three, the word “of” is omitted between the words “fine” and “one hundred”.

*Question put and agreed to.*

*Clause 16, as amended, ordered to stand part of the Bill.*

*Clause 17.*

*Question proposed, That clause 17 stand part of the Bill.*

**Sen. Prescott SC:** Mr. Chairman, may I invite the hon. Attorney General to give us his views on 17(3) and 17(5) please?

**Mr. Chairman:** I believe that it should have been subsection (4) in (5). I am told that is correct. I would like to ask, though, in 17(2), it says:

“...the contents of a communication as permitted by section 6 shall be admissible as evidence.”

Of course, we had carved out 6(2)(b) and therefore, maybe you need to make a carve out here for that. I do not know how you want to phrase that.

**Sen. Al-Rawi:** That is a further fine distinction because you can use 6(2)(b) when you go for your warrant.

Perhaps one can use the words “permitted by warrant”, introducing the word “warrant” somewhere into subsection (2). When you get a warrant for section 6(2)(b)—

**Mr. Chairman:** “permitted by warrant under section 8 or 11”.

**Sen. Al-Rawi:** Actually that would take care of it. Clause 6 is a little broader, that is why I had asked the question about the economic interest and the mutual assistance treaties.

**Mr. Chairman:** So, “permitted by warrant issued pursuant to section 8 or 11”.

**Sen. Ramlogan:** That is fine.

**Mr. Chairman:** The question is that clause 17(2) be amended as follows:

In line 3, the words section 6 be deleted and substituted by “warrant issued pursuant to section 8 or 11.

**Sen. Ramlogan:** Subject to subsections (3) and (4). So clause 17(2) will now read:

“Subject to subsections (3) and (4), the contents of a communication that is obtained by interception permitted by warrants issued pursuant to section 8 or 11 shall be admissible as evidence in any criminal proceedings.”

*Question put and agreed to.*

**Mr. Chairman:** The question is that clause 17(5) be amended as follows:

Delete reference to subsection (3) in line 1 and replacing it by subsection (4)

**Sen. Baptiste-Mc Knight:** Mr. Chairman, someone had asked about subsections (3) and (5).

**Mr. Chairman:** That is the amendment we are making to (5). There was a wrong reference. It is (4).

**Sen. Al-Rawi:** Just a query. Insofar as an offence actually includes the ability to prosecute someone under the Act, (5) actually says that subsection (4), which is your ability to use the evidence in criminal proceedings, shall not apply to criminal proceedings in an offence under this Act. Just a double-check. Are we okay in light of the amendment to the word “offence”?

**Mr. Chairman:** The offences under this Act now become an offence.

**Sen. Al-Rawi:** I am just asking for a double-check because my eyes are a little tired; a cross-reference, because “offence” includes a broadened policy to allow for prosecution of persons who have run afoul of the Act. Subclause (5) right now says that your ability under subclause (4) in criminal proceedings to have evidence adduced et cetera—does subclause (5) now need to be looked at? Just give me a minute to read carefully (4) with (5).

**Mr. Chairman:** I do not think it picks up “any other offence”. I think it still applies. It still works.

**Sen. Al-Rawi:** I withdraw that. I think I am satisfied by it because I see we are really using the sensitivity test as opposed to “offence”.

**Sen. Prescott SC:** Before we go, I hope it is not my misunderstanding, but in subsection (5)(b), I am thinking that the word “not” in the first line should not be there because it seems that subclause (5) is attempting to rule out evidence which, sensitive information being disclosed, that would jeopardize the course of the proceedings or unduly prejudice the party. Am I understanding that clearly?

**Mr. Chairman:** I understood it to mean that whereas in (4) you do not have to identify your source and your method, now, in relation to offences under this Act, you can disclose that information except where the court decides that it is prejudicial.

**Sen. Prescott SC:** If the court is satisfied that the parties to the proceedings are not being unduly prejudiced, he would exclude the disclosure? That means he will allow it.

**Mr. Chairman:** Exactly, because you need that information to prove that offence, I take it.

**Sen. Prescott SC:** Is that what it means? To exclude disclosure is to allow disclosure? Subclause (4) seeks to keep some things out and subclause (5) says it may be allowed in.

**2.10 a.m.**

**Sen. Al-Rawi:** Answers to sensitive information—they are saying if you are being prosecuted under this Act, ignore that sensitive rule, but if the judge feels that you are going to be prejudiced, then do not obey it.

**Sen. Prescott SC:** Good, so (b) should read:

“would be prejudiced”

**Mr. Chairman:** It is that “not” that you have trouble with? I thought it was the first “not”.

**Sen. Dr. Balgobin:** No, it is the second “not”.

**Sen. Prescott SC:** It is a “notty” problem.

**Sen. Ramlogan:** To be or not to be, that is the question.

**Mr. Chairman:** It does change the tenor of what is being put before us.

“the parties to the proceedings would be unduly prejudiced thereby.”

So we delete “not”?

**Hon. Senator:** Yes.

**Mr. Chairman:** Clause 17(5) is amended by deleting in line 1 the reference to subsection (3) and substituting a reference to subsection (4), and in subsection (b), to delete the word “not” in line 1 of (b).

*Question put and agreed to.*

*Clause 17, as amended, ordered to stand part of the Bill.*

*Clause 18 ordered to stand part of the Bill.*

*Clause 19.*

*Question proposed, That clause 19 stand part of the Bill.*

**Sen. Dr. Balgobin:** Clause 19(3)(b).

**Mr. Chairman:** We are taking out the “not”. Is that agreed? Is that the only question? In line 1, the word “not” is deleted.

*Question put and agreed to.*

*Clause 19, as amended, ordered to stand part of the Bill.*

*Clause 20.*

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

**Sen. Al-Rawi:** Mr. Chairman, relative to, firstly, subsection 20(5), it reads “an officer” not “an authorized officer—”

**Mr. Chairman:** I agree.

**Sen. Al-Rawi:**—“who intercepts a communication in pursuance of section 6(2)(b) shall ensure that any record of information obtained from the interception that is not related to the objective of the interception is destroyed immediately.”

I understand generally why it may be there. First question: do we want to stick with the same rubric that we have been using right through, “an authorized officer” and “are relative to communication”? We have used the expression “a record of information”.

**Sen. Ramlogan:** Sen. Al-Rawi, that ties in back with clause 6(2)(b). The issue was raised before by Sen. Prescott SC and others, if you cross-reference it to clause 6(2)(b), as to whether or not we should have inserted “by an authorized officer” in clause 6(2)(b) or whether we want to leave it open-ended, so that we do not restrict the category of officers who can make the application. If you are going to change it in subsection 20(5) to say “an authorized officer”, then I am going to have to reconsider the position on clause 6(2). As it stands on clause 6(2), Sen. Prescott SC’s example of someone going down the road, a private citizen, who intercepts communication using a device bought from Radioshack and says that he is intercepting outside my house on the basis of national security, because he is a good citizen, you cannot do him anything. It is not an offence. I would prefer to err on the side of caution. We are back at both clauses 6(2)(b) and 20(5) and we insert the words “by an authorized officer”. Mr. Prescott SC, does that make you happy?

**Sen. Al-Rawi:** That would make me happy as well.

**Sen. Ramlogan:** I am obliged to you, Sir.

**Sen. Prescott SC:** Delayed gratification suits me.

**Sen. Ramlogan:** After clause 6(2)(b), the communication is intercepted by an authorized officer.

**Mr. Chairman:** A question was raised whether it should be done immediately or whether it should be as soon as it is determined that it is not required for the permitted purpose, because you might want to keep—on the same subclause (5) instead of immediately.

**Sen. Baptiste-McKnight:** At subclause (5), there is this meeting to take place prior to destruction. Should it not be dependent on the meeting, rather than immediately?

**Sen. Dr. Balgobin:** It should be subject to subsection (6), which is below it.

**Sen. Baptiste-McKnight:** Yes, subsection (6). Both subsections (1) and (5).

**Sen. Ramlogan:** What clause is that?

**Sen. Dr. Balgobin:** It is clause 20(5) and we are saying the authorized officer cannot act to destroy the data, save and except—

**Sen. Al-Rawi:** That would apply to subsections (1), (2), (3), (4) and where it says “immediately”. The question is whether it is natural to say that subsection (6) would be a sweep all, in respect of all of those. Did you want to put clause 20: subject to subsection (6), then (1), (2), (3), (4) (5)? This is a question for interpretation, through you, Mr. Chairman, to the hon. Attorney General. Do you think that clause 6, as constructed right now, would automatically put the rider to (1), (2), (3) and (5)?

**Sen. Ramlogan:** I think so, because it is a clear, direct and specific provision. In other words, not to have any destruction, you must consult prior to—Mr. Chairman, do you have any suggestions?

**Sen. Dr. Balgobin:** Destroy immediately.

**Mr. Chairman:** It is the Commissioner of Police doing the destruction, and, therefore, we just put in “an authorized officer must destroy it”. It seems it is the Commissioner of Police.

**Sen. Ramlogan:** He is already an authorized officer, so there is no need to—

**Sen. Dr. Balgobin:** Could I just seek clarification on one thing from the Attorney General? I understand what you are saying about subsection (6), but in all of the preceding subsections it says, “destroy immediately”, as opposed to—I assume that having consultations with—

**Sen. Al-Rawi:** The question is really if clause 6 catches (1), (2), (3), (4) and (5), it is okay because it says before any destruction, have a consultation but [*Interruption*] it may already be in there. I think that language actually has it there. My point is relative to Sen. Prescott's SC observations, as to the Commissioner of Police to consult with everybody else.

**Sen. Ramlogan:** I am told that is a matter of legislative drafting. It was deliberately structured this way because it reads in sequence, so that clause 6, coming after (1), (2), (3), (4) and (5) is really cascading downwards in accordance with statutory interpretation.

**Sen. Al-Rawi:** I actually agree with it as drafted. I just wanted the assurance on record and I have got it.

I have moved on to a second point in subsection (6), which is the consultation point. I understand the purpose is to get all the authorized officers to talk to each and then decide if to destroy. Right now, we are putting the obligation on the Commissioner of Police to consult with the Chief of Defence and then the Commissioner of Police to destroy.

**Sen. Ramlogan:** Yes, that is correct.

**Sen. Al-Rawi:** Where he considers it appropriate; he has that overriding objective at the end of the day.

**Sen. Ramlogan:** That is correct.

**Sen. Al-Rawi:** That was intended?

**Sen. Ramlogan:** That was the policy that was intended.

**Sen. Prescott SC:** May I intervene once again? It is being suggested that subsection (6) puts the burden on the Commissioner to destroy.

**Sen. Al-Rawi:** Yes.

**Sen. Ramlogan:** Yes.

**Sen. Prescott SC:** Which verb are you relying on for that? It says he is obliged to, where he considers it appropriate, consult with the director. He is obliged also to consult with the Chief of Defence Staff and the Director of Strategic Services Agencies, but it does not say who must destroy.

**Sen. Ramlogan:** It says prior to the destruction.

**Sen. Prescott SC:** By whom.

**Sen. Ramlogan:** If read together, “The Commissioner of Police shall consult”.

**Sen. Prescott SC:** “The Commissioner of Police shall destroy after consultation...”

**Sen. Ramlogan:** Shall destroy after consultation.

**Sen. Ramlogan:** I think it is fairly clear as is. Is it not? I will defer to the hon. Minister.

**Sen. Brig. Sandy:** I think it is clear as it is.

**Sen. Al-Rawi:** I wish to join that it is perhaps clear because subsection (6) speaks to the consultation and (7) speaks to the person required. Ostensibly, somebody will then be obligated to destroy.

While we are on (7), I have a proposed amendment relative to (7), which has been circulated for discussion first. It is not something I am going to enforce upon you. The first point is that—

**Sen. Ramlogan:** Senator, if I can preempt you in the interest of time, we have discussed and we are very grateful to you for proactively circulating it. What we have decided is that this is an administrative matter which can be appropriately addressed in the regulations.

**Sen. Al-Rawi:** Okay.

**Sen. Ramlogan:** It does not need to form a substantive part of the Act itself. We are grateful to you. Thank you very much.

**Sen. Al-Rawi:** Just before I let it alone, the regulations will contain a certification of sign off. Later on I was going to add on to the latter part, section 25; a statement of how many files were destroyed, et cetera; as long as we have that assurance.

**Sen. Ramlogan:** The form of the certificate would, perhaps, be part of the regulations, so you can fill in the blanks, as it were.

**Sen. Al-Rawi:** Okay, because I would have suggested a Schedule which would have been a—

**Sen. Ramlogan:** You are more than welcome to supply it to us sometime after tomorrow.

**Sen. Al-Rawi:** It is a simple Schedule that mirrored Schedule 3.

**Mr. Chairman:** Clause 20(5) is amended by interposing the word “authorized” before “officer” in line one.

*Question put and agreed to.*

*Clause 20, as amended, ordered to stand part of the Bill.*

**Sen. Baptiste-McKnight:** Are we leaving the “immediatelies” or taking them out?

**Mr. Chairman:** I am told that, yes.

**Sen. Baptiste-McKnight:** But they remain?

**Mr. Chairman:** “Immediately” means immediately after the consultation takes place. This is what I am told.

**Sen. Al-Rawi:** Clause 6 says, before you do it immediately, you need to consult with everybody.

**Sen. Ramlogan:** Now that we have accepted—have we accepted the amendment in subsection (5)?

**Mr. Chairman:** I would read it again because we had the intervention.

*Question again put and agreed to.*

*Clause 20, as further amended, ordered to stand part of the Bill.*

**Sen. Ramlogan:** In light of that amendment, there is a consequential amendment. The consequential amendment would now be, since we have said in subsection (5) “an authorized officer who intercepts a communication in pursuance of clause 6(2) (b);” we need to return to clause 6(2) (b).

*Clause 6 recommitted.*

*Question again proposed, That clause 6 stand part of the Bill.*

**Sen. Ramlonga:** And we need to insert at the end:

“The communication is intercepted by an authorized officer”. We had not dealt with it.

**Sen. Al-Rawi:** We had not done it formally.

**Mr. Chairman:** Clause 6(2)(b) is amended by interposing the words “by an authorized officer” after “intercepted” in line one.

*Question put and agreed to.*

*Clause 6, as amended, ordered to stand part of the Bill.*

*Clause 21 ordered to stand part of the Bill.*

**2.25 a.m.**

*Clause 21 ordered to stand part of the Bill.*

*Clause 22.*

*Question proposed, That clause 22 stand part of the Bill.*

**Sen. Prescott SC:** Mr. Chairman, I made the observation that clause 22 does not oblige anyone, in particular, to inform the Minister of any of these things. I wonder whether there was a policy decision in relation to that.

**Mr. Chairman:** I think the suggestion was. “shall be informed by an authorized officer”. Is that correct?

**Sen. Prescott SC:** I might be in error. If you read clause 22(b) without the amendment it says:

“The Minister shall be informed—

(b) of an application under section 8 by the authorized officer who has made the application...”

I think 22(b) and (c) already say who must make it.

**Sen. Ramlogan:** In light of that, I think it is fairly obvious that the Minister has to be informed by the authorized officer. I do not think we need to make any changes.

**Sen. Prescott SC:** I withdraw.

**Sen. Ramlogan:** Let us move on. Just leave it as is.

**Sen. Drayton:** Through you, Mr. Chairman, just a quick clarification. Under clause 22(a) it says:

“The Minister shall be informed—

(a) of an interception under section 6(2)(b) within ninety-six hours of the commencement of the interception;”

What if this is a national security matter? Is it ninety-six hours?

**Sen. Ramlogan:** It says “within” and one would really expect that is the outer limit. Under Sen. The Hon. Brig. Sandy, they would not get past the first hour.

*Clause 22 ordered to stand part of the Bill.*

*Clause 23.*

*Question proposed, That clause 23 stand part of the Bill.*

**Sen. Hinds:** Mr. Chairman, I have circulated an amendment for the establishment of a new clause 23 for the consideration of Senators.

**Sen. Ramlogan:** What clause is it?

**Mr. Chairman:** He circulated an amendment to clause 23.

**Sen. Hinds:** To add a clause 23(a) if you like. This has to do with the fact that from my reading of the legislation, as it now stands, there is no protection for persons whose privacy was truncated, so to speak, prior to the commencement of these procedures.

**Sen. Ramlogan:** Sen. Hinds, there is a suggestion. Can I just read it for you?

**Sen. Hinds:** Please.

**Sen. Ramlogan:** Clause 23(2) would now read as follows:

“A person who intentionally discloses the contents of any communication—

- (b) obtained in the course of the interception of communication to a person to whom he is not authorized to disclose the communication whether the interception occurred prior to or after the coming into force of this Act.”

So we have added the words “whether the interception occurred prior to or after the coming into force of this Act”. Would that be all right?

**Sen. Hinds:** Thank you very much and, therefore, I withdraw the amendment I circulated.

**Mr. Chairman:** Attorney General, in clause 23(4) and (5) it was pointed out that reference to “a person” there could include a journalist. I think what was intended is the person or somebody within the ambit of who is receiving information under this Act. I think it was Sen. Prescott SC who said that it could be a journalist.

**Sen. Ramlogan:** I think we should let them raise their defence in court if that is the case, because it could be anybody.

**Sen. Panday:** It is an unauthorized person.

**Sen. Ramlogan:** Any unauthorized person. So anyone who intentionally does this, the idea would be that they are guilty.

**Mr. Chairman:** Clause 23(2)(b) is amended by interposing after the word “communication” the words “whether this interception occurred prior to or after the commencement of this Act”.

*Clause 23, as amended, ordered to stand part of the Bill.*

*Clause 24.*

*Question proposed, That clause 24 stand part of the Bill.*

**Sen. Prescott SC:** Mr. Chairman, I made some recommendations to be included in clause 24, and I would like to itemize them, if I may. They were for the inclusion of—

**Sen. Ramlogan:** The point about the number of warrants being revoked.

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan:** Would you be contented to leave that as a matter to be considered under subclause (n)? I would tell you why. There may be so many other matters that one can consider necessary, and if we start itemizing them—I am seeing some of your colleagues licking their chops to come at me—I would end up with about five more amendments. One would expect that is something that should be in an annual report.

**Sen. Prescott SC:** A responsible officer would put more than what is there now. I suppose, the responsible Attorney General—

**Sen. Ramlogan:** Sen. Prescott SC, we can actually satisfy clause 24(c) if we simply say “the number of warrants applied for or revoked”. Would that catch it;—“the number of warrants applied for and/or revoked?” Sorry, it is (e). Clause 24(1)(e); “the number of warrants refused or revoked”.

**Sen. Panday:** Do you think we should read this together? Because if we read it disjointly, we would find ourselves in problems.

**Sen. Ramlogan:** Sen. Prescott SC, in clause 24(1)(e) if I put “the number of warrants refused or revoked by the court”, would that satisfy you?

**Sen. Prescott SC:** Mr. Chairman, “and/or” would suffice.

**Sen. Ramlogan:** Yes, and/or—“the number of warrants refused and/or revoked”.

**Sen. Prescott SC:** Yes, that addresses one of the concerns. I cannot remember what the others were.

**Sen. Al-Rawi:** The other one is destruction.

**Sen. Ramlogan:** The draftsman says “or”.

**Sen. Dr. Balgobin:** It should be “and”.

**Sen. Ramlogan:** No.

**Sen. Dr. Balgobin:** Are you sure? The legislation makes separate provisions for revocation as opposed to refusal. It is late, and the draftsman might be tired. *[Laughter]* What I am saying is that it is possible for you to have a warrant to tap my phone which is subsequently revoked. That is different from you applying and being refused. I am just making the little suggestion of “and” as opposed to “or”.

**Sen. Ramlogan:** We are prepared to go with “refused or revoked”.

**Sen. Al-Rawi:** Relative to destruction, a statement—

**Sen. Ramlogan:** It is refused or revoked for now. I have to move on.

**Sen. Al-Rawi:** I am on a separate point which is not on the list at all which is material which has been destroyed.

**Sen. Ramlogan:** You would not want that in an annual report.

**Sen. Al-Rawi:** Why? It is just a quantity number?

**Sen. Ramlogan:** Well, you know, that is the point I was making. You opened a can of worms, Sen. Prescott SC and we are going to the fallout. That is obviously something to be considered another (n). If you start itemizing everything, you would write the report in the Act itself. So, folks, let us be a little reasonable.

**Sen. Al-Rawi:** Two worms is not a difficult situation.

**Sen. Ramlogan:** I would prefer the Minister has some degree of flexibility and discretion in preparing his annual report.

**Sen. Beckles-Robinson:** It is not traditional that you give any set of directives.

**Sen. Ramlogan:** Absolutely. Sen. Beckles-Robinson you have experienced it, and your experience and guidance are welcomed.

**Sen. Beckles-Robinson:** It is not traditional that you give any set of specifications as to what is written in a report. The Constitution says a report has to be presented.

**Sen. Ramlogan:** Correct.

**Sen. Al-Rawi:** I do not appreciate being truncated that quickly all the time. If you could just bear me out; I think courtesy is a characteristic we must observe.

**Sen. Ramlogan:** That is a matter for you and Sen. Beckles-Robinson.

**Sen. Al-Rawi:** No, I am speaking to you, hon. Attorney General, through the Chairman, no one else but you. Let me be clear. We are on the last clause.

**Sen. Panday:** Do not let tempers flare.

**Sen. Al-Rawi:** I am asking for your clarification and I am just making the point that we are speaking about protecting rights and destruction of records, which are important characteristics. All I want is a clear statement. Is it that we contemplate that the regulations are going to deal with this? Is that the suggestion?

**Sen. Beckles-Robinson:** The point I am making Sen. Al-Rawi is that you are asking for certain specifics in a report, but normally there is really no set guideline as to how reports are written or the contents. If you look at reports, you are going to see that they are varied; they are wide and broad. So while the request is good, I do not think that you can direct, in this particular legislation, that you must have this. I think what is there is sufficient and we can go with it.

**Sen. Ramlogan:** I am grateful Sen. Beckles-Robinson for that intervention.

**Sen. Baptiste Mc-Knight:** Mr. Chairman, could I just ask, how is the minister going to obtain all of this information? He has to be told when an application is made for a warrant.

**Sen. Ramlogan:** That would normally be an administrative matter. The Minister would be able to request that information and, if needs be, the regulations can deal with it, but it is really an administrative matter as to how you would receive that information. I presume he can ask for it from the three authorized officers.

**Sen. Baptiste Mc-Knight:** Well, you see, the authorized officers must have on the warrant the person whose information is being disclosed.

**Sen. Ramlogan:** No, but this is for a specific reporting purpose, and the three of them, in any event, fall under the supervision and within the ministerial portfolio of the Ministry of National Security. So, really, that should not be a problem. I do not think we need to legislate it.

**Sen. Drayton:** I just want to suggest in clause 24(2), I would prefer rather than using the word “promptly”, say specifically if it is within one month after preparation.

**2.40 a.m.**

**Sen. Drayton:** I think instead of using the word “promptly” we should be more specific and say “within a month”.

**Sen. Ramlogan:** Would “within three months” satisfy you? Sorry, “within a month”?

**Sen. Drayton:** That is fine. [*Crosstalk*]

**Sen. Panday:** Okay.

**Mr. Chairman:** So you are deleting “promptly” and putting “one month” or “not more than one month”?

**Sen. Panday:** Yes.

**Mr. Chairman:** “Within one month”?

The question is that clause 24(1) be amended by interposing the words “or revoked” after “refused” in line one of subsection (e) and that subsection (2) line three be amended by deleting the word “promptly” and inserting the words “within one month”.

*Question put and agreed to.*

*Clause 24, as amended, ordered to stand part of the Bill.*

*Clause 25 ordered to stand part of the Bill.*

*New clause 26.*

**Sen. Ramlogan:** Chair, one point that has arisen for consideration was that perchance in the future there needs to be amendments to the Schedule. We need to just put a clause 26 in which would read:

“The Minister may, by Order, amend any of the Schedules to this Act.”

**Mr. Chairman:** And the marginal side note to section 26 will read “Schedules amended”.

*New clause 26 read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*Communications Bill*

*Tuesday, November 30, 2010*

*New clause 26 added to the Bill.*

*Schedule 1 ordered to stand part of the Bill.*

*Schedule 2.*

*Question proposed, That Schedule 2 stand part of the Bill.*

**Sen. Prescott SC:** Mr. Chairman, I have a recommendation for amendment to Schedule 2. In subparagraph (1) it should read:

“Except where it states otherwise, the facts set out herein are based on my personal knowledge and they are true and correct.”

**Sen. Ramlogan:** It is there at the end in the last paragraph:

“I make this declaration conscientiously believing the same to be true...”

**Sen. Prescott SC:** I have a preference for him swearing to each of the facts at the beginning, but if you are happy with that—

**Sen. Ramlogan:** There is a deeming provision that deems it to be a statutory declaration, so that everything in it would have to be true and correct or else we would have to say that for each line, that kind of thing.

**Sen. Prescott SC:** Very well, Sir.

*Question put and agreed to.*

*Schedule 2 ordered to stand part of the Bill.*

*Schedule 3 ordered to stand part of the Bill.*

*Preamble approved.*

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

*Senate resumed.*

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

*The Senate voted: Ayes 27*

AYES

Panday, Hon. S.

Sandy, Hon. Brig. J.

Ramlogan, Hon. A.

King, Hon. M.  
Karim, Hon. F.  
George, Hon. E.  
Nan Ramgoolam, Mrs. R.  
Ramnarine, K.  
Abdulah, D.  
Oudit, Mrs. L.  
Moheni, E.  
Maharaj, D.  
Ali, Dr. A.  
Tota-Maharaj, Dr. V.  
Moore, A.  
Beckles-Robinson, Mrs. P.  
Hinds, F.  
Cudjoe, S.  
Al-Rawi, F.  
Deyalsingh, T.  
Ali, B.  
Baptiste-Mc Knight, Mrs. C.  
Drayton, Mrs. H.  
Balgobin, Dr. R.  
Wheeler, Dr. V.  
Prescott SC, E.  
Anmolsingh-Mahabir, Mrs. P.  
*Question agreed to.*  
*Bill accordingly read the third time and passed.*

**ADJOURNMENT**

**The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday):** Mr. Chairman, I wish to thank all the Senators who have participated in this debate. As time went along one would have thought that the enthusiasm would have waned, but, on the contrary, everybody kept on working until the end. This is really service to the country. We should give ourselves a round of applause. [*Desk thumping*]

In that spirit, let me say there was a document circulated which said that the Finance (No. 2) Bill would be debated on Monday. I spoke to my colleagues on the other side and in the spirit of compromise and the way the Senate has been working, we have all agreed that the Senate be adjourned to Tuesday, 07 December at 10.30 a.m., when the Finance (No. 2) Bill will be debated and carried through all its stages.

I wish to also inform Senators that there might be the Anti-Gang Bill, 2010 coming in the Lower House and maybe some other Bills and we have the Firearms Bill to complete.

Thank you.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 2.52 a.m.*