

*Leave of Absence**Tuesday, November 15, 2011***SENATE***Tuesday, November 15, 2011*

The Senate met at 1.30 p.m.

PRAYERS[MADAM VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Madam Vice-President: Hon. Senators, I wish to inform you that the President of the Senate, Sen. The Hon. Timothy Hamel-Smith, is out of the country. I have granted leave of absence to Sen. The Hon. Kevin Ramnarine who is out of the country as well.

SENATORS' APPOINTMENT

Madam Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richard T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President

TO: MR. KEVIN BHAGALOO

WHEREAS Senator the Honourable Kevin Christian Ramnarine is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago;

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(a) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KEVIN BHAGALOO, to be temporarily a member of the Senate, with effect from 15th November, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Kevin Christian Ramnarine.

Senators' Appointment
[MADAM VICE –PRESIDENT]

Tuesday, November 15, 2011

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 11th day of November, 2011."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President

TO: MR. RABINDRA MOONAN

WHEREAS Senator the Honourable Timothy Hamel-Smith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago;

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(a) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, RABINDRA MOONAN, to be temporarily a member of the Senate with effect from 15th November, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Timothy Hamel-Smith.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 14th day of November, 2011."

OATH OF ALLEGIANCE

Senators Kevin Bhagaloo and Rabindra Moonan took and subscribed the Oath of Allegiance as required by law.

**ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) BILL, 2011**

Bill to repeal and replace the Deoxyribonucleic Acid(DNA) Act, Chap. 5:34, brought from the House of Representatives [*The Minister of Justice*]; read the first time.

Motion made: That the next stage be taken at a later stage of the proceedings.
[*Hon. H. Volney*]

Question put and agreed to.

PAPERS LAID

1. Second report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Tunapuna/Piarco Regional Corporation for the year ended September 30, 2002. [*The Minister of Public Utilities (Sen. The Hon. Emmanuel George)*]
2. Second report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Tunapuna/Piarco Regional Corporation for the year ended September 30, 2003. [*Sen. The Hon. E. George*]
3. Annual audited financial statements of the Estate Management and Business Development Company Limited for the financial year ended September 30, 2009. [*Sen. The Hon. E. George*]
4. Thirty-Third annual report of the Ombudsman for the period January 2010 to December 2010. [*Sen. The Hon. E. George*]
5. Ministerial response to second report of the Joint Select Committee of Parliament on Ministries (Group 1), and on the Statutory Authorities and State Enterprises on the Administration of the Green Fund. [*Sen. The Hon. E. George*]
6. National Climate Change Policy for Trinidad and Tobago. [*Sen. The Hon. E. George*]
7. Annual administrative report of the Police Service Commission for the year 2010. [*The Minister of National Security (Sen. The Hon. Brig. John Sandy)*]
8. Annual administrative report of the Boiler Examiners Board for the period September 2009 to September 2010. [*Sen. The Hon. E. George*]
9. Administrative report of the Minimum Wages Board for the period January 2009 to December 2010. [*Sen. The Hon. E. George*]
10. Administrative report of the Advisory Friendly Societies Council for the period October 2008 to September 2010. [*Sen. The Hon. E. George*]
11. Administrative report of the Board of Governors of the Cipriani College of Labour and Co-operative Studies (CCLCS) for the period October 2008 to September 2010. [*Sen. The Hon. E. George*]
12. Annual report of the Teaching Service Commission for the year 2010. [*Sen. The Hon. E. George*]

- 13 Annual administrative report of the Registration, Recognition and Certification Board (RRCB) for the year 2008. [Sen. *The Hon. E. George*]
14. Annual audited financial statements of the Trinidad & Tobago Free Zones Company Limited for the financial year ended December 31, 2010. [Sen. *The Hon. E. George*]

**JOINT SELECT COMMITTEE
(Appointment of)**

Madam Vice-President: Hon. Senators, before the Clerk announces items Nos. 7 and 8, I would like to go back to Item No. 3 on the Order Paper, “Announcements by the President”. I have a correspondence from the Speaker of the House, hon. Wade Mark, dated November 14, 2011:

“Appointment of the Joint Select Committee to consider the Legislative Proposals to provide for Public Procurement and Disposal of Public Property and to Repeal and Replace the Central Tenders Board Act.”

At a sitting held on Wednesday November 9, 2011, the House of Representatives agreed to the following:

‘BE IT RESOLVED that a Joint Select Committee be established to consider the Legislative Proposals to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act which were laid in the House of Representatives on Friday June 25, 2010 along with the work of the previous Committee appointed in the First Session of the Tenth Parliament:

AND BE IT FURTHER RESOLVED that the Joint Select Committee be mandated to:

- (a) consult with stakeholders, experts and other interested persons;
- (b) send for persons, papers, records and other documents;
- (c) recommend amendments to the proposals with a view to improving the drafts;
- (d) submit a report to Parliament within three (3) months from the date of appointment.’

Accordingly, I respectfully request that you convey this decision of the House of Representatives to the Senate.”

ORAL ANSWERS TO QUESTIONS

**“PH” Taxi Drivers
(Government’s Policy to Legalize)**

- 10. Sen. Fitzgerald Hinds** asked the hon. Minister of Transport:
- A. Could the Minister indicate the date and place of the first announcement of the Government’s policy to legalize “PH” taxi operators?
 - B. Could the Minister outline the consultative process that his Ministry engaged with the national community and with the Maxi-Taxi Drivers Association and taxi-drivers in particular, before and after such announcements?
 - C. Could the Minister indicate the names of the insurance companies, if any, which have agreed to issue insurance policies that are appropriate for the protection of passengers travelling in the private vehicles proposed to be so authorized or legalized?

The Minister of Transport (Sen. The Hon. Devant Maharaj): [*Desk thumping*]
Thank you very much, Madam Vice-President.

In response to part A, the first announcement of the Government policy to legalize “PH” taxi operators was made by the then Minister of Works and Transport, hon. Jack Warner, at a meeting with the media on July 08, 2010 at the head office of his Ministry at the corner of Richmond and London Streets, Port of Spain.

In response to part B, upon the announcement of the plan to introduce legislation for a legal framework for the operation of “PH”:

- (1) a proposed policy framework was published and placed on the then Ministry of Works and Transport’s official website for public comment;
- (2) the policy paper was also circulated to all the associations representing maxi-taxis and copies were placed at all licensing offices throughout Trinidad and Tobago. Interested persons were also advised to email their comments at a special email address that was created specifically for this purpose;
- (3) the then Minister of Works and Transport, hon. Jack Warner, invited the Maxi-Taxi Drivers Association, the auxiliary transport association, operators of wide vans in rural communities to a meeting at the Ministry’s head office located at Richmond and London Streets, Port of Spain.

1.45 p.m.

There is no record of any insurance company stating categorically that it is prepared to insure “PH” taxis now or when they have become regularized.

Sen. Hinds: In light of the fact that no insurance companies have yet indicated any willingness to issue policies to protect passengers in the circumstances as you have described them, does the Government, does the Minister feel that this policy is going anywhere? Is it likely that it would become realized in Trinidad and Tobago?

Sen. Ramlogan: That is not a question man, that is a not question. Ask for a supplemental.

Sen. The Hon. D. Maharaj: I would suggest you ask a supplemental question to that effect.

Sen. Hinds: Which is what I just did.

Hon. Senators: In writing.

Sen. Hinds: Madam Vice-President, this is not for the Attorney General. I have asked a supplemental question. Would you direct the proceedings, please? This is not a matter for the Attorney General.

Madam Vice-President: You have advised him to put it in writing Hon. Minister? He is indicating that he does not have the adequate information at this time and if you can put it as a supplemental in writing. Do you have another supplemental, Senator?

Sen. Hinds: No, Madam Vice-President.

Madam Vice-President: Sen. Hinds, question No. 13,

Sen. Hinds: Just calm down and let the thing happen. All right! Nice!

Mr. Mohamed Bin Hammam
(Details of Visit)

13. Sen. Fitzgerald Hinds asked the hon. Minister of Foreign Affairs and Communications:

- A. Would the Minister indicate whether special courtesies and/or privileges were afforded to former FIFA executive Mr. Mohamed Bin Hammam and his contingent upon their arrival at the Piarco Airport, during a recent visit to Trinidad in May, 2011?

- B. Would the Minister also inform whether the delegation arrived via a private aircraft?
- C. If the answer to (B) is in the affirmative, would the Minister indicate whether procedures observed during the arrival and departure of Mr. Bin Hammam and his contingent adhered to all the relevant laws of Trinidad and Tobago?

The Minister of Foreign Affairs and Communications (Hon. Dr. Surujrattan Rambachan): Thank you, Madam Vice-President. Madam Vice-President, this question is in three parts and I will answer them in three parts.

Madam Vice-President, I am advised that Mr. Mohammed Hammam S. al Abdullah, better known as Mohammed Bin Hammam, former FIFA Executive and his contingent visited Trinidad and Tobago on May 9 and 10, 2011. No special privileges were afforded to Mr. Mohammed Hammam S. al. Abdullah and his contingent. Normal courtesies that would be extended to any visiting VIP guest at the executive Jet Centre at the south terminal of Piarco International Airport were afforded. Mr. al Abdullah and his contingent—the Airports Authority of Trinidad and Tobago protocol officers were in attendance to escort the guests to be processed by the border control agencies. I repeat, the Airports Authority of Trinidad and Tobago protocol officers were in attendance to escort the guests to be processed by the border control agencies.

The second part of the question, I am advised that the delegation arrived by private aircraft.

The third part: Madam Vice-President, I am advised that the procedures observed during the arrival and departure of Mr. Mohammed Hammam S. al. Abdullah and his contingent, adhered to all the relevant laws of Trinidad and Tobago. Thank you. [*Desk thumping*]

Sen. Hinds: Since they adhered to all the laws, are the Immigration and Customs declaration forms available to the Government as we speak?

Hon. Dr. S. Rambachan: Madam Vice-President, that is a new question.

Sen. Hinds: Madam Vice-President, just asking—

Madam Vice-President: Well, the hon. Minister did answer questions (a),(b) and (c), and if that is in fact for him to provide additional information, you have to give him some time to provide that.

Sen. Hinds: Second supplemental. Well, you indicated hon. Minister that the Airports Authority of Trinidad and Tobago protocol officers greeted Mr. Bin Hammam, did that include passage through the VIP lounge?

Hon. Dr. S. Rambachan: Madam Vice-President, if you know the south terminal, I am referring to the south terminal, and what is available in the south terminal.

**Caribbean Court of Justice Legislation
(Timeframe for Introduction to Parliament)**

15. Sen. Helen Drayton asked the hon. Prime Minister:

Would the Prime Minister indicate to the Senate:

- (i) whether the Government intends to introduce legislation in Parliament to replace the Judicial Committee of the Privy Council and make the Caribbean Court of Justice (CCJ) Trinidad and Tobago's final appellate court; and
- (ii) if the answer to (i) is in the affirmative, would the Prime Minister indicate the time frame for its introduction in Parliament?

Sen. The Hon. Emmanuel George: Thank you, Madam Vice-President. Madam Vice-President, the answer to question No. 15 is as follows:

The Government does not at this time intend to introduce legislation in Parliament to replace the Privy Council and make the CCJ our final appellate court.

In light of this answer to (i), the answer to (ii) is not applicable. Thank you.
[Desk thumping]

**Elite Athlete Assistance Programme
(Details of)**

16. Sen. Corinne Baptiste McKnight asked the hon. Minister of Sport:

With respect to the Elite Athlete Assistance Programme (EAAP), would the Minister indicate to the Senate:

- (i) what are the criteria governing qualification for "Elite Athlete" status;
- (ii) is eligibility open to all sporting disciplines;
- (iii) is there a system of monitoring and periodic evaluation in place for these athletes;
- (iv) if the answer to (iii) is in the affirmative, would the Minister explain how it operates;
- (v) how are the payments to athletes made; and
- (vi) what is the role of the sporting association to which the athlete belongs?

The Minister of Sport (Hon. Anil Roberts): Thank you, Madam Vice-President. With regard to (i) of the question—and the question is quite long and extensive—the criteria governing qualifications for “Elite Athlete” status indicates that athletes and teams must:

1. be nationals of Trinidad and Tobago as defined by law and accepted by the international federation governing the respective sport;
2. be ranked within the top 40 of their respective sporting discipline in the world;
3. be a medalist at the Olympic Games or World Championships or Commonwealth Games, of Pan-American Games, or Central American and Caribbean Games;
4. represent Trinidad and Tobago at sanctioned international competitions;
5. make themselves available for selection at the stipulated games, within the current quadrennial period;
6. be performing at the sub-elite level with major success as determined by the national sporting organization.

With regard to (i), financial assistance is only provided to athletes competing in Olympic sports. However, as you would recently know, due to the great performances of our cricket team—as you know cricket is not an Olympic sport, but because of the advent of the champions league and Trinidad and Tobago being able to be represented internationally, and Daren Ganga and his team in 2009 making it all the way to the final and then again once again proving Trinidad and Tobago’s worth at that level—the Ministry and its team have made allowances for the expansion of this programme, and even though not at the extreme levels of financial reward, have made it available to senior cricketers male and female and a junior elite level also. So the programme will be expanded as world class performances can come up to the existing criteria.

With regard to parts (iii) and (iv), yes, Madam Vice-President, periodic evaluations and monitoring of athletes are conducted as detailed below:

- the Ministry of Sport will adhere to the following guidelines for disbursement of funds under the Elite Athlete Assistance Programme (EAAP);
- government’s guidelines on the payment of subventions;
- employment of proper accounting procedures;

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- submission of the required financial statements by athletes and coaches to the Ministry as required;
- utilization of grants by successful applicants for the purpose for which it was granted;
- quarterly evaluation reports from the national sporting organizations on the status of rankings of successful programme applicants;
- regular updated reports on incidents of sport related injuries among participating athletes;
- provision by athletes of statements, bills from service providers for training, medicals, coaching, accommodation fees, et cetera.
- completion of performance evaluation forms by athletes based on half yearly tranches;
- availability of the athlete for drug and medical testing;

As it relates to part (v) of the question, payments are made to athletes in two tranches, up to a ceiling of \$250,000.

Finally, for part (vi) of the question, the national sporting organization is responsible for recommending to the Trinidad and Tobago Olympic Committee, athletes who are eligible for financial assistance under this programme.

Madam Vice-President, I will also let Senators know that my cell number is 680-8343, so if there are any questions at any time they can call. [*Desk thumping*]

**BACTERIOLOGICAL (BIOLOGICAL)
AND TOXIN WEAPONS BILL, 2011**

Bill to give effect to the Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction [*The Minister of National Security*]; read the first time.

Motion made: That the next stage of the Bill be taken at a sitting of the Senate to be held on Tuesday November 29, 2011 [*Sen. The Hon. Brig. J. Sandy*]
Question put and agreed to.

LEGAL AID AND ADVICE (AMDT.) BILL, 2011

Bill to amend the Legal Aid and Advice Act, Chap. 7:07 [*The Minister of Justice*]; read the first time.

JOINT SELECT COMMITTEE
Legislative Proposal to Repeal and Replace
Central Tenders Board Act
(Appointment of)

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Madam Vice-President, I beg to move the following Motion:

“BE IT RESOLVED that a Joint Select Committee be established to consider the Legislative Proposals to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act which were laid in the House of Representatives on Friday June 25, 2010, along with the work of the previous Committee appointed in the First Session of the Tenth Parliament:

AND BE IT FURTHER RESOLVED that this Joint Select Committee be mandated to:

- a) consult with stakeholders, experts and other interested persons;
- b) send for persons papers, records and other documents;
- c) recommend amendments to the proposals with a view to improving the drafts;
- d) submit a report to Parliament within three (3) months from the date of appointment.”

Question put and agreed to.

2.00 p.m.

ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) BILL, 2011

The Minister of Justice (Hon. Herbert Volney): Madam Vice-President, I beg to move:

That a Bill to repeal and replace the (Deoxyribonucleic Acid) Act, Chap. 5:34, be now read a second time.

Over the last few days, Madam Vice-President, I have been heartened to observe the high levels of interest and debate surrounding the provisions of this Bill by ordinary citizens, the man in the street, as it were, demonstrating that the democratic process in our land is indeed alive and well. This Government values such contributions. Cognizant of the fact that the responsibility of nation building falls on all of us, we recognize that it is the Government that will set the course

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and champion the realization of our dreams to become a society of which we can all be truly proud, and this is the aim of the Government as we bring for the consideration of the Upper House the Administration of Justice (Deoxyribonucleic Acid) Bill, 2011. [*Desk thumping*]

We seek to return Trinidad and Tobago to peace and tranquillity, to a sense that we are a people that observe and uphold the rule of law, and to safety and security for both life and property. We desire a society where there is a high level of expectation that if you do the crime, you will do the time. To deliver such, Madam Vice-President, requires the modernization and transformation of the criminal justice system as we know it, we must provide our foot soldiers with the ammunition to wage war on the criminal elements in our society, and not just any ammunition, but such that is suitable to the task.

The primary purpose of this Bill then is to establish a legal framework within which forensic DNA evidence can be used in the investigation and prosecution of criminal matters. We are well aware that there has been a marked increase in the number of criminal trials which have been aborted or discontinued where witnesses have refused to give evidence or have recanted on previously given evidence or statements.

This conduct immediately brings into question the veracity of the witness and raises questions as to the reliability of the evidence. Without the oral evidence of these key witnesses, the prosecution is often forced to discontinue proceedings against an accused person.

DNA evidence, Madam Vice-President, is not subject to the vagaries and unpredictability of human testimony, and provides important corroborative evidence which can show conclusively whether an accused person is guilty or innocent. As we are all aware, but to restate for the purpose of the records, DNA is an acid found in the nucleus of cells in living organisms which is analyzed by scientists to obtain a DNA profile. Like fingerprints, each person's DNA, except in the instance of identical twins, is unique to that individual, and therefore, an excellent tool in assisting in the determination and pinpointing with extremely high levels of accuracy whether or not individuals detained for an offence are, in fact, the perpetrators.

Madam Vice-President, the use of DNA technology is not new to Trinidad and Tobago. What we are in fact doing with this Bill is updating the provisions of the existing legislation bringing it in line with global best practice, and ensuring that areas of the existing Act that heretofore were impossible to implement can now be realized.

Madam Vice-President, I now turn to addressing some of the issues raised in the other place by Members of that esteemed place on the other side. One Member disputed the infallibility of DNA evidence citing that errors in DNA testing regularly occur, and have led to wrongful conviction. Madam Vice-President, significant weight can be ascribed to DNA evidence, since in general the chance of error is very small. That is, the probability of two unrelated individuals' DNA profiles matching is on average less than one in one million. Indeed, present day genetic testing has an accuracy rate of up to 99.99 per cent.

DNA evidence, therefore, Madam Vice-President, is highly accurate and is undoubtedly the most accurate piece of scientific evidence a lawyer and law enforcement officials can have. What we have in fact found is that questions as to the accuracy and reliability of DNA evidence speak, not to the accuracy of the DNA test itself, but rather to the procedures employed in the collection and analysis of a particular sample.

When DNA evidence fails to produce the truthful test, it is because of a failure in criminal justice mechanisms. The case in point, the *Amanda Knox and Raffaele Sollecito* matter in the Italian jurisdiction. Both were found guilty of murder and sentenced to jail for 26 years and 25 years respectively. There, the court appointed an expert panel which found, among other things, that the DNA was improperly stored in plastic bags that would degrade genetic traces which could have been prevented by using the international standard of paper bags. This confirms the point that DNA does not lie, Madam Vice-President, but human fallibility may shroud its truth.

With this in mind, a provision of this Bill is for the Minister to make regulations in order to give effect to the Act. At this time, the drafting of those regulations is engaging the attention of the legal team in the Ministry of Justice. The intention is to provide a regulatory framework that will guide, among other things, the collection, storage and analysis of DNA samples and evidence according to international best practice. Ultimately, despite the potential for human error, the criminal justice system can still benefit more from DNA profiling than it can without it.

On the issue of contamination, Madam Vice-President, a Member in the other place raised the issue that with DNA, there is a high risk of cross-contamination including accidental contamination and a danger of the wrongful convictions that could follow as a result. Madam Vice-President, concerns were also raised as to the cross-contamination by microscopic traces of unrelated evidence by forensic scientists accidentally mixing their own DNA with the sample being tested.

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Madam Vice-President, in the analysis of any forensic material, there is, of course, a risk of contamination. Such instances are possible, for example, when the analyst talks while handling a sample leaving an invisible deposit of saliva. This is a problem encountered by even the most sophisticated of DNA laboratories including those in the United States. However, there are several methods for preventing and detecting contamination available to DNA testers which relate to the enhancement of sterile techniques, and the use of best practice standards, operating procedures and techniques to minimize contamination.

This Government recognizes that even with the implementation of the best methodologies, good technique cannot ensure a zero probability of contamination, hence the need for the existence of negative control experiments. The point is, Madam Vice-President, that all types of forensic evidence including impression evidence, fingerprint evidence and ballistics are exposed to opportunities for destruction, mishandling, contamination and any other conceivable catastrophe that can be brought on by human or natural errors.

It is therefore misleading to suggest that the risk of contamination is particular to DNA evidence. Do we then take a Cro-Magnon step backwards and also do away with fingerprinting, an enshrined and viable crime-fighting tool? I put it to you, Madam Vice-President, that the answer to such a question is an emphatic “no”. What we must then strive to do is to ensure that all our mechanisms, procedures and systems conform to international best practice and keep abreast of improvements as they become available. I hope I did not breach any protocol by putting anything to you, Madam Vice-President; it was not intended to suggest offence.

Madam Vice-President, I intimated earlier that I was quite heartened to note the levels of public interest that this Bill has evoked. Journalists and public figures alike all shared their perspectives and concerns in both traditional and new media sources. Of particular concern seems to have been the clause which allows for a sample to be taken from an alleged victim of sexual assault without consent.

In fact, Sunday columnist, Judy Raymond in her article, “Keep an eye on what is going on here, Kamla”, in the *Trinidad Express* of November 13, says and I quote:

“The DNA Bill will authorise the State to assault people who are not only innocent of any crime, but have also just been the victims of one of the worst kinds of crime.”

She goes on to add:

“How does the Government justify this additional, official violation of rape victims?”

Before I proceed to answer, I would like to thank her for the compliment of referring to me as a “19th Century squire”; I thought it was rather complimentary. [*Desk thumping*] That is in my poise.

Madam Vice-President, the Government is not insensitive to the plight of individuals who are the victims of one of the most heinous crimes that can be perpetrated against a person. However, as a former member of the Bench, I am also aware that for reasons that maybe best known to the alleged victim, some individuals have also used false allegations—a means of accomplishing sinister ends. Admittedly, such instances are in the minority. There have also been cases where bona fide victims of the crime because of the emotional trauma associated with the experience or for other reasons, may have difficulty identifying the perpetrator of the crime.

Madam Vice-President, whereas clause 19(1) provides for a police officer to, without delay, make arrangements for a qualified person—that is a medical officer—to examine the alleged victim who has filed a report regarding the alleged commission of a sexual offence, there is nothing in this provision that compels that person to attend and submit to physical examination by a qualified person.

Where however, the alleged victim agrees to attend such an examination by virtue of clause 19(2), the qualified person at the time of the examination may take such samples, as he thinks, fit from the alleged victim for the purpose of forensic DNA analysis without the victim’s consent. What obtains currently is that when a victim is examined, at this time, a sample is extracted for the purpose of determining whether or not semen has been deposited in the vaginal cavity. It does not provide for the identification of the perpetrator of the crime. However, clause 19(2) allows for a qualified person to take such samples that he thinks fit, during the examination, without obtaining the approval of the alleged victim and the resulting DNA profile may establish the identity of the perpetrator.

2.15 p.m.

The issue here is that the purpose of this provision is not to infringe the rights of any one individual, but ensures that perpetrators of this heinous crime are caught, including those who are considered serial rapists. If the wheels of justice are engaged, then it is imperative that persons responsible for these crimes are prosecuted and brought to justice, otherwise many other persons may become

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victims simply due to failure to act in a timely manner as a result of the unavailability of evidence. Moreover, there are persons who may falsely accuse another. The justice system must be enabled to exonerate that person.

The final benefit of this provision is the increased likelihood that defendants will enter guilty pleas when confronted with the knowledge that victims are mandated to provide samples. Increased guilty pleas by defendants may result in victims reporting rapes to the police more often. One current deterrent to victims reporting rape to the authorities is the additional trauma they suffer by testifying in court. However, the increased probability of defendants entering guilty pleas when confronted with positive DNA results may encourage victims to report more crimes in the future as well as save the courts both time and money.

Madam Vice-President, I read recently an article in the United Kingdom's *Guardian*, where a teenage rape victim had the presence of mind to leave, at the crime scene, strands of her own hair as well as saliva to ensure traces of her DNA could be found by the police. Her actions provided additional evidence that victims truly appreciate the value of DNA. They understand that through DNA, they are in fact empowered.

I now come to the issue of retention of samples. On the issue of indefinite retention of DNA profile, I wish to make the following points:

1. Retention is objective and not linked to guilt or innocence and, therefore, stigmatization.

The storage of a profile in the databank does not indicate the innocence or the guilt of the individual to whom it relates. The DNA profile is merely a numerical code derived from a DNA sample from which an individual may be identified.

The modification of database criteria to exclude suspects defeats the purpose of the database. As demonstrated by the legislative progression of the retention programme in the United Kingdom, the database is more useful when the police have access to a larger class of persons, as opposed to only those suspected of committing the most serious offences.

2. Knowledge of the existence of the databank to yield public benefit.

It is anticipated that the databank will act as a deterrent to offending and reoffending, as it provides a means of solving cold cases and raises public confidence that persons who have committed offences can be found and better dealt with by the criminal justice system.

Madam Vice-President, the DNA databank can also provide a breakthrough into the investigation of serial offenders who operate in different locations and deliver a powerful message to offenders that technology will catch them at the end of the day. Retention has also received judicial support.

In the House of Lords decision of the *Regina v the Chief Constable of South Yorkshire, ex parte LS. and Marper* reported that 2004, United Kingdom House of Lords at page 39, when considering the proposition that the retention of fingerprints and samples create suspicions in respect of persons who have been acquitted, Lord Brown said at paragraphs 86 and 87, I quote:

“86. Given that carefully defined and limited use to which the DNA database is permitted to be put—essentially the detection and prosecution of crime—I find it difficult to understand why anyone should object to the retention of their profile (and sample) on the database once it has lawfully been placed there. The only logical basis I can think for such an objection is that it will serve to increase the risk of the person’s detection in the event of his offending in future...First, the fear of an Orwellian future in which retained samples will be re-analysed by a mischievous State in the light of scientific advances and the results improperly used against the person’s interest. If, of course, this were a valid objection it would apply no less to samples taken from the convicted as from the unconvicted and logically, therefore, it would involve the destruction of everyone’s samples. But no such abuse is presently threatened and if and when it comes to be then will be the time to address it. Sufficient unto the day is the evil thereof.

87. The second suggested objection is to the retention of profiles obtained from those at one time reasonably suspected of crime but subsequently acquitted or not proceeded against”—and I continue to quote from the law lords in the United Kingdom’s House of Lords—“the objection being that they are thereby stigmatised as properly belonging to the same group as the convicted. This to my mind is an equally unrealistic objection.”—Counsel—“...was quite unable to suggest in whose eyes they would be stigmatised. It should not be forgotten that the profiles of pure volunteers...are also...on the database.”

Matters considered to be cold cases may have a sudden breakthrough when some fresh evidence is produced, which links the perpetrator of a criminal offence with another crime committed many years before. This is the importance of establishing and maintaining a comprehensive DNA database against which searches may be conducted for a match.

3. The emergence of new technologies.

Advancements in DNA technology continue to improve law enforcement's ability to use DNA to solve cases. The original forensic applications of DNA analysis required a relatively large quantity of the DNA sample and for that reason, some testing in the past may not have been successful. Similarly, if a biological sample was degraded by environmental factors, DNA analysis may have been unsuccessful at yielding a result.

Newer DNA analysis techniques enable laboratories to develop profiles from biological evidence invisible to the naked eye such as skin cells left on ligatures or even on weapons. Value DNA evidence might be available that previously went undetected in the original investigation. This highlights the importance of the retention of both DNA samples and profiles for unforeseen future use.

4. Other forms of forensic evidence are routinely retained.

The fingerprints, photographs and physical descriptions of convicted persons are preserved as a matter of routine.

In Trinidad and Tobago, by way of the Police Service (Amdt.) Act, No. 13 of 2007—probably piloted in the Parliament by Sen. Fitzgerald Hinds, for all you know—section 50 provides for the data derived from the analysis of the fingerprint impression taken from a person, that it shall not be destroyed and the Commissioner of Police shall cause that data to be transferred to a national database created by written law.

I now turn to the provisions of the Bill. The Bill which is divided into six parts and comprises 38 clauses would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the Members of each House of our Parliament.

Part I of the Bill comprises clauses 1 through 4 and deals with preliminary matters. Clause 2 in particular provides for the Act to take effect even though it is inconsistent with the fundamental rights and provisions of the Constitution. A standard feature of any written Constitution in every democratic nation is that fundamental rights and freedoms are recognized and declared in one form or another. Fundamental rights define the limits on how the state may or may not treat with its citizens.

Notwithstanding the recognition and declaration of our fundamental rights and freedoms in those sections 4 and 5 of the Constitution, provision is in fact made for Parliament to abrogate these rights. Any piece of legislation which is

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inconsistent with sections 4 and 5 is required, pursuant to section 13(2) of the Constitution, to be passed by a special majority vote of not less than three-fifths of the Members of each House.

Section 13(1) of the Constitution provides, I quote:

“An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.”

Our Government is confident that this Bill is in fact reasonably justifiable in accordance with section 13(1) and I will show why.

The Bill seeks to modernize the criminal justice system. It is part of a compendium of measures that are being brought to the Parliament, including the Bill to abolish the preliminary enquiry and the Administration of Justice (Electronic Monitoring) Bill; all of which shall be before the Parliament very, very shortly. As I said, it seeks to modernize the criminal justice system and implement critical legislation, which will be an invaluable crime-fighting tool aimed at securing convictions on the one hand and exonerating the innocent on the other.

2.30 p.m.

Given the current unpalatable state of affairs as regards the increasing levels of crime and criminality in our country—notwithstanding the very best efforts of our Sen. The Hon. Brig John Sandy and the protective forces of our country—it is the duty of the Government to put in place whatever measures may be necessary to ensure the safety and well-being of all our citizens; this Bill is a manifestation of that resolve. [*Desk thumping*]

Madam Vice-President, whilst the Government recognizes that the tenets of the Constitution must be treated with the utmost respect, individual rights must be balanced against the overriding public interest. This is an established principle of constitutional jurisprudence, that no right is absolute and there are instances in which rights claims should yield to competing social considerations. In other words, the rights of each individual must be balanced against the right of the State to protect all individuals collectively. Because the fundamental human rights of the citizenry are involved, the State cannot and should not act capriciously in these matters, but must show just cause, that is, some compelling moral justification for intervening, or imposing limitations on the manner in which an individual exercises his fundamental rights.

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It is submitted that in determining the rules to govern any society priority must be given, *inter alia*, to the maintenance of public order, the security of the State, the well-being of the citizenry and the prevention, detection and prosecution of criminal offences. The criminal element has virtually decimated the effective functioning of the criminal justice system, and we recognize that we are no longer fighting for our individual interests, but for our collective well-being and for the future of our children. As such, Madam Vice-President, the Government is duty-bound to respond to the needs, hopes and expectations of our people; that is all the people. And so it is with the collective interests of all our citizens in mind, I appeal to all Members of this honourable Chamber to support this legislative measure.

Part II of the Bill, Madam Vice-President, provides for the Forensic Science Centre to be the official DNA laboratory in Trinidad and Tobago and provides for the facility to enter into agreements with accredited international DNA laboratories, for the provision of DNA services.

Part III of the Bill comprises clauses 7 through 11, and deals with establishment and functioning of the National Forensic Databank of Trinidad and Tobago. The section provides for the appointment of a custodian and deputy custodian and the function of those officers.

Part IV comprises clauses 12 through 23 and makes provision for the taking of intimate and non-intimate samples. Firstly, this section provides for a person to volunteer a sample. The value of obtaining samples from volunteers should not be overlooked, Madam Vice-President, as the effectiveness of any investigation is enhanced, if law enforcement authorities can also obtain elimination samples. For example, where an individual has been murdered, each police officer who attends the crime scene, the district medical officer, the undertakers or any other person who may have compromised the integrity of the crime scene, should volunteer to give an elimination sample, or may be required to submit to testing if so required by the investigating officer.

Similarly, where a woman has been the victim of a rape, her husband or committed partner may wish to volunteer a DNA sample, in order to distinguish his DNA from any biological material which may have been retrieved from the rape victim.

Part IV also sets out the circumstances under which a non-intimate sample shall be taken from a person without his consent. Under the existing legislation non-intimate samples may only be taken from a person without his consent, where:

- (a) he has been charged with an offence;
- (b) a stain derived from a crime scene exists and there are reasonable grounds for suspecting the person's involvement in that crime;
- (c) the person has already had a non-intimate sample taken and that sample has proved to be unsuitable, or insufficient;
- (d) the person has been convicted of an offence and is serving a term of imprisonment.

However, Madam Vice-President, with respect to intimate samples, the 2007 Act is limited to the taking of an intimate sample from a suspect with his consent, or without his consent, by order of the court. Additionally, non-intimate or intimate samples may be taken from a person who is in prison, or other institution to which the Prisons Act applies, or from a person who is detained at a psychiatric hospital in accordance with the Mental Health Act.

Madam Vice-President, the severe limitations posed by this current legislative formulation were highlighted in Magisterial Appeal No. 3811 of 2006; *Sean Dhilpaul Corporal v. Richard McBain alias "Bean"*. In this matter the complainant sought an order under section 19:1 of the then Act, to obtain an intimate sample from the accused, Mr. McBain who was charged with the murder of Stephen Hackshaw.

The main question to be determined by the court was whether Mr. McBain was a suspect within the meaning of section 19(1) of the Act, having already been charged for murder and the preliminary inquiry having already begun. The court ruled that section 19, subsection (1) of the Act, only applied to a suspect and did not apply to an accused person who had already been charged and brought before the court. The court concluded that since section 19 made no mention of persons charged or convicted of an offence as provided for in section 5 of the Act, the court could make no ruling, or order in respect of an accused, but was limited by the section making orders in respect of a suspect.

The learned Judge, Madam Justice Alice Yorke-Soo Hon was of the position that, and I quote:

"If section 19 were intended to apply to an accused or to a convicted person then it should have been drafted in terms similar to section 5. Considering the legislation as a whole and the way that it is drafted at present it is my view that a Court may only order that an intimate sample be taken from a suspect and not from an accused already charged with a crime or someone already convicted of an offence."

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Clearly, Madam Vice-President, the practical effect of the court's ruling was to severely restrict the ability of the police to obtain intimate samples from accused or convicted persons resulting in a major hindrance to the investigative capacity of the police, and an inadequate use of DNA technology.

This Bill, Madam Vice-President, addresses these deficiencies Clause 13 of Part IV, therefore, is intended to strengthen the legislation and assist the police with their investigations by broadening the categories of persons from whom non-intimate samples can now be taken.

Madam Vice-President, the 2007 Bill quite clearly shows that despite the best efforts, the best efforts and the encouragement of the then Member of Parliament for Morvant/Laventille, present Sen. Fitzgerald Hinds, that the Opposition should join in this noble feat of bringing this legislative measure to Parliament and passing it, and actually receiving the support of the then Opposition, now Government, that despite all of that including the best effort of a Joint Select Committee of the Parliament, that the legislation ended up being flawed. We must accept that we are humans and we do make errors even as parliamentarians and this measure is intended to tighten up on that Bill, and to strengthen it, and to make it operational, so that the law enforcement agencies can make optimum use of DNA technology in fighting the war against criminals. [*Desk thumping*]

Madam Vice-President, this Government is in effect seeking to simplify the means by which DNA samples are obtained and to strengthen the legislation as I said; so that DNA evidence may be fully utilized as a modern and effective crime-fighting tool; clause 13 achieves this goal. The consent of the person from whom a sample is to be taken is no longer an issue, and the taking of DNA samples is no longer restricted to suspects, or persons charged with an offence. Moreover, police officers will now be empowered to take a wider range of non-intimate samples including a specimen of blood.

What would we expect in this world in which we live, a person who knows he has left a specimen of DNA at the scene of the crime to consent to his DNA being given? Let us get real in this Senate, it does not happen that way, there are times when the State has a greater interest in seeing that the ends of justice are served, that the criminal be detected, the crime be proven; and those who commit the crime be made to do the time, and that is why this measure although it may appear, and it has been described perhaps as being draconian, it is a measure that on the whole is reasonably justifiable notwithstanding that it abrogates—and we admit that it abrogates—certain sections of the Constitution.

Madam Vice-President, I have already alluded to the need for having elimination samples lodged on the databases which will form the DNA bank. Because of the sensitive nature of their employment, and as a security measure, it was felt that the following persons should, as a matter of course, provide a non-intimate sample:

- (a) A person who is employed, or applies for employment...—in the—
“protective services.”

That is members of the police service, prison service and fire service, and we are open on the floor of this Senate, to even include the members of the defence force if the wisdom is that that is the way to go.

- (b) An applicant for, or the holder of, a licence, certificate, or permit under the Firearms Act...

- (c) A person who is employed or assigned duties at the...Forensic Science Centre.”

Madam Vice-President, legislation should never be static, but should always evolve and adapt to the needs of society. It may be necessary in the public interest for other persons to give mandatory DNA samples, provision is, therefore, made for the Minister by order to amend the Third Schedule.

Part IV of the Bill also introduces another new concept, that is where the Minister of National Security is of the opinion that a sample is required from a person in the interest of national security, he may request that the Commissioner of Police make arrangements for a non-intimate sample to be taken from the person. There is nothing to fear about this: Intelligence tells you that “Joe the Jackal” is at Piarco Airport, or “Fitzgerald the Hind” [*Interruption*] [*Laughter*] [*Crosstalk*] [*Desk thumping*]

Sen. Hinds: Madam Vice-President, I take offence! I take offence! Could the hon. Minister get a better example? [*Crosstalk*]

2.45 p.m.

Hon. H. Volney: We are all aware, Madam Vice-President, that we live in a global village where threats to destabilize civil society have become a frightening reality. It goes without saying that balancing the needs of national security and the interest of the State against the respect for the fundamental constitutional rights and freedoms entrenched is indeed a difficult task faced by governments all around the world.

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Similar safeguards already exist in the UK under the Counter-Terrorism Act, 2008, which extended police powers to allow DNA samples obtained under the PACE Act to be used in the interest of national security. It should be noted that locally our Interception of Communications Act, 2010, makes provision for the interception of communications in the interest of national security. That is an Act, if I recall, which was approved by both sides of the House, after, I believe, a joint select committee had so recommended. There is no black and white answer to the balancing of private interest with that of national security, but the Bill seeks to strike this delicate balance as powers of arrest alluded to in clause 16 are only meant to facilitate the taking of the sample and the police are under a strict duty to immediately release the person after the sample is taken.

Part IV also provides for the taking of non-intimate samples from citizens who have been deported both before and after the coming into force of this new Act; and also from non-citizens who have been detained under the Immigration Act.

Hon. Senators may not be aware, but there are many persons at the Immigration Detention Centre who have literally thrown away all evidence of their identity and identification and want to stay in sweet Trinidad, but the State cannot allow them because we do not know who they are. They could be criminals in flight.

This Bill permits the State to obtain their DNA in order, through international sharing of information and intelligence, to be able to trace, from other countries from which they came, who in fact they are so that they can be sent back to where they came from. This is another radical move from the current law, which will serve to strengthen our databases and investigative capacity, as this information may prove to be of invaluable assistance in the event that the deported or detained person was convicted of a criminal offence abroad or is wanted for any outstanding criminal matters in this jurisdiction or any other jurisdiction.

I now turn to clause 18 of Part IV. In years past, our nation experienced an unprecedented surge in the kidnapping of persons for ransom, many of whom remain unaccounted for to date. The families of these missing persons, understandably, have had their lives turned upside down always searching for their loved ones and needing closure. Occasionally, we see and we read reports in the media that unidentified human remains may have been found or that the remnants of clothing and other items which may belong to a missing person are discovered. There is obvious benefit in the use of DNA technology to assist in identifying missing persons or even the bodies of deceased persons, which are in such an advanced state of decomposition that the identity of the individual may only be determined by forensic DNA analysis.

This clause seeks to address these issues and will make provision for forensic DNA analysis to be carried out on an item belonging to or used by a missing person, on any biological material found on the body of a deceased person, or on any item attributable to a crime scene.

Madam Vice-President, it is critically important that the integrity of a sample taken from a person pursuant to provisions of this Bill is maintained. This is the purpose of clause 21, which provides that:

“A police officer or qualified person who takes a sample...shall as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis.”

I now move to Part V of the Bill, which comprises clauses 24 to 25 and seeks to establish post collection procedures and also deals with the length of time samples may be retained. Provision is made for the retention of samples for a minimum period of 10 years, unless a court orders that the sample not be destroyed. The Akiel Chambers case—I am sure everybody in this country remembers that name, Akiel Chambers, and the injustice in the life of this young man. This is a painful reminder of the grave injustice which can occur when a DNA sample is destroyed prematurely. I rest my case there.

Madam Vice-President, despite privacy concerns, this is the benefit of retained DNA samples. The Bill, therefore, seeks to extend the scope of the existing legislation by providing that within three months of the end of each calendar, the Forensic Science Centre shall provide the Commissioner of Police with a list of samples it proposes to destroy. If the commissioner does not object to the destruction of a sample on the list, the sample may be destroyed.

Madam Vice-President, where the Commissioner of Police is of the view, based on information then available to him, that a sample shall be retained for investigative purposes, he will now be able to alert the Forensic Science Centre that the sample should not be destroyed. This is a safety measure which will ensure that cases do not collapse because of a lack of evidence.

Part VI of the Bill comprises clauses 26 through 38 and provides for miscellaneous matters which relate, inter alia, to the taking of DNA samples, storage of DNA profiles and the sharing of DNA data.

Clause 27 provides for the establishment and maintenance of a DNA register at each police station or by each qualified person who takes samples. While the legislative proposals I have outlined may be considered radical, far-reaching and

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unfathomable by some persons despite our best efforts on this side of the floor to explain them—and it is left to be seen if what I have outlined today may be considered to be far-reaching—they must be exercised in a structured and tightly-managed framework with appropriate checks and balances.

The Bill sets out, therefore, the information which must be recorded in a register when a sample is taken. The clause further describes the circumstances under which the custodian or person authorized by him may disclose DNA data. Where DNA data is disclosed outside the specified categories of persons, the person making the unauthorized disclosure commits an offence and is liable, on summary conviction, to a fine of \$100,000 and imprisonment for seven years.

Clause 30 would set out the offences which can be committed by a person under the proposed legislation.

Clause 31 would provide that a person refusing to give a sample or otherwise obstructs or resists a police officer or a qualified person in the exercise of his function under this Act commits an offence and is liable on summary conviction to a fine of \$10,000 and imprisonment for two years.

Madam Vice-President, this Government has long signalled its resolve to do all within its power to halt and reverse the upward spiral of criminal activity in our land. This Bill is only one of the measures designed to put an end to the low rate of detection and resolution of criminal matters. The detection rate of 10 per cent over the last 10 years has got to be reversed and that is why, at this time, this Government has felt it timely to bring this Bill, which has been properly prepared by all the experts, with the assistance of stakeholders, to the floor of this Senate, in order to empower the police and the law enforcement to be able to detect the criminals who commit the offences and bring them to see the face of justice in our land.

By this legislation, we are signalling our zero tolerance policy as regards crime and those who profit from it. [*Desk thumping*] Madam Vice-President, hon. Senators, the Government today seeks your support, your collaboration in returning Trinidad and Tobago to a state of peace and tranquil. Every day real crimes affect real people. The impact of crime on victims, their families and the fabric of our society should never be underestimated. Without a doubt, DNA profiling will foster a level of public protection, enhance public confidence in the criminal justice system that is so badly lacking; serve to bring the guilty to justice; and, most importantly, ensure that the innocent go free. This will undoubtedly be of inestimable value to the lives of our citizens and to the future of our nation.

Madam Vice-President, I accordingly beg to move. [*Desk thumping*]

Question proposed.

Sen. Faris Al-Rawi: Thank you, Madam Vice-President. I rise to join the debate on the Bill to repeal and replace the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34, as amended in the House of Representatives.

This is not an easy Bill to debate. It involves very heavy concepts of social justice, morality and law. On November 10, 2011, I received a letter from the Clerk of the Senate advising that this Bill would be debated today, Tuesday, November 15, 2011. Indeed, the Bill was sent to my office late that evening. I saw it at night and this morning I got the Supplemental Order Paper as I arrived here. I have not seen the actual Order Paper as yet. Effectively, we have had Friday, Saturday, Sunday, Monday and this morning to consider this Bill—four and a half days at best, as a Senate to consider this Bill.

3.00 p.m.

Now, Madam Vice-President, a very innocuous thing happened earlier in the proceedings, and that is that under Standing Order 48 we were invited to consider this Bill—under Standing Order 48(2), we were invited to take all stages of this Bill today. And, Madam Vice-President, for the record I would like to refer to Standing Order 48, which says and deals with: “Appointment of Days for Stages of Bills”; 48(1) reads, with your permission:

“After the introduction and First Reading of a Bill, whether introduced in the Senate or brought from the House of Representatives, an interval of not less than fifteen (15) days must elapse before the debate on Second Reading, provided however that for a Money Bill the interval shall not be less than five (5) days.

2. Notwithstanding (1) above, the Senator or Minister in charge of a Bill may, at the conclusion of proceedings on any stage of a Bill, on motion made and question put, obtain the leave of the Senate to either name a day for the next stage of the bill or move that the next stage be taken...later—in the—proceedings.”

So we are here, today. Standing Order 48(2) having been read and invoked—simple majority to be passed—we are here to discuss a far-reaching bit of legislation, the repeal of existing law which is stated in the Bill itself to be an abrogation of rights contained in sections 4 and 5 of the supreme law of this land, the Constitution.

So what do we do, Madam Vice-President? Do we take a very cavalier approach in debating this Bill? Do we simply say that we are not going to deal with the Government in important legislation? No, Madam Vice-President. We as a Senate recognizing that we are outnumbered must deal with this Bill today. So let us look at the Bill as put to us in the truncated fashion in which it has been put. This Bill

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represents the third round of DNA legislation in this country. In 1999 we had a Bill laid which resulted in the 2000 Act; in 2006, we had the Bill laid which resulted in the 2007 Act, and today we have the third version of it. It is interesting to note that each version has resulted in a repeal of the Bill or the Act prior. So, Madam Vice-President, we are faced with a Bill which has 38 clauses.

Now, Madam Vice-President, the hon. Minister of Justice has come this afternoon, and invited us to consider that this Bill, in fact, achieves a section 13 reasonableness standard. He has admitted that the Bill abrogates rights set out in the supreme law of this land—sections 4 and 5 of the Constitution, in particular—and he said the Government is confident that this Bill is reasonable. In support of that, my learned colleague has relied, in particular, upon dicta arising in a very interesting case out of the House of Lords in England. That is, in fact, a combination of two cases, it was the *United Kingdom v S and another*, what is called the Marper decision of the House of Lords.

Madam Vice-President, in that case the learned law lords were considering the provisions of the PACE 1984 Act as amended in England which has a provision which says that, basically, you may retain samples and profiles, much as our Act does. And it says that you can keep it for so long as you are maintaining the purpose for which it was collected. Under our old legislation as it is proposed to be repealed today, that is the 2007 Act, and in today's Bill we are dealing with a purpose stated in the Act—and now Bill—of investigation and prosecution of offences. Madam Vice-President, this Bill, in fact, proposes that you may retain DNA profiles indefinitely, and that you may, in fact also, depending upon the construction given, retain samples indefinitely. That is stated in the Bill as put before us.

Madam Vice-President, we have heard the reliance on the dicta of Lord Steyn in particular, arising out of the House of Lords. But what I found very interesting was that my learned colleague, the hon. Minister of Justice, omitted to tell the national community and, in fact, this honourable Senate that that decision of the House of Lords was, in fact, overturned by the European Court of Justice. [*Desk thumping*]

Sen. Deyalsingh: That is right!

Sen. F. Al-Rawi: Madam Vice-President, I refer, in fact, to *S and another v the United Kingdom*; it was Appeal No. 30562/04. The European Court of Human Rights comprising 18 judges, all of them unanimously held that the English provision, the section 64(1A) of the PACE Act, which allows for indefinite retention of DNA profiles and samples, they unanimously held that to be a contravention of European Community rights, Madam Vice-President. [*Desk thumping*]

Sen. Beckles: Seventeen judges.

Sen. F. Al-Rawi: Eighteen judges, including the president. It is difficult to speak because, Madam Vice-President, is somewhat distracted, but I guess I would address my commentary to the rest of the Senate. [*Crosstalk*]

Sen. Hinds: And that law is binding on the UK.

Sen. F. Al-Rawi: Eighteen judges of the European court, which is binding on the United Kingdom by way of convention, held that the dicta delivered by Justice Steyn, in fact, did not apply.

Now Madam Vice-President, let us analyze whether this European court decision, in fact, has any persuasion over us. The first realm of persuasion that I would invite you to consider, Madam Vice-President, is the fact that the European Court of Justice was looking at an Article 8 provision; that is the European Convention at Article 8 considers the particular constitutionality provision. And Article 8, with your permission, Madam Vice-President, as quoted in the judgment—and this is the Marper European Court of Human Rights judgment—at paragraph 58 it set out that Article 8 provides—and so far as it is relevant here, Madam Vice-President—that:

Everyone has the right to respect for his private life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is, necessary in a democratic society...for the prevention of disorder or crime...

So that is Article 8 of the European Convention, Madam Vice-President. And what does our Constitution of Trinidad and Tobago, declared to be the supreme law of this land, say at section 13, which is the tool by which you may abrogate rights under sections 4 and 5 of the Constitution, our enshrined rights, Madam Vice-President. Section 13 of the Constitution reads,

“13(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justified in a society that has a proper respect for the rights and freedoms of the individual.”

So Madam Vice-President, you have the European Convention Article 8 saying that there should be no interference by a public body, except in accordance with the law and as is necessary in a democratic society for the prevention of disorder or crime.

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Madam Vice-President, you are dealing, as we would say in law, with a case on all fours with our Constitution. And I recommend to you and every Senator of this Senate that there be intense scrutiny of this particular case.

In the public law, the expression is that you have “urgent scrutiny” or that you have “anxious scrutiny” of the learning of this type, something which my friend, the learned Attorney General is well familiar with. In fact, it was most recently referred to by the hon. Mr. Justice Boodoosingh in his judgment in the Galbaransingh and Ferguson matter where he had “anxious scrutiny” of the reasonableness of a particular decision.

And Madam Vice-President, I raise the word “reasonableness” because when you are embarking upon an analysis as to whether something has achieved the bar of section 13 reasonableness, you are looking to a concept of something known in law as proportionality. You are obliged in law to examine whether the balancing act between the rights of the individual versus the rights of the public, as the hon. Minister of Justice has put it in this instance, are proportionate in a society such as ours which as section 13 says, has “proper respect for the rights and freedoms of the individual.”

Madam Vice-President, when you are looking to proportionality and you are looking to a society that has respect for rights and freedoms, let us look at what these rights and freedoms are that we refer to. The hon. Minister of Justice said simply in this Senate today, that there is an abrogation of rights. He did not go into the full explanation of what rights are being abrogated and as a Senate, being invited to consider far-reaching and draconian legislation such as this, we must see what those rights are. And those rights are to be found, Madam Vice-President, in the Constitution of the Republic of Trinidad and Tobago. It is to be had by an appreciation of the Preamble to the Constitution as well as an appreciation to the section 4 enshrined rights stated there. And I ask you to permit me to reflect upon the words of the Constitution in its Preamble:

“Whereas the people of Trinidad and Tobago—

(a) have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free man and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human families are endowed by their Creator;” and

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

Madam Vice-President, section 4 of the Constitution specifically deals with rights enshrined. It says:

“...that in Trinidad and Tobago there have existed”

—and there continues—

“to exist fundamental human rights and freedoms, namely—;

- (a) the right of the 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;
- (b) the right of the individual to equality before the law and protection of the law;
- (c) the right of the individual to respect for his private and family life;”

So Madam Vice-President, you have seen here reference to private and family life, equality before the law, due process of the law. This Bill, in fact, tramples on all of them. And if you are to look in particular at the fact that samples are to be taken, samples by definition including intimate and non-intimate samples, they are to be taken without consent in all circumstances, and they are to be taken from a broad category of persons, you are looking to the fact of trampling of rights to the person itself, insofar as you can take a sample without consent; the integrity of the person. Secondly, you are looking at rights of equality to treatment insofar as you will be putting onto the national DNA database profiles of persons when they may, in fact, be determined to be innocent persons later or innocent all along;

Insofar as they may not have been suspected or charged or convicted, you are putting their samples onto a database by pure circumstance or happenstance when other people are not.

You are also dealing with put samples and profiles relative to children upon this database. You are also looking to putting samples on an indefinite basis. And the core concept here, Madam Vice-President—apart from the rights of the child which are recognized by United Nations convention, which are recognized by the good morals and laws of Trinidad and Tobago, notwithstanding the failure to pass legislation dealing with the Childrens Act by this Government—you are looking in an examination of those rights to see whether the hon. Minister’s submission that the will of the majority is to outweigh the will of the minority or the individual right, you are looking to see: is it proportional in a society that has due respect for fundamental rights and freedoms? When you look at that, you need to, first of all, analyze the context within which this is put.

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This Bill comes at a time in Trinidad and Tobago's landscape where we have a Government with a constitutional majority in the Lower House. You are dealing with the Bill being laid under a state of emergency where there is an inability to speak on any microphone or publish literature or deal with any dissenting view in Trinidad and Tobago as long as the state of the emergency and the current regulations which prohibit them exits. You are dealing with a joint and unified purpose which says, "No one supports crime; and you are dealing with a hysteria created by the Government to say, the Opposition is not supporting this Bill." Madam Vice-President, when you factor that in the context of considering this Bill in four and a half days' notice, you now come to an appreciation of the broad spectrum of the Bill, because that is one of the elements of proportionality that you must look to.

Madam Vice-President, I should point out for you that the Marper European Court of Human Rights decision, as well as a very recent decision entitled *R(on the application GC) (FC) (Appellant)v The Commissioner of Police of the Metropolis (Respondent)* and *R (on the application of (C)(FC) (Appellant) v the Commissioner of Police of the Metropolis (Respondent)*, a judgment given on May 18,2011, all recognized that the concept of proportionality exists not only in relation to considerations of the acts of public authorities, but exist also in a consideration relative to the primary legislation itself. The difficulty that we are faced with in this Senate is that it is presumed—with your constitutional majority in the Lower House and then your circumstance here in this Upper House—that a three-fifths majority means Parliament "in its wisdom considered the rationale for this legislation and deemed it to be such that section 13 could apply, that it was reasonable for a society such like ours." In fact, that was the commentary of Lord Dworkin where he in his book in 1991—I believe it was *Law's Empire*—said that it was tortuous to try and discern rationale in legislation from a mere counting of votes. So the primary purpose today of all Senators of this Senate is to put on record the reasons why you cannot support this Bill. We do so, so that those who will challenge this Bill may take avail of the rules in *Pepper v Hart* and use them as an aid to the statutory interpretation. [*Desk thumping*]

Sen. Deyalsingh: Well said.

Sen. F. Al-Rawi: On the proportion and the measures of proportionality, it is instructive. I ask you to take consideration of an interesting piece of learning which evolved in the case of Daly and that was, in fact, *R (on the application of Daly) v Secretary of State for the Home Department*. That is a judgment of 2001

to be found at two Appeal Cases at 532. In that judgment, the House of Lords in England finally accepted that the principle of proportionality is a principle of public law. That also took account of a very peculiar case—an interesting case which binds us as well persuasively—from the Privy Council which is the case of *De Frietas v the Permanent Secretary of the Ministry of Agriculture*, a case arising out of Antigua and Barbuda. It is that case which, in fact, sets out what the Privy Council considers to be the three aspects of proportionality when you are considering it.

The first aspect or the first stage is that the legislative objective must be sufficiently important to justify limiting of fundamental rights, and that is often simply equated to a notion of having a legitimate aim. Secondly, the measure designed to meet the objective must be rationally connected to it and, thirdly, the means used to impair the right must go no further than is necessary to accomplish the objective, and it is that third lid which is referred to as, “the least intrusive means”, that is you have an obligation to accept and to recommend in legislation “the least intrusive means” of achieving your legitimate aim.

Now, the hon. Minister’s purpose was to say, fight against crime is a legitimate aim. He relied upon the judgment of Lord Steyn in the *Marper v UK* decision, and he read out his dicta and did not tell us that it was, in fact, the subject of negative commentary and overrule, but he read that overruled dicta saying that that primary purpose of crime fighting was a sufficient and reasonable legitimate aim, but Madam Vice-President, it is not. It is not when you have regard to the provisions of the Bill again.

So, let us take a moment to look at the Bill in the particular context of what it has by way of recommendation. Let us first examine the issue of who is to give a sample. When you are looking at giving a sample, I can take you, Madam Vice-President, from clause 12 straight through clause 19 and clauses 12—19 of the Bill provide: a volunteer may give a sample; a suspect, detainee, accused may give a sample; a person associated with a crime stain by reasonable suspicion may be compelled to give a sample; a person who has had a sample given but which was lost, destroyed or deemed insufficient is obliged to give a sample; a detainee in prison; a person admitted to hospital who is a suspect, accused or convict; a person admitted to a psychiatric hospital who is a suspect, accused or convict; a juvenile in clause 13(2)(d) is obliged to give a sample; a person who is under supervision of a juvenile home; a member of the protective services; firearm holder; forensic services employee and any person added to the Third Schedule, because as you heard the hon. Minister say, he by order simply gazetted may amend the Third Schedule.

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A person who the Minister of National Security says should be sampled on grounds of national security, again, is required to give a sample; a Trinidad and Tobago citizen deported is obliged to give a sample. That, for instance, could have included had he been a citizen; the Commissioner of Police, Dwayne Gibbs, detained. If he were in Trinidad and Tobago as he was in Brazil, he would have been obliged to give a sample. [*Desk thumping*] A foreigner detained under the Immigration Act, and that would include any dignitary, detained for any cause whatsoever; your credit card is deemed insufficient, you are obliged to give a sample under the Act without consent; a Trinidad and Tobago citizen deported prior to the Act is obliged to give a sample; a missing person; a deceased person. In clause 18(2) you raised an eyebrow; you may take a sample from a part of a person's or the body itself; a reported victim of sexual offence, that is in clause 19(1)(2). All of these people, clauses 12—19 included, are obliged to give samples.

The hon. Minister sought to trivialize—and I do not mean it in any disparaging way to him—the issue of a victim of a sexual offence, an alleged victim of a sexual offence. He said, in referring to clause 19(2), the person is obliged to be taken to an examiner, and that persons may—but he omitted to tell us the impact of clause 23, which says that you may use force to obtain the samples and anything that examiner says he wants he can get. So, Madam Vice-President, clause 19(1) says you shall be examined forthwith upon the report. Clause 19(2) says you may, but clause 23 says that you can take it by force. Anyone attempting to take a sample if he considers fit in clause 19(2), is obliged to have it given by force; a fundamental disrespect of the rights of a victim. [*Desk thumping*]

Madam Vice-President, how are these samples to be taken? Samples are to be taken, again, by way of reflection to clauses 12—19. They are to be taken in simple fashion; one simple fashion, no consent. Anybody passing a crime scene—and a crime scene, Madam Vice-President, when you look at the definition of crime scene, a crime scene is anything upon which biological material maybe found, essentially. So you may have a DNA shedder who sheds some of his DNA by touching your jacket, you are later found in a difficult position—God forbid something happens to you or someone in this society—that jacket is now a crime scene, Madam Vice-President, and anybody is obliged to give a sample as a result of that.

Madam Vice-President, importantly, you are giving the sample being aided—those who take the samples—by use of force, in clause 23. More so, you are not

only can use force, but those who use force can do so with blanket immunity, subject only to the restraints of negligence in taking the sample.

Madam Vice-President, the concept of malicious prosecution in stopping you if you have a complaint, for example, the dose of salts that applied—my learned friend, the Attorney General favourite expression, the dose of salts that applied in the anti-gang legislation application, that dose of salts which saw hundreds of people passing through arrest and release without charge—all of those people would have been subjected to DNA sampling if this legislation was in—immediately corralled, sampled and dealt with. Whilst they have a right to prosecute for malicious prosecution, per se, they cannot prosecute for the invasion of their privacy to their body. [*Desk thumping*] They can be corralled and hogtied, if you want to be graphic, and a sample taken from them; an intimate sample, a non-intimate sample. All of those people would be subject to this. No right of redress, no malicious prosecution, no suit against the hon. Attorney General's Ministry insofar as the State and Liability Proceedings Act is concerned. None of that! Go away! So long as I did not infect you by some form of negligence, because I used a dirty needle, no problem. So, Madam Vice-President, you have a broad range of persons from whom samples can be taken. You have it being taken without consent and by use of force.

Madam Vice-President, are there any safeguards particularly to this legislation? Let us see what the safeguards are. Relative to safeguards, clause 20 provides simply that you must have due regard to the taking of an intimate sample. Clause 21 says the safeguard is that when you take a sample, you must submit it as soon as practicable to the Trinidad and Tobago Forensic Sciences Centre. Clause 22 says in relation to children or incapable person that you must simply have a representative present. Those are the safeguards for the taking of the samples. Albeit I did hear my learned colleague say that there are regulations to be espoused. But what are the further safeguards in the primary legislation—the safeguard of having a board which was implemented and articulated by a Joint Select Committee comprising Members of the now Government and Members of the now Opposition? That is gone, Madam Vice-President. The independent supervision and recommendations of a board suitably equipped no longer exists in this new Bill. It is proposed that we eliminate that.

The hon. Minister may stand and reply and say, “Well the board was never constituted.” I ask him immediately now, you had 18 months in office. It is your first Bill apart from that which you dealt with in May of this year where you vested five pieces of legislation under your hand, why did you not appoint a board?

Sen. Ramlogan: “It’s workable man!”

Sen. F. Al-Rawi: Why did you not appoint a custodian? The hon. Attorney General said quickly that it is unworkable. If it is unworkable, why do you have a custodian in this Bill? He says it is unworkable—He is being facetious, I think—cannot appoint a custodian, but you are asking for a custodian to be appointed in this Bill. So what is it? That is what you call torturous logic, Madam Vice-President! [*Desk thumping*]

So, Madam Vice-President, we look further to the safeguards. [*Desk thumping*] What other safeguards are there? A safeguard would exist, you would assume, in the quality of the Trinidad and Tobago Forensic Science Centre. But what is the standard set out in the primary legislation? Do you know what it is? It is that you certify the board simply by saying it is certified in the Bill. That is it! There is no reference to ISO standards as existed in the 2007 Act. There is no reference to maintenance of standards in the primary legislation. What other safeguards are there, Madam Vice-President?

3.30 p.m.

It says in this proposed Act that an analyst is deemed to be an expert for the purposes of the Evidence Act; just so. No definition, no qualification reference, no certification mechanism—just like that the analyst who takes the sample is an expert. Madam Vice-President, this Bill proposes that whatever he writes in any document, be it fact or opinion, that that is not to be questioned unless it is requested, or unless a court, *ex proprio motu*, decides that it wishes to investigate it. That is asking for an entire crack to be unsolved. You are not going to bridge it, you are not going to put any safeguards over it, you are just intended to fall into that; this is the primary legislation that we are talking about. They tell us that the Act is reasonable—that the Bill is reasonable. There is no explanation as to why it is reasonable. Reliance is given to some overruled piece of law and we are told it is reasonable—just accept that; we know we are abrogating rights but that is okay, forget that, the Opposition is being Opposition for opposition sake—do not worry about that.

Madam Vice-President, let us look at the safeguards that this Government proposes in the Bill relative to the appointment of a custodian. You know, Madam Vice-President, that we have a Data Protection Act not yet proclaimed, it has been assented to, and I come back to say here, the Act is unconstitutional. It is going to be overturned—I am sure of that. This Government comes, it puts into the DNA Act a recognition which we all have of 12 data protection principles of the Holy Grail recommendations, so to put it, as to what you must do to preserve data, its integrity, the quality of it and the periods of retention for it, and then this Bill

comes along and totally disregards it. It would be okay if it was disregarded because they accepted the data protection legislation was unconstitutional, but that is not the reason; they just disregard it. Let us make it simple: no consent, hold everything, forget about your rights to privacy, equality, whatever it is—forget the UN Convention on the rights of the child; forget that convention which says that you should preserve with a sacred holiness the rights of the child; forget that—keep juvenile records, keep them indefinitely, profile them, put them on the database, put them next to other profiles and “doh” worry about that. Forget about any requests for destruction—you “doh” need destruction, we will just keep them forever and forget about that simple idea of advances in technology—forget that—you do not need advances in technology to be worried about, we will protect you, we the mighty Government will protect you. We accept, but we are not telling you that the possibility to reverse engineered DNA exists, but do not worry about that, that is irrelevant for this Government.

Madam Vice-President, we have a custodian who is meant to obey data protection principles in theory and what do we have in relation to this custodian?—Clause 10, clause 11, clause 24, clause 23, clause 27 set out the duties, roles and responsibilities of the custodian. How the custodian is to be appointed? The deputy custodian? The acting deputy custodian? The members of staff of the custodian? How they are to be funded? By appropriation from Parliament. But who is appointing them? The Minister. The Minister is now appointing a custodian, deputy custodian, acting deputy custodian, all the staff members under purview, they are to be appointed ostensibly by the Minister.

The Government is to do this. We are forgetting about something called Public Service Commission, something which my learned friend the Attorney General was at pains to include in the FIU amendments which he brought. The inadequate FIU amendments which he brought and which he promised to revisit—he was at pains in the FIU legislation to say: “We have to put in provisions there”. And what have we done? We are proposing by way of further safeguard—“PP style”, we are saying: “Forget appointment of custodian by President, do not worry with that independent appointment, the Minister alone can appointment him, doh worry about that”—executive authority is to be there—no right of access to a court under the primary legislation because you are granting immunity, you are putting it on the basis of negligence only. You have a right of judicial review—sure; you have the right of challenge, but no primary right to challenge this thing that exists because you are simply saying: “Remove the issue of consent, forget about it”.

So the hon. Minister not only has the power to hire but importantly he has the power to fire. The Minister may terminate the custodian, deputy custodian, acting deputy custodian—the Minister can do that. And how can he do that? If you look to the Bill, he can do that if the custodian fails to carry out any instruction under the Act. We have seen in the newspapers recently allegations of boards saying that Ministers have given directions—Ministers are allowed to give directions as to policy, not specific points. So under this legislation now it is saying: “Trinidad and Tobago take protection PP style. Give the Minister the power to appoint, hire, fire, and if you Mr. Custodian dare not to answer and do what I tell you under this Act impregnated in the Bill, I could fire you”—no problems! Forget job security and tenure and employment! Forget all of that!

Sen. Hinds: And take a sample too without consent.

Sen. F. Al-Rawi: Madam Vice-President, what else is there in terms of balance in this Bill? You know what else there is? Absolutely nothing! We have not been given, despite the statements of the hon. Minister, any form of consultation as an Opposition. We have not been given any explanation as to the inadequate measures that exist relative to fundamental rights: right against self-incrimination, right against personal life and privacy life, privacy of person and family life. We have not been given any form of explanation as to the inadequacies in this Bill relative to equality of treatment. We have not been given any form of explanation as to why we ought to derogate from the rights of the child enshrined under the United Nations Convention.

We have been told, Lord Steyn in the House of Lords said this thing was laudable and there is a legitimate aim. So let us look at what Lord Steyn had to say; let us look at what *Marper v UK* had to say. *Marper v UK* said—Lord Browne; there was Baroness Hale of Richmond; there was Lord Browne, there was Lord Steyn; there were many judges. [*Interruption*] I am sorry, my learned friend said he did not quote Steyn, I will accept that he quoted Browne, Steyn is concurring with Browne in any event and they both say the same thing, except for Baroness Hale who was the only person who dissented in that judgment.

Madam Vice-President, what did the European Court of Human Rights have to say about this? Let us see. The European Court of Human Rights was looking at human rights privacy, private life, fingerprints and DNA samples, because in England they are sensible to have a corroboration of evidence, they tag on the DNA samples and profiles to photographs and fingerprints, not in the “PP Bill”

however that does not happen. So anyway, that court is looking at whether power of retention is comparable with convention right to privacy, and as I have shown you, Madam Vice-President, the convention on right to privacy in Article 8 is on all fours with section 4 of our Constitution in the right to private life and family life.

That case concerned an applicant who was 11 years old at the time of an arrest—a child. It also concerned somebody who was in a relationship with his partner—the partner complained of being abused and in both instances the child and the gentleman who was alleged to have abused, DNA samples were taken and fingerprints were taken. In the instance of the child, the conviction never came about, it was dismissed; in the instance of the gentleman accused, they reconciled and it was withdrawn. They applied to have their DNA samples removed, and they applied to have their profiles removed and their fingerprints removed. There is little distinction to be had relative to samples and profiles, in my respectful view. They are dealt with in separate clauses under our Bill but the point is that they may both be held for indefinite periods. In the case of profiles, it stated so specifically and in the case of samples it may be held, because there is a minimum prescription period of 10 years.

So what did the European court have to say?

The concept of private life was a broad term not susceptible to exhaustive definition. It covered the physical and psychological integrity of a person. It could therefore embrace multiple aspects of the person's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fell within the personal sphere protected by Article 8. Beyond a person's name his or her private and family life could include other means of personal identification and of linking to a family. Information about the person's health was an important element of private life; an individual's ethnic identity had to be regarded as another such element. Article 8 protects, in addition, a right to personal development and right to establish and develop relationships with other human beings on the outside world.

Moreover, the concept of private life included elements relating to a person's right to their image, mere storage of data relating to private life of an individual amounted to an interference within the meaning of Article 8. Apply that to this Bill. It is accepted that the profile and sample under this Bill do affect your personal rights—the Minister stated so, so we are on all fours so far.

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Bearing in mind the rapid pace of developments in the field of genetics and information technology, the court would not discount the possibility that in the future the private life interest bound up with genetic information might be adversely affected in novel ways, or in a manner which could not be anticipated with precise action.

The honourable court goes on to say that:

Only a limited part of that information was actually extracted—and they meant in relation to small sample profiles, and in fact, the samples themselves—all used by authorities through DNA profiling and no immediate detriment was caused in a particular case did not change that conclusion. So the fact that you have taken a small sample or kept only a profile, in the honourable court's position, does not change the conclusion.

It says further:

As regards the DNA profiles themselves, although they contain a more limited amount of personal information extracted from cellular samples in a coded form. The profiles, nonetheless, contain substantial amounts of unique personal data. Moreover, the possibility that the DNA profiles created for inferences to be drawn as to ethnic origin made their retention all the more sensitive.

Madam Vice-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. P. Beckles*]

Sen. F. Al-Rawi: Thank you, Madam Vice-President. I continue to quote with your leave from the judgment.

Moreover the possibility that DNA profiles created for inferences to be drawn as to ethnic origin made their retention all the more sensitive and susceptible of affecting the right of private life. Accordingly, the retention of both cellular samples and DNA profiles disclosed an interference with the applicants' rights to respect for their private lives within the meaning of the convention.

The court then goes on specifically to say:

An interference would be considered necessary in a democratic society for a legitimate aim if it answered a pressing social need, and in particular if it was proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it were relevant and sufficient.

In this particular case the United Kingdom came and argued, much as my learned colleague has, and said the aim of protecting the majority of citizens in a crime-free environment is a legitimate aim.

3.45 p.m.

The court accepted that it was a legitimate aim, but the court also considered a mountain of statistical information brought to it by the UK Government. Of course this Government has brought no information whatsoever. We have had a 2007 Act in place. We have had the hon. Minister say a girl was smart enough to have left DNA samples at a crime scene, exonerate herself.

There is statistical information, Madam Vice-President, available to the Government but none of it has come forward. Part of it also, because they dismissed those people who were in charge of it, and I am referring to the members of the Special Anti-crime Unit of course, who were leading and pioneering the efforts in forensic development in this country. But no information has come—unlike the UK case where the court considered on the basis of evidence brought to it, the allegations of legitimate aim, and the sufficiency of the reasonableness of an intrusion on the individual's rights. The court goes on say, Madam Vice-President, that there is a margin which is narrower in some instances and broader in other instances within which you must consider the issue of proportionality.

Madam Vice-President, the courts says that: the protection of personal data was of

fundamental importance to person's enjoyment of his or her right to respect for private and family life as guaranteed by the convention. The domestic law had to afford appropriate safeguards to prevent any of the personal data as might be inconsistent with the guarantees of that article. The need for such safeguards was all the greater where the protection of personal data undergoing automatic processing was concerned, not least when such data was used for police purposes.

Exactly on point, Madam Vice-President.

The domestic law should notably ensure that such data were relevant and not excessive in relation to the purposes for which they were stored and preserved in a form which permitted identification of the data subjects for no longer than was required by the purpose for which the data are stored. The domestic law had also to afford adequate guarantees that retained personal information was efficiently protected from misuse and abuse. The interest of the data subject and the

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community as a whole in protecting personal data might be outweighed by legitimate interest in the prevention of crime. However, the intrinsically private character of that information called for a careful scrutiny of any State measure authorizing its retention and use by the authorities without the consent of persons.

The protection afforded by Article 8 of the Convention, would be unacceptably weakened if the use of modern scientific techniques in the criminal justice system were allowed, at any cost, and without carefully balancing the potential benefits of the extensive use of such techniques against important private life interests.

The retention of the applicant's private data could not be equated with the voicing of suspicions. Nonetheless, their perception that they were not being treated as innocent was heightened by the fact that their data were not being treated as that of a convicted person, while the data of those who had never been suspected of an offence were required to be destroyed.

The retention of the unconvicted person's data might be especially harmful in the case of minors, such as the first applicant given their special situation and the importance of their development and integrity in society.

I am nearly finished on this point.

The blanket and indiscriminate nature of the powers of retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences as applied in the case of the present applicants, failed to strike a fair balance between the competing public and private interests. The respondent state had therefore overstepped any acceptable margin of interference with the applicant's right to respect for private life, and could not be regarded as necessary in a democratic society. And therefore, there had been a violation.

Madam Vice-President, you know it is unlike me to read extensively in a Parliament. In my contribution on the budget I had the youngest orderly come to me and ask me for a copy of my speech; I had none to give because I do not read, but I felt it important, Madam Vice-President, to lay on the table for this honourable Senate—because the Minister did not—the overruling of the very authority by which he proposes this legislation should stand.

Madam Vice-President, this is a serious matter. This is an issue which concerns fundamental constitutionality. This debate is an inappropriate place to run through all of the legal concerns. I kid you not. I have read four volumes like this in the last five days; four volumes of thick law. For the listening community it may not be such an interesting thing for a man in the Senate to stand and focus on the law but we must, Madam Vice-President. We in the Opposition must because the Government will not.

There is a studious and obvious disregard for any form of intelligent discussion of the law, and I am hoping—

Sen. Hinds: Yes, Sir.

Sen. F. Al-Rawi:—today, Madam Vice-President, that the hon. Attorney General will not regale us with a contribution which is about, “who did what, and who he jailing, and where he is going”. I hope today that he will return to the fundamentals of the law, Madam Vice-President. [*Desk thumping*] Because it is conspicuous that recently pronounced judgments of the High Court of Trinidad and Tobago, the Attorney General seemed to lose sight of the law, the law which he pioneered in the Privy Council in case of *Feroza Ramjohn and the Attorney General and the Prime Minister, Patrick Manning*, as he then was.

Sen. Ramlogan: And do not forget the Maha Sabha Radio Licence.

Sen. F. Al-Rawi: Yes, Madam Vice President, I want my learned colleague to do less politicking and more law, that is what I want him to do. [*Desk thumping*] He is the titular head of the Bar, a man whom I have respect for, we passed through school together; he is my friend.

But today, Madam Vice-President, it is my obligation, if only under the principles of *Pepper v Hart*, to set down reasons, lawful reasons, why we cannot support this legislation, Madam Vice-President, and it would be terrible for any other speaker to stand today and say that this is opposition for opposition sake. I wish I could have a truthful answer as to how many Senators on these Benches here actually read the Bill. One, two. How many of them have read the law, Madam Vice-President? Three. How many of them participated in the consultation exercises which my learned colleague said was so broad, Madam Vice-President because—I am not being facetious—their votes in the affirmative are, according to the words of scholars, they are indicative of an estimation of reason? So when you vote yes, you are saying that you have thoroughly interrogated the provisions before you. And dare I say, I am not that confident that my learned colleagues could possibly have had that level of inspection because they were only given four and a half days to consider this kind of far-reaching legislation. How could they have read all of the volumes of material that are required to be considered?

Sen. Beckles: They did not.

Sen. F. Al-Rawi: Do you know about the European Commission’s judgment, hon. Devant Maharaj? Madam Vice President—

Sen. Ramlogan: That is trite law.

Sen. F. Al-Rawi: That is not trite law. Madam Vice-President, the key in here is to understand that the measures of proportionality—

Madam Vice-President: Please, in this Senate—I know you are on your last legs but Devant Maharaj is an individual, Minister Devant Maharaj, the Minister of Transport is in this Chamber, please address him as such.

Sen. F. Al-Rawi: Madam Vice-President, I thank you for your very timely and important intervention on the content of the law. I apologize profusely, hon. Sen. Devant Maharaj, Minister of Transport. [*Desk thumping*] Yes, that is an important intervention, Madam Vice-President, lest I get swept away on my legs of reasoning. No, Madam Vice-President, I am being serious, I do not wish to be churlish.

Madam Vice-President, the point is we are debating serious law, I am really very passionate about the fact that I cannot believe that this Government could come here and tell me, with a straight face, that they consider that this law is constitutional, and I that because I know that they spoke to Members of the Bench in the Lower House and they said that they wished it to be discussed in a joint select committee. But we had to decline because it is so fundamentally flawed that a joint select committee would result in a bad product, Madam Vice-President. They must go back. They spent 18 months digesting this legislation to come up with this product. I am distressed, Madam Vice President, that this is the quality of law to meet these Benches. [*Desk thumping*] I get very passionate about the law.

So, Madam Vice-President, my appeal—there was an opportunity under the Standing Orders for the hon. Minister to have withdrawn this Bill, to go back to the legislative committees and the consultation exercises that he was having. He had the opportunity but hubris has taken over, of a worst kind, that he alleged the PNM was guilty of, because it cannot be anything but hubris to produce this kind of exercise.

Madam Vice-President, who participated in the joint select committee Bill? In 2007 we had excellent persons: Adesh Nanan as he then was an hon. Member of the Opposition; Gillian Lucky, a person for whom I have great regard; Dr. Tim Gopeesingh, the hon. Minister that he is, Madam Vice-President. They contributed serious content. Here it is over 400 or 500 pages of it, all thrown in the dustbin. I have seen recommendations from the Special Anti-crime Unit which

provided for mechanisms to fix the 2007 legislation. All we were told by the hon. Minister is, “That is not good enough”. No explanation. The hon. Madam Justice Yorke-Soo Hon gave a decision relative to section 19 of that Act which could have been amended.

Madam Vice-President, I will have a lot to say in committee stage—a lot—get comfortable in your seats, we will be here for hours. But I have the authority to say from my Leader of the Opposition, we will support you with properly drafted legislation on the DNA amendments. We will support you if you withdraw it, you consider it, you do it in a sober and sustained fashion which represents proportionality as is required by the law.

Madam Vice-President, I plead with the Government to do proper homework. I know my colleague, the learned Minister of Justice to be a sincere man who is hardworking and committed, I mean him no disrespect in my deep criticism, but I pray that he will listen to his own words and decide to cooperate with us in the best interest of proper law.

Madam Vice-President, I know I have a minute left so I will end early today. With that contribution I invite the Senators on the Independent Bench in particular to pay jealous regard to their anxious scrutiny to the Bill and ensure that you do not pass this Bill.*[Desk thumping]*

SECURITY BRIEFING

Madam Vice-President: Hon. Senators, we are now occupying a new building and, therefore, it is imperative that we are all aware of the rules and procedures governing our occupation to ensure that we are prepared for any eventuality, and that our stay is as safe and as comfortable as possible. Therefore, at this point the sitting will be suspended to facilitate security briefings by parliamentary security personnel. There will be two separate briefings, as a consequence members of the public and members of the media are kindly asked to temporarily vacate the Chamber at this time and proceed to the J Hamilton Maurice room where you will be briefed. All Senators are kindly asked to remain in their positions for the security briefing which will be conducted by the Marshal of the Parliament. Following the brief session which is expected to last for about 30 minutes, Senators are asked to then proceed to the Member’s dining lounge for tea. The sitting will resume at 5.00 p.m. This sitting is therefore now suspended until 5.00 p.m.

4.00 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

**ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) BILL, 2011**

Madam Vice-President: Before we suspended, Members, Sen. Al-Rawi had completed his contribution, so it is now a Member from the Independent Bench to speak.

Sen. Basharat Ali: Madam Vice-President, I am pleased to be able to make a contribution on the Bill before us. The Bill has a long title as given in this: the Administration of Justice (Deoxyribonucleic Acid) Bill, 2011. It is a long title, and the objective of this Bill is to repeal and replace the DNA Act Chap. 5:34. So really we have an Act in place, as of now, and I would like people to remember that. There is an Act in place, and we are not going down the road at a pace that we have to stop and do that, because as far as I could see, that is where we are.

Madam Vice-President, do you realize it has been 12 years since we have been grappling with DNA legislation? [*Desk thumping*] I do not know whether we should cheer on that, Mr. Leader of Government Business; we have spent 12 years. I have a little comment from my own point of view, that we do not seem to have achieved very much, that little has been achieved in all this period.

When I began work on this, I decided, “Let me have a look at the history of DNA legislation in this country.” That is the first thing I did. I went back to the first Bill which was passed in this House, the DNA Identification (No. 2) Bill. That was done in the Senate to start with. It was read on November 30, 1999. It was debated until December 08, 1999. So it was passed in the Senate on that day. The House of Representatives, in fact, debated this Bill very quickly on December 10, 1999—well not so quickly, I have to say—and passed it on May 12, 2000. There were amendments, so it went back to the Senate on May 16, 2000, and the amendments were handled then.

That Bill was assented to on July 14. That is when it became an Act, but there is a proviso: it was never proclaimed. So for all this time that we spent, nothing happened. The next thing is that we came back, and for some reason or the other this Act is not adequate. And I could see why, because it really is more an Act for identification of DNA rather than for forensic application of DNA as a process. That is why it remained in limbo, until that second Bill.

I think the DNA Bill, 2006 was probably the most important Bill we have done on the subject, up till now anyway. It was read for the first time on December 18, 2006. I believe the Bill was referred to a joint select committee. They met from January 26—February 09, 2007. A report was eventually laid on August 24, 2007, and was debated and adopted. That same amended debate went to the Senate on September 03. On September 11 it was completed, and assented to and proclaimed on September 28, 2007. It was proclaimed as Act No. 24 of 2007.

There is a certain significance to that date. I wonder how many people realize what date is September 28, 2007. That is the day that Parliament was dissolved. So we finished the Bill, we patted ourselves on the back and then Parliament was dissolved on that day. That was the Eighth Parliament being dissolved, in fact. That Parliament remained dissolved into December, because the Ninth Parliament commenced on December 17, 2007, so by then we had a law.

Looking at it, I really could not say what transpired during the Ninth Parliament—because the Ninth Parliament itself was a short-lived Parliament, if you remember well. The Ninth Parliament was dissolved on April 08, 2010 and we had the commencement of the Tenth Parliament on December 19, 2010, according to my notes. So we ended the Eighth Parliament with a genuine proclaimed Act. I just wonder what took place during the Ninth Parliament. I do not recall any matter being brought with respect to DNA in that period. I was a Member of the Senate at the time, and certainly nothing came to the Senate, until that fatal day of April 08, 2010.

My view is that this Act has been given short shrift. Very little attention had been paid to this Bill, after all this time, and it was well ventilated. We were at the usual joint select committee to look after it, good contributions. I myself in the Senate spoke on it. I remember I spoke on it before it was passed and proclaimed, and it went basically into oblivion. What happened in the Ninth Parliament, which was divided up of course, from the beginning of December 2007—April 08, 2010? During that period, I do not know what happened. Did anything happen at all? Nothing came here. I do not recollect anything related to the matter. I really wonder why we did not follow up anything on this Bill.

If something was not right, it was not brought to the Parliament for amendment or anything else. So I started to look at this. This comes from the law book itself, the DNA Act, Chap. 5:34—Act No. 24 of 2007, commencement September 28, 2007. That is the data which I have given. I just looked at a few of the sections of this Act, and how that has been affected as we had gone through. When I go through Part X of the Act, the heading of that section is “Forensic DNA Laboratories”. Section 33(1) says:

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

The first question that arises is: was the lab at any time accredited by an international organization?

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Then we had subsection (3) of that same Act which says that:

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

Subsection (4) says:

“A forensic DNA laboratory may enter into an agreement with a foreign accredited laboratory listed in Part B...”—which is a long list of foreign accredited laboratories. Basically I wondered whether there was any form of accreditation that took place during the tenure of this Act.

Just by chance I was doing some research work, and I came across one report. It was a fourth report of the Joint Select Committee (Part I), 2006/2007. There is a chapter 4 in it which is headed “The Trinidad and Tobago Forensic Science Centre”. I will not go through the whole of this, but I did make some notes on it. I would like to read some of it, if I may, Madam Vice-President.

The salient findings in that document related to the Trinidad and Tobago Forensic Science Centre were on the subjects of accreditation and ISO standards. I am quoting here from that joint select committee report:

“During its deliberations the Committee found that the Centre was not internationally accredited, but learnt that this would be achieved by 2010, since it is a lengthy process. In the absence of international accreditation, however, the Centre subscribes to Collaborating Testing Service International which does proficiency tests”—that is one of the nonprofit making organizations—“The Centre compares its standard operating procedures with other international labs to deduce how proficient it operates and these are revised as techniques change internationally.”

These are comments, in terms of the report, but they are not fact. It is a statement.

The document goes on, and once again I am quoting:

“Your Committee noted that reports from lab studies done by the Centre are called pathology reports and certificates of analysis; these are used by the court and so far have not been challenged.”

That is what it says. Is it an accredited laboratory? We do not know yet.

“The Committee was informed that the Centre is technologically ready for the implementation of the DNA legislation. However, the modular unit is still to be completed.”

This was at the end of 2007, we are talking about. The recommendations for the forensic science centre—because this was only one of the items being dealt with by that joint select committee. Let me read the main recommendations again.

5.15 p.m.

Let me read the main recommendations again, and I quote:

“The Joint Select Committee proposed the following recommendations to address the challenges faced by the Forensic Division:

- (i) ensure that all the necessary procedures be put in place for accreditation before or by 2010.
- (ii) appointment of adequate scientific officers.
- (iii) adequate resources be provided for the proper functioning of the TTFSC.
- (iv) action be taken to improve public awareness in order to support the work of the TTFSC.
- (v) action be taken to ensure optimum security of all records of the TTFSC.”

So, after the follow-up I do not know what will happen.

We were expecting that by 2010 there would be accreditation by whom? Maybe by one of these scheduled foreign companies; and I ask the hon. Minister, are we in a position that we have ever been accredited? That is a question for answer, in fact. So, one thing I am certain about is that in further joint select committees during the following Parliament, during the Ninth Parliament of December 2007 to April 2010, there were not any other reports. I think I can say so quite clearly because I, in fact, was a Member of the Joint Select Committee (Part 1) and we never met, so this is why I wonder when did we achieve accreditation from an international body? It is a question I pose because it is important. It is very important that facilities like these have to undergo that strict protocol, otherwise they are liable to be faulted and be reduced to nothing in fact.

This is why I am looking at the particular clause in the present Bill before us. It says here at Part II of the Bill, clause 5:

“The Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory in Trinidad and Tobago.”

And clause 6:

“The Government may, for purpose of obtaining forensic DNA services, enter into an agreement with other laboratory that is—

- (a) accredited by an international accrediting body listed in the First Schedule.”

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If you remember from the First Schedule the accredited organizations is in a schedule all by itself—quite lonely all by itself. The First Schedule is the international accrediting bodies and the four of them listed there:

1. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board.
2. Forensic Quality Services—International.

which is an organization for accreditation.

3. The Standards Council of Canada.
4. The United Kingdom Accreditation Service.

So, I ask this question: have we ever, ever been accredited by any of these organizations as of today? Have we ever been? But, we have a Bill here which is deeming that the TTFSC will be the official forensic DNA laboratory for Trinidad and Tobago. There is where I rest—in fact, that First Schedule is there—I am sorry, I did read that already.

I believe somewhere in this document, this 2007 Act, says you will be accredited for five years but there was this option from the hon. Minister to give an additional year. That is also in here.

Hon. Senator: Section 33.

Sen. B. Ali: Okay, so we have that. But the only way we could be accredited is if we have received an accreditation to start with, so can the Minister, in fact, give an extension without that previous accreditation for five years? I do not know whether that would work and I come from a field of technology and science and that does not happen.

So, it leaves me with this big doubt in my mind and that is where I have the most difficulty in this Bill. There is no structure, structural organization for the Forensic Science Centre or the DNA laboratory, et cetera. If I go to the next part of this Bill now, Part III; the National Forensic DNA Databank of Trinidad and Tobago:

“7(1) There shall be a DNA databank to be known as ‘the National Forensic DNA Databank of Trinidad and Tobago’ which shall comprise an electronic or other collection of DNA profiles attributed to individuals or crime scenes.”

And clause 7(2):

“DNA profiles stored in the Forensic DNA Databank may be kept indefinitely.”

We have heard about that. But more important to me, Madam Vice-President, are the appointments to the databank and clause 8(1):

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

(a) from the Trinidad and Tobago Forensic Science Centre; and

(b) submitted to the Government pursuant to an agreement under section 6.”

Section 6 is where we enter into an agreement that is almost like a commercial arrangement—we are entering into an agreement—and that is for carrying out searches against the forensic databank. This is where I have a lot of problems:

“The Minister”—that is clause 8(2)—“shall appoint the Custodian from among suitably qualified persons on such terms and conditions as he thinks fit and the appointment shall be notified in the *Gazette*.”

The next subclause, that is clause 8(3):

“The Minister shall appoint a Deputy Custodian from among suitably qualified persons on such terms and conditions as he thinks fit and the appointment shall be notified in the *Gazette*.”

Even in the absence of the deputy and the custodian, in their absence or incapacity, the Minister may appoint an acting deputy person. So the sole authority for making all these appointments, from what I read here, appears to be the Minister, which is the Minister of Justice in this case. So there is no term for the office of this person, apart from that fact; I do not know any qualification for it. I have never been in a situation where somebody gets a job and there is no specification for the job in terms of qualification, experience and everything else. That is my training and that is the field I am in. But here we are, they give you all of this, but we do not know, there are no terms and conditions laid down. Those terms and conditions are what the Minister thinks fit; and the custodian and deputy custodian have no time bar on their appointment. In fact, the custodian may be a fellow with a long beard, for all you know. *[Laughter]*

You see, there is no term limit; there is no three years, five years or 10 years. This is what it says, so you can really grow old in that job, unlike me. *[Interruption]* This is where I get the greatest problem, nowhere have I found an organizational chart. I have looked into the website—I think it is still the Ministry of National Security website, unfortunately—and all I have been able to find there are the names of some people in four divisions, I think there are, in the Forensic

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Science Centre, and the names of the people are the same people who are in this report: Miss Arlette Lewis who is a director of the TTFSC and Mr. Emmanuel Walker, deputy director, apart from the finance people.

So, I see no structure. Who are the people? Who are the testers? Where do they come from? How are they accredited? Are they not required to be accredited locally by the local accreditation council? I have the document which speaks to that person—okay I cannot find it, but that comes under the Standards Act.

Sen. Al-Rawi: The Bureau of Standards Act.

Sen. B. Ali: That comes under the Bureau of Standards Act, so—

Sen. Al-Rawi: The Metrology Act.

Sen. B. Ali: Well, if you say Metrology Act, well fair enough. I expect that it would be there, but there is a blank here. I really do not know.

So, this is why I have my serious concerns about organization and I think we need to do something about it before we go further, because for the custodian for example, all they have is how the Minister can terminate his appointment and it is really for cause. We are talking about being of unsound mind, bankrupt, convicted of an offence, guilty of misconduct, misbehaviour in public office. So, it is only then that you can do anything about him. So, what is the reporting relationship or the line within that organization? Although in the report the custodian—clause 11 of the report:

- “(1) The Custodian shall, within three months after the end of each calendar year, submit an annual report of his operations to the Minister.
- (2) The Minister shall cause the report referred to in subsection (1) to be laid in Parliament within one month of his receipt of the report or as soon as practicable thereafter.”

So, I mean, how does he convey that report to the Minister? Is there anybody supervising the custodian or the deputy custodian? I have not found that anywhere. The total lack of an organizational structure, that beats me, [*Desk thumping*] and we are bringing in this here as an improvement on this law.

As I said, I think this Act was given short shrift and could have been, in my view, amended as necessary. I think we all have problems when they have a board under this Act—a DNA Board—appointed by the President. Now, they did not say appointed in consultation with anybody, they said appointed by the President and the President fixes his term. I do not agree with the President having to do that,

but there should be the alternative. If the hon. Minister has an organization, then that should be publicized. This is one of the things that they are saying here, that we must make public what we know, the last joint select committee report said that as a final item: action to be taken to improve public awareness in order to support the work of the TTFSC, action to be taken to ensure optimum security of all records of the TTFSC.

5.30 p.m.

So, Madam Vice-President, I will be very unhappy to give up what we have. I am saying that because we have this and we can work with this, unless we find that there are challenges which we cannot work out, and then you come to Parliament and you can amend it. But, we have come the other way around wholesale and say this is no good, let us get a new Bill and I cannot follow the logic of this new Bill. [*Desk thumping*]

My problem, as I say then, is related to organization as I know it. I come from a technical field. I have worked closely with people like the Bureau of Standards and CARIRI, all of these are places with organization and you can go and pick who it is you want to see and talk to and everything else. You know the organization, okay, but not for this one. I will be quite happy to be proven wrong by the hon. Minister, but that is what I see here.

So that was my primary beef with respect to the Bill before us. The other aspects I am not competent to handle, the question of clause 3, the retroactivity, for example. That is not my field, law is not my field, we have others who are here and who would be prepared to make comments on it and I am prepared to listen. So I am in a position where I feel that we have a big gap in the Bill with respect to the organization of the Forensic Science Centre and we must cure it before we go ahead. I know it is always easy, and I say it directly to the hon. Minister, to say that we are making regulations. If we are to pass this Bill with a three-fifths majority, we would be doing so blindly because we would not have seen any regulations. [*Desk thumping*]

It is my strong view that when you want to do that you must make some draft regulations and lay it in Parliament at the same time of the debate, so that those of us who have to make the decision will be aware that these are the circumstances in which we have to work. I stick very strongly to those points.

So I am willing to sit and listen, but as I keep saying, if we cannot do any better, go back to 2007, and fix it up if we cannot get any of those things going in due course. So the question of qualification, training, organization, managerial

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systems, all of those to me are unmentioned anywhere, and this unit appears as a separate unit. I may be wrong, but I think that is the only unit which is coming directly under the Minister of Justice. Much of it will remain with the Minister of National Security, probably. I do not know whether the whole or all of it is going there, so I am subject to correction there, because as I say, the website still speaks of the Minister of National Security.

It becomes difficult, in fact, when you are put into this position like I am put today, to make up my mind whether I can support or not support this Bill. DNA is in fact a relatively new technology. In fact, when the hon. Minister was speaking of the newspaper columnist who referred to him as a 19th Century squire, he could have said as a rejoinder, “well I am as old as DNA”, because DNA was discovered in the 19th Century and it is only in mid-50s and later—I think that many of us know the name Dr. Linus Pauling, a great scientist; it is they who discovered the structure of DNA and that is where it all started. The work started then.

Hon. Senators: [*Inaudible*—Watson.

Sen. B. Ali: Yes there are others, but he was the leader. So it is all there. I did not make that up. By trying to learn something for myself, I went to that site and I found those data.

I do not wish to take up any more time because I feel so strongly about the administration side and the technical side, the shortcomings as I see it on the technical side, that I am prepared to listen to the pros and cons of the legal luminaries that we have in our midst—and we have quite a lot of them. I am prepared to sit and listen to them and to come to my own judgment, because in the long run that is what I will have to do and I will have to live with it.

So I thank you very much, Madam Vice-President, for giving me the chance to make my contribution. [*Desk thumping*]

The Parliamentary Secretary in the Ministry of Foreign Affairs and Communications (Sen. Nicole Dyer-Griffith): Thank you, Madam Vice-President, for affording me the opportunity to contribute to this Bill brought before this honourable Senate, the Administration of Justice (Deoxyribonucleic Acid) Bill, 2011, to repeal and replace the DNA Act, Chap. 5:34.

Madam Vice-President, I sat here and I listened to the hon. Sen. Al-Rawi speak at length around a number of legally based arguments with respect to the Bill. Many of the arguments I listened to quite intently, and one of those things

that was mentioned or a question that was thrown at the Senators of this side of the Senate, is, “I wonder how many of you really honestly read this Bill.” And to answer the Senator, I am sure, and I can speak for all of my hon. colleagues, that we did read the Bill. [*Desk thumping*] And in reading that Bill, hon. Senator, quite a few things came to mind. Madam Vice-President, I would just like to share an experience, just to create a platform for the understanding of the things that came to mind and the things that did not come to mind in reading this Bill.

Hon. Senators: Woman power.

Sen. N. Dyer-Griffith: Madam Vice-President, I recall a few years ago, perhaps in 1990 or so, I worked in South Trinidad and I lived in Diego Martin. I was traversing down the highway and it was a very rainy day and the car I drove perhaps was not very steady in its gait and it managed to run off the highway. At that point, I stood in a ditch in the car and waited for somebody to come to my assistance and nobody came. Then after a few minutes—about 15 minutes a gentleman came and asked, “Do you need some help?” Now, at that point I could not be bothered as to the way in which the gentleman looked, because he was the only person who came and offered help. He pushed my car out of the ditch and then he asked me, “Can I help you start the vehicle?” He started the vehicle and then he asked me, “Can I just get a lift a little further down the road?”

Now, Madam Vice-President, in that position, I am already traumatized. If someone—the only person who came to my assistance, asked for a lift, I see not an issue with that. On the way down the highway something happened and the gentleman grabbed the wheel of my vehicle and threw me out of the car whilst the car was still going at around 60 miles per hour. Whilst rolling on the highway out of a moving vehicle and having to dodge out of the way of a moving truck on the highway from crushing my head, Madam Vice-President, I was eventually rescued by some persons passing by in a taxi who saw my bloodied state, and they took me to the hospital.

Now, the reason why I recall this is, that in reading that Bill it jolted those emotions back to me. At that point in time, I was not concerned too much about conventions. I was not concerned too much about cases; I was not concerned too much about the legal totalities and the legal pontification. At that point in time, I was concerned with getting justice. I was a victim of crime, and at that point in time the various dicta made very little sense to me. As a victim, I was concerned about getting justice and this is the framework within which we present this Bill to this honourable Senate. [*Desk thumping*]

Now, the framework continues in that it is a Bill framed around the protection of our citizens. The hon. Sen. Al-Rawi raised a number of concerns, as I mentioned before, but those concerns must be placed within the framework of developing mechanisms and powerful tools that can be utilized in the criminal justice system for the protection and the preservation of the rights and freedoms and the safety and security of the citizens of Trinidad and Tobago.

He mentioned, Madam Vice-President, the issue of tortuous logic. When you are a victim as I was, and I am sure many others are, many of the people who are listening in the national community, we do not think about tortuous logic. We think that we want to see the perpetrator brought to justice. We think that we want to ensure that we can support whatever means of legislation that is within the confines of the Constitution that can ensure the perpetrator is brought to justice.
[*Interruption*]

Sen. Al-Rawi: Madam Vice-President, on a point of clarification. My reference to tortuous logic was the remarks of a learned jurist in relation to discerning the intention of Parliament from the vote only and it was not my language. So, if the hon. Senator could quote me correctly please. Thank you.
[*Desk thumping*]

Sen. N. Dyer-Griffith: Thank you for the clarification, hon. Senator, but at the time whilst I was lying as a victim on the side of the road that did not come to mind. [*Desk thumping*] What was that? Sorry? [*Crosstalk*]

Hon. Senators: Today you were a victim at the side of the road?

Sen. N. Dyer-Griffith: No, I am speaking about that in historic past.

Madam Vice-President, the hon. Senator mentioned the lack of consultation. Now, I recall some time ago when we were debating another Bill there was an invitation that was issued for consultation around that Bill and that invitation was not taken up. You know, Madam Vice-President, there is a saying: “Once bitten twice shy”, and so I suspect that that is the saying that will culminate with respect to the consultation and the issuance of invitations. But then the hon. Senator continued that a joint select committee was declined—an invitation was declined, so I was a little confused with respect to the issue of whether they were invited to consult on the Bill or not. And there is the issue of balance of rights and interest.

Now, what was interesting is on January 26, 2007, pages 24, 25, 27 of the *Hansard*, a similar matter had to be responded to by the presenter at that point in time, and this was Sen. Hinds who had piloted that Bill. And I quote:

“Today, we are here to offer DNA measures that will raise the bar as it were and consequently, make it more difficult for offenders to beat the system, as I have just described. This will necessarily involve the balance between the interest and security of the State and the society as a whole, vis a vis the interests and rights of the individual.”

This is Sen. The Hon. Fitzgerald Hinds responding to a similar question and query, that Sen. Al-Rawi would have raised. This is Sen. Hinds in 2007, responding to that issue.

Sen. Karim: What was he then?

Sen. N. Dyer-Griffith: He was then the Minister of State in the Ministry of National Security.

Hon. Senators: “Oh lawd”. Where is he now?

Sen. N. Dyer-Griffith: Now, the issue relating to the identification of the persons or the specifications of the persons required to provide samples, was also raised and the point was raised as to why should they be required to provide samples and so on. And one side of the coin was raised in that the requirements—why should they be required to do that? But we did not look at the other side of the coin or the other side of the coin was not presented in that, what about the probability to ensure that you did not commit a crime or that you are not a perpetrator of a crime, or that you are innocent of a crime?

5.45 p.m.

That is the flip side of that coin that we have to also look at when we are looking at the issues with respect to the taking of the DNA samples. What was interesting—and it is something that I would like this honourable House to consider—is whenever we enter the United States of America we are ten-printed, and whenever we leave that ten-print, a number of personal details are left on persons. So what is the fundamental difference with respect to that and the issuance and the taking of the DNA sample? What makes it wrong to take a DNA sample?

Sen. Deyalsingh: You have a choice. You could refuse not to go to the States.

Sen. N. Dyer-Griffith: What makes it wrong for you to take that DNA sample? You have to look at the two sides of the coin. It can be used to prove your innocence, and then the other side of the coin where it can be used to place you at the scene of a crime.

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Now, I quoted the hon. Senator a little earlier on and with your acquiescence I would just like to read a bit of the same *Hansard* of 2007, because I believe what that hon. Senator said at that point in time is very important to this debate and it is very important to creating a framework within which we observe and continue to look at this debate. This was in 2007, and I quote:

“This Bill is being presented in the context of very clear evidence that we, as Parliamentarians, as State officials, as citizens, must stand up and do so together to defeat this criminal onslaught by a relatively small group of ruthless criminals who believe that they can beat the system and, indeed, they often have beaten the system and got away without any serious consequences for their evil deeds.”

The hon. Senator, in 2007, continues:

“They threaten justices of the peace at the beginning of the criminal justice process; they threaten the police; they threaten witnesses; they kill witnesses; they throw chairs at magistrates and judges; they curse them in the courts; they lie for each other in the courts in order to save each other; they suffer elective amnesia, that is to say, they conveniently forget evidence.

At the end of the criminal justice process, if they are imprisoned, they attempt to beat the system even in the prison, by importing cellular phones and other contraband and illegal items; threaten prison officers; create upheaval in the system. So the reality is that given Trinidad and Tobago’s current constitutional and legal position, the criminals are beating us too often at every stage of the criminal justice process.”

This was the contribution by the hon. Fitzgerald Hinds on the DNA Bill in 2007, and I believe that is a perfect platform for the support of the Bill and the continuance of the support of the Bill, having been presented so eloquently in 2007 in seeking support of the other side at that point in time.

So at the end of this debate, I would want to go back to that quotation and bring it back to the attention of this honourable Senate so that we are assured when the time comes for the support of this very important Bill, that the voices that were raised in 2007, the voices that were raised in 2000, will be the voices of support in 2011. [*Desk thumping*]

Now, this is a very technical Bill, as was mentioned by many of the honourable contributors before. The Bill looks at some aspects of the law; it looks at some aspects of medicine; it looks at some aspects of physical and other various strains of science, social and other forms of science. So what I would attempt to do—and

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we also have to remember that we speak to many targets and many various audiences and everyone would have a different level of understanding the logic with which we present. I would want the members of the national community to be also au courant with many of the areas that we are seeking to address in this Bill, so that I would also take the opportunity just to clarify and explain a few of the concepts, the very complicated and technical concepts that relate specifically to this DNA Bill.

I would just like to start with a brief description of what exactly constitutes DNA. Over the last 10 years we have seen great advances in this very powerful criminal justice tool, and it is the deoxyribonucleic acid, or DNA. And DNA can be used to identify criminals with incredible accuracy when biological evidence exists. By the same token, DNA can be used to clear suspects and exonerate persons who are mistakenly accused or convicted of crimes. This is a very important point, so I would just like to repeat that. There are two key areas, and two key elements that can be used in DNA testing: one, to identify criminals with incredible accuracy and by the same token, to exonerate persons mistakenly accused or convicted of crimes.

All in all, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. DNA is generally used to solve crimes in one of two ways in cases where a suspect is identified. So we have identified who the suspect or the perpetrator of this crime is; a sample of that person's DNA can be compared to evidence from the crime scene. So we have that case. The results of this comparison may help establish whether the suspect committed the crime. So that you have a suspect; you have a crime scene, so you take the DNA from that suspect and once it is matched to the DNA lifted from the crime scene, it will help in confirming that that suspect was the person committing the crime. In cases where a suspect has not yet been identified, biological evidence from the crime scene can be analyzed and compared to offender profiles in a DNA database.

I will speak a little later on the issue of the DNA database and the retention of the DNA database and the DNA samples to demonstrate the absolute importance of ensuring that we do control, manage and keep an effective national DNA database system to help identify the perpetrator.

Crime scene evidence can also be linked to other crime scenes through the use of these DNA databases. For example, let us assume that someone was convicted of a sexual assault. At the time of his conviction, he was required to provide a DNA sample and the resulting DNA profile was entered into a DNA database. So we have someone convicted of a sexual assault, and he is required to produce this

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sample. We take the sample from him, either by buccal swab or whatever, and then we enter that sample into the DNA database. Several years later another sexual assault was committed. A medical practitioner worked with the victim and was able to obtain biological evidence. So we have a sexual offence committed, in the first instance a sample was taken and that sample was stored, and then a few years later, another offence was committed and you get biological evidence from the victim. When the evidence is analyzed, the resulting profile run against the DNA database and a match is made to the perpetrator's DNA profile, that perpetrator could be apprehended, tried and sentenced for the second time.

In this hypothetical case, he would also be prevented from committing other crimes during the period of his incarceration. The hon. Minister of Justice raised the Akiel Chambers' case and I would just like to read from an excerpt of "NIHERST: Gene Scene: DNA could do you or"—well, I would not want to say the other word because I am not sure if it is parliamentary language or not, but it is the flip side of "do you". And I will also be guided by you, Madam Vice-President, because some of the verbiage in this example, I am not sure if it would be within the lines of parliamentary language. But I just want to demonstrate the issue with respect to the Akiel Chambers case and the use of DNA.

"Eleven-year-old Akiel Chambers disappeared on May 23, 1998 after attending a birthday party. His body was found the following day in the swimming pool at the home at which the party was held. Semen was found...indicating he was sexually molested before he died. Murder was suspected."

The reason I raise this is because it still rips at the core of the emotional landscape of Trinidad and Tobago and it relates specifically to the potency of DNA and the use of DNA to solve crimes. I am reading this from 1998, five years after that.

"Five years later, a magistrate conducted an inquest to determine the circumstances surrounding his death. Had forensic scientists conducted DNA samples or DNA tests on the semen found...and similar tests were carried out on DNA samples from the suspects...and that of one of the suspects, the court could have used that information, along with all the other evidence presented, to arrive at a verdict. However, DNA testing was not done and in the absence of conclusive evidence, justice has not yet been served in Akiel's case."

I recall Sen. Basharat Ali mentioning, wondering and questioning, the efficacy of what were the things in the 2000 and 2007 Acts that were missing. According to this document here:

“The Akiel murder mystery remains unsolved because:

- Although legislation to allow police officers to take DNA samples at crime scenes has been passed,”—and this was in 2000—“it has not been proclaimed.
- Supporting regulations on collecting samples, and conducting the tests, among other things that will give effect to the Act have also not yet been established.”

Which is in keeping with what the hon. Sen. Ali had mentioned: What was the drawback? Why were these things not established?

The reason—because I am hearing whispers—I brought that to the fore is for us to understand that these things rock the emotional core and the emotional framework, not only of the victims, but the nation at large and we need to treat with this very seriously, because it impacts on the lives of people in Trinidad and Tobago. When you read this case; from the time you speak the name of this young child, from the time you speak the names of the many young children who have been assaulted or abused in whatever way, the first thing that comes to mind should be what can we do to stop this? What can we do to stop another child from being hurt? What can we do to bring the perpetrators to justice? Those are the questions that need to be brought to the fore when we are dealing with issues related to strengthening the criminal justice system.

I would like to speak to the issue of DNA testing and providing evidence. Biologically, DNA testing is a highly accurate way of determining genetic relationships and determining a positive identification of the source of any genetic material found at the scene of a crime. In many instances, it can confirm that a suspect was present at a scene or was found to bear the DNA of the victim, which is, of course, very useful in often determining information to help solve the crime.

One of the main advantages of DNA testing in court cases is that it is capable of placing the accused at the scene of the crime. That means DNA samples lifted from the scene are capable of placing the accused right back at that scene, or confirming that the accused had come into contact with a victim. Along with other strands of evidence, this can prove crucial to the outcome of the case and the decision whether or not to proceed with prosecution. Combined with witness identification or other testimony, DNA evidence can raise particularly powerful questions as to the innocence or otherwise of the accused. There are many benefits of DNA testing as we go through. One of these is that the introduction of DNA profiling has revolutionized forensic science and the criminal justice system.

DNA technology has given police and the courts a means of identifying perpetrators of rapes and murders with a high degree of confidence. For a variety of reasons, DNA profiling has significantly advanced the analysis of biological stain evidence. First, these methods are intrinsically more discriminating and the methods of genetic marker analysis that were used before. DNA profiling is more likely to exonerate a wrongfully accused suspect as well.

Now, there is the issue of, what we call, “cold cases” and in the other place I know it was raised as a matter of concern with respect to the issue around the cold cases. A cold case refers to a scene of a crime or an accident that has not yet been solved to the full and is not the subject of a recent criminal investigation, but for which new information could emerge from new witness testimony, reexamined archives, retained material evidence, as well as fresh activities of the subject. Just to repeat that. A cold case refers to a case that has not yet been solved, or a crime that has not yet been solved, but the crime can come back to the fore as a result of new evidence that might have been brought to the fore.

6.00 p.m.

New technical methods developed after the case can be used on the surviving evidence to reanalyze the causes, very often with conclusive results. Now, I would just like to read an example lifted from a Los Angeles Police Department (LAPD) Blog. And this relates to a cold case that was re-energized and brought to the fore as a result of a DNA match. It is dated January 13, 2009, and it is the case of a 19-year-old cold case, which was solved by a DNA match.

“A nearly two decades old rape and murder case has been solved with a recent DNA match.

On February 26, 1990, 82 year old Alma Harvey was found strangled and raped in her house located in the 800 block of East 32nd Street in Los Angeles. Ms. Harvey was in declining health and confined to her home when the attack occurred. During the initial crime scene investigation, Newton Homicide detectives discovered physical evidence left behind by an unknown suspect. This physical evidence revealed a DNA profile that was eventually entered into”—their database system called “CODIS”.

On January 5, 2009, a DNA, cold hit notification was made on a particular person, who had recently been arrested on an unrelated matter. So that this person’s DNA was taken, it was entered into a DNA system—in this system, the LAPD system is called the CODIS—so that the person’s DNA was registered there. The person was not was convicted of the first crime but they committed another

crime and the cold hit immediately rose on the system. Now during the person's arrest and detention a DNA sample was obtained and entered into the system where a match was made to the 1990 unsolved murder of Ms. Harvey. On January 6, 2009 detectives from Newton Homicide arrested the person at a residence and booked him for the murder of the original person.

So the issue that was raised in the other House with respect to the cold cases, this responds to that issue very, very clearly. It also creates the link between the need for a national DNA database in order to strengthen the entire system around the use of the DNA Bill and the DNA Act.

An unforeseen consequence of the introduction of the DNA profiling has been the reopening of old cases, or these are the cold cases. Persons convicted of murder and rape before DNA profiling became available have sought to have the evidence in their cases reevaluated utilizing this technology. In some cases, DNA test results have exonerated those convicted of the offences and resulted in their release from prison.

I spoke earlier about the issue of my own "victimhood" so to speak, and I got very passionate about the issue of wanting the perpetrator brought to justice. Even though this Bill is married to a number of different threads: legal, medical, sociological, forensic, et cetera, it is also married and very heavily framed by an emotive framework, because whenever you are dealing with persons who would have suffered as a result of a crime perpetrated on them, regardless of the crime, emotions come to play. So that this Act also responds to that issue, and this issue should not be taken lightly and it should not be cast aside. So we have to look at the benefits to the victim.

Psychological trauma impairs the ability and or the willingness of crime victims to cooperate with the criminal justice system. Victims whose crime related fear makes them reluctant to report crimes to police, who are too terrified to testify, effectively make it impossible for the criminal justice system to accomplish its mission. If however, DNA samples have been data based and stored then this has the potential to ensure the overall treatment of the victim is less intrusive. We have to look at the benefits of the families to victims, because whenever a crime is perpetrated the victim does not exist in isolation. The victim is a nucleus of a family, so that whenever the crime is perpetrated on the victim it is not only the victim who will be the person that will be suffering, we have to look at the families of these victims. So when we look at all of these areas we have to look at it from a holistic perspective ensuring that we respond to the victims and their families.

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Now in speaking to the DNA Bill, many times we speak to the persons who would be accused of a crime, and we very often tend not to look at the persons who were wrongfully accused. There have been many examples of persons who were wrongfully accused, and as a result of DNA evidence that would have come to the fore, were released. According to this document the Politics of Crime—and this document is dated Monday August 01, 2005 it speaks to another innocent accused set free by DNA and this was written by TChris and it reads:

“It seems that a week rarely goes by without a new report of an innocent accused being cleared (after conviction) by DNA testing. How many innocent men and women are behind bars with little hope of release because the true criminal left behind no DNA evidence, or because it wasn’t collected by the police?”

This is an example of a gentleman who spent nearly 18 years in prison for an offence he did not commit. The person was convicted in 1986 of an assault of a 48-year-old woman at a hospital. The person was 25 years old and the father of two young children when he was convicted; he was denied parole four times. Prosecutors originally opposed DNA testing for Doswell—this is the person—but a judge ordered it. When the tests came back some time ago showing that liquids taken from the victim did not belong to him the prosecutors filed motions to vacate his sentence and have him released. Why did this happen? Eyewitness testimony—and that is what his conviction was primarily based—is often unreliable but suggestive identification procedures such as those in this person’s case, enhance the likelihood of mistaken identification.

This example of this person set free after spending 18 years behind bars and their parole being denied four times, is just one out of many examples of persons who were wrongfully accused and left behind bars and subsequently freed as a result of DNA evidence coming to the fore. So when we are looking at the framework within this Bill we have to look at both sides of the coin. We have to look at the side of getting justice for those persons who are accused of crime, and who are convicted of conducting a crime, as well as you have to look at those persons who might be wrongfully accused and giving them back their lives.

Earlier on, I spoke to the issue of the DNA databank and the issue of indefinite retention. And I would just like to spend a little time on this issue because it was raised in the other place. And the argument that was proffered—the hon. Minister mentioned this earlier in his presentation but I believe that it is very important because it is necessary for us to understand what are the absolute benefits to ensure that we have an indefinite retention of this database, because the database

is more than the DNA sample. Many times we tend to mistake the use and the keeping and the storage of DNA samples with that of setting up the database, but as we go through we would see that there is an intrinsic difference and we would see the intrinsic benefits and need to ensure that we keep a database, a national database, and we keep that in check.

Now as I mentioned this issue was raised in the other place with respect to why would we need to have the DNA profiles and the databank used indefinitely or stored indefinitely. The argument that was offered is that there should be some timeframe for the storage because templates around the world were moving away from that storage, even in cases where a person might have been exonerated.

One of the arguments for ensuring that we do have some measure of indefinite retention of profiles in this bank is that retention is objective and not linked to guilt or innocence and therefore stigmatization.

We have heard it mention before, why are you taking this DNA sample? Why do you want to store the DNA sample? But the DNA sample would not be stored to stigmatize someone; you can also look at it from the flip side; it can be stored to ensure your innocence. The storage of a profile in a databank does not however indicate the innocence or guilt of the individual to whom it relates. In other words it is just storage of information, the storage is a criminological tool for exoneration and identification purposes. Rather this information provides the opportunity to detect offenders and eliminate the innocent from enquiries quickly. Madam Vice-President, how much time do I have?

Madam Vice-President: Until 6.20 p.m.

Sen. N. Dyer-Griffith: Okay. So I am speaking to the issue of the retention indefinitely of profiles in the DNA databank. The other issue with respect to that is that we can acknowledge the existence of the databank to yield public benefit. Now this is an important issue because it is a deterrent to offending or reoffending. So that if someone or a perpetrator of a crime were to know that their DNA is stored somewhere, it might act as a deterrent to them reoffending. Likewise, it might act as a deterrent to someone committing an offence. Because if you know that your profile is stored, then it acts almost as a barrier to you committing a crime or wanting to commit a crime because the deterrent exists.

Retention has received judicial support. Now, the hon. Minister spoke at length about the issue of judicial support and how that support creates a buffer and a balance for the retention of this DNA national databank.

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Now safeguards of the databank system: with respect to the safeguards of the databank system, the areas that were offered by the hon. Minister demonstrate that the databank will be properly secured and safeguarded and that the issue of interference will be limited if not completely eradicated.

I mentioned the issue around cold cases and the results of the DNA sample or the DNA profile may often be the primary evidence in a criminal case, which collapses because there is simply no other viable evidence available. Additionally, matters considered to be cold cases may have suddenly broken through when some fresh evidence is produced which links the perpetrator of a criminal offence with another crime that was committed years before—and I gave the example of the opening of a cold case. This is the importance of establishing and maintaining a comprehensive DNA database against which many searches may be conducted for a match. So as I gave an example of that case, the reason why they were able to retrieve a hit—and it is called a cold hit—the reason why they were to identify and match against that cold hit is because the information was registered within the DNA database and the information came up and registered as a match, so that the person who would have committed the offence previously matched that criteria.

Retention counteracts the degradation and destruction of DNA samples. Now this is the issue to which I spoke, where many times—and I have heard it mentioned in the public domain, the little areas of clarification with respect to a DNA sample and the DNA databank. Now the DNA sample is made of natural molecules. And quite naturally, no pun intended, it will have a life cycle, which is why it is important that when you take the DNA sample that it is entered into a system of a DNA database or a databank, so that that life cycle is stored somewhere. So if anything should happen to the actual DNA sample or the life cycle of the sample is eradicated the information has already been stored within the DNA databank, so you do not have the issue of loss of information and the issue of shelf life.

6.15 p.m.

Madam Vice-President, the retention can facilitate the emergence of many new technologies. We live in a technological era and before we blink our eyes, some new technology comes to the fore. I mean this Bill alone has gone through so many revisions from 2000—2007 and now we are looking at it in 2011, and I am sure that something new will always come to the fore. So it is imperative that we ensure that we maintain our samples and we maintain our databank so that if new technology or even newer technology were to come to the fore, we would have all the samples, and we would have the information technologically stored within a network so that we would not be left behind.

DNA samples and the retention of DNA samples. I spoke to the issues of the DNA sample vis-a-vis the DNA databank. Now, this issue of resourcing—I believe Sen. Ali and Senator, you can correct me if I am wrong, but you spoke a little bit about the issues as to why some of these areas were not functional or not adequately functional, the administrative areas of the use and the proclamation of the Bill. Now, one of these areas here is that DNA database, retention and composition can cut cost. Banking arrestee's DNA, instead of banking only that of convicted criminals could result in financial savings in investigation, prosecution and incarceration.

This retention could significantly cut down the cost of an investigation of an automated computer search if an automated computer search can eliminate suspects or link a suspect to a crime scene. And it brings us back to the issue of the creation of the electronic databank. In the example I gave with the LAPD, they were just able to get onto a computer, touch a button and the person's DNA sample and his DNA information was able to link, whether they had committed a crime or not. So that when it is you create this technology, not only is it beneficial in the other areas but it is also beneficial in the composition and cutting costs.

Now, Madam Vice-President, the issue of saving time and resources: so I am looking at my time. We are very well aware of the time, effort, resources and energy used in the investigation of cases, and the reason I am harping on this is that many times you hear people speak about the issue of resources, about how much will it cost the taxpayers, how much will it tax the resources of the national community; and this looks at a way of streamlining the use of our resources, the issue of creating this national databank because it saves on manpower, it saves on time, energy, effort and so on.

Now, as I wrap up my contribution, I just want to read a few quotations that I lifted about the pros of DNA testing. Madam Vice-President, I know that many of the hon. Senators of this Chamber are already convinced of the pros of DNA testing and they are already convinced of the need to have this Bill used as a tool in fighting crime. I understand that there are some considerations which I am sure we will be willing to take into consideration, but for the benefit of the members of the national community, I would just like your acquiescence, Madam Vice-President, to read a few quotations with respect to the pros of DNA testing.

PROCEDURAL MOTION

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Madam Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate do now continue to sit until 11.30 p.m.

Question put and agreed to.

**ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) BILL, 2011**

Madam Vice-President: Senator, you have one minute for extension.

Sen. N. Dyer-Griffith: Thank you very much, Madam Vice-President. I am almost finished. I was mentioning that I know that the hon. Senators of this Senate need no convincing with respect to the need for this Bill to be passed in this Senate, and I am sure there are some considerations which will be taken into account. But for the benefit of the members of the national community, I would just like to read a few quotations that speak to the pros of DNA testing, because this has been a hot topic on the lips of people within Trinidad and Tobago over the last few days. So that I would just like to provide them with some information as to the pros of this testing.

The first quotation is Stuart Taylor Jr. JD—

Madam Vice-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. T. Deyalsingh*]

Question put and agreed to.

Sen. N. Dyer-Griffith: Thank you very much, Madam Vice-President. I feel humbled that my colleagues would jump to their feet to request that my speaking time be extended, I appreciate it very deeply; thank you very much hon. colleagues.

Madam Vice-President, as I was mentioning, I would just like to close by a few quotations of persons in support of DNA testing and so on. First one, Stuart Taylor and he is a non-resident, Senior Fellow of Governance Studies at the Brookings Institution, and in his November 17, 2007 article, "The Death Penalty: Slowly fading?" wrote and I quote:

"Irrefutable DNA evidence has exonerated some 15 death-row inmates and almost 200 other men convicted of murder"—assault—"mostly since the late 1990s. This DNA-evidence revolution, along with non-DNA evidence proving the innocence of a great many more condemned men and other prisoners has alerted many who support the death penalty in principle to the fallibility of the criminal-justice system and the risk of executing innocent people."

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Another quotation from Orrin G. Hatch, a US Senator, on June 13, 2000, in his speech and I quote:

“Statement of Senator Orrin Hatch Senate Committee on the Judiciary Hearing on ‘Post-Conviction DNA Testing:...‘Advanced DNA testing improves the just and fair implementation...While reasonable people can differ about—different forms of—punishment, it is indisputable that advanced DNA testing lends support and credibility to the accuracy and integrity of capital verdicts.”

Third: this quotation is from the National Institute of Justice, in its September 1999 report “Post conviction DNA Testing: Recommendations for Handling Requests, wrote,” and I quote:

“In little more than a decade, DNA (deoxyribonucleic acid) evidence has become the foremost forensic technique for identifying perpetrators and eliminating suspects, when biological tissues such as saliva, skin, blood, hair or semen are left at a crime scene. First introduced into evidence in a United States court in 1986 and the subject of numerous court challenges in the ensuing years, DNA evidence is now admitted in all United States jurisdictions...Moreover, law enforcement agencies and legislatures have come to understand the potential of using DNA testing systematically by constructing DNA databases...”

You see, Madam Vice-President, it always comes back to the issue of the structure of the database and ensuring that the database is strengthened.

“on a State and Federal level that inventory DNA profiles from new unsolved cases, old unsolved cases, and convicted offenders. As these DNA databanks grow in size, society will benefit even more from the technology’s incredible power to link seemingly unrelated crimes and to identify with alacrity suspects who were until then completely unknown to investigators...”

Madam Vice-President, against this background, I submit my offering to you for your honourable attention and to the Senators of this Senate. I would just like to close by reminding as we consider the various elements of this Bill, as we consider the various legalities, as we consider the various issues around rights and responsibilities and so on, I ask that we also consider the issues around the emotive side, the psychological side; that we consider the victims, that we consider the people on whom crimes are perpetrated; that we consider the way in which it impacts upon the national society; that we consider the issue of the fundamental right of safety and security to the people of Trinidad and Tobago. I thank you. [*Desk thumping*]

Sen. Terrence Deyalsingh: Madam Vice-President, thank you very for the opportunity to contribute on this Bill, and I also take the opportunity to welcome you to this Chamber, I think it is the first time we have had the pleasure of your company in this Chamber, Madam Vice-President. [*Desk thumping*]

Madam Vice-President, I rise to make a contribution on the Bill: An Act to repeal and replace the Deoxyribonucleic Acid Act, Chap. 5:34. So I will refer to it as the DNA Act from here on.

Madam Vice-President, we on this side have no problems with DNA; we want DNA legislation, and like my good friend, Sen. Basharat Ali, we do not want to wait 14 years for DNA legislation.

I will not bore the Senate and the national community with the chemistry and biology of DNA; it has been well explained by speakers before, but I would just like to put two names on record, Tommy Lee Andrews who was the first person convicted using DNA legislation, that was in 1987. And a name which has come from the past, an 1880 murderer, Ned Kelly; an Australian bushranger who murdered three policemen in 1880, recently had his—when he committed those murders, he was just thrown into a mass grave, and from 1880 to now, his descendants have been fighting to get his remains properly buried, and using DNA, they were able to extract his body from a mass grave and give Ned Kelly a proper burial in 2011. So like Sen. Nicole Dyer-Griffith, we all know the benefits of DNA legislation so I am not here to go through that.

However, I would like to point out to all and sundry that what we need is legislation which can stand scrutiny and legislative scrutiny. Madam Vice-President, it is because I came from a science background and a pharmaceutical background, I fully support the use of DNA testing as do we all. There is a particular drug called Rohypnol commonly referred to as the “date rape drug”. You give it somebody, they do not know what is going on, you can have your way with them and when they wake up the next morning, they were violated and they have no recollection. This country has been on Rohypnol since June 24, 2010. We have not realized the path that we have gone from May 25, 2010 as far as basic human rights are concerned and the passage of legislation. If I cannot convince this Senate today and all independent-minded people and the national community that there are certain clauses in this Bill that need us to take pause, then I am sorry, I do not have antidote to Rohypnol.

Madam Vice-President, an Anglican priest at a funeral I went to recently, in this country said we now have leadership by PR; that was an Anglican priest, not a politician—leadership by PR. And the haze that has descended over this country from May 24, 2010, I sometimes wonder why the PNM thinks that running this country is so difficult? Why does Dr. Keith Rowley, my political leader, think that running Trinidad and Tobago is a difficult task? It is not! Every time you have a problem, you use the constitutional majority and ram through a Bill or use a Bill in a way it was not intended, like the anti-gang legislation; easy.

Former temporary High Court Judge, Gregory Delzin, is now saying what we told them with the Data Protection Act; it is unconstitutional.

6.30 p.m.

Did they listen? No. At that time, we warned them that the Data Protection Act needed a constitutional majority to be passed, that it infringed on sections 4 and 5 of the Constitution. Nobody saw it. The haze that has descended over this country from May 25, blinds everyone. Even members of the media, media practitioners, did not see the danger of that Data Protection Bill until Sen. Faris Al-Rawi spoke about it. And now, members of the media are wondering what really happened in that Data Protection Act.

As it goes to DNA, Sen. Nicole Dyer-Griffith spoke about laws, victims and bringing perpetrators to justice. I have, on several occasions in this Parliament, called for the Government to make a comprehensive statement, yes or no, on the Privy Council. Today I heard, answering a question from Sen. Helen Drayton, that the Government has no intention of abolishing the Privy Council. That is their decision. [*Interruption*]

Hon. Volney: That is not what was said.

Sen. T. Deyalsingh: That is what I heard. I would give way. I would give way. Correct me.

Hon. Senator: You want the man to lose his work?

Sen. T. Deyalsingh: Correct me. I have put pointed questions: are we going to retain the Privy Council? Because, if you use DNA evidence and you want to hang somebody, I have put it before this honourable Senate that once we retain the Privy Council you cannot hang anybody. Because—and the hon. Minister of Justice facetiously said we are British not European, when Sen. Al-Rawi was making reference to European law. I am surprised that a former High Court Judge—and Sen. Bhagaloo who is a learned lawyer, if he is making a

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contribution can tell this Senate that the Privy Council has to abide by the European Convention on Human Rights, via the Human Rights Act of 1988, which abolishes the death penalty. Am I right hon. Senator? Again, no comment.
[*Interruption*]

Hon. Volney: You are wrong.

Sen. T. Deyalsingh: I am wrong? I would give way. Correct me.
[*Interruption*]

Hon. Volney: Next speaker.

Sen. T. Deyalsingh: I will give way. Correct me. We follow—the Privy Council has to interpret legislation consistent with the European Convention on Human Rights. If I am wrong well, I stand corrected. That is the point Sen. Al-Rawi was making.

But you see, the haze. Again, if I cannot convince people as to the unconstitutionality of this Bill, then I am sorry for Trinidad and Tobago, because every time there is a problem, we infringe on people's rights; whether it is the Central Bank (Amdt.) Bill, where I spoke about the unconstitutionality of that. Time will tell.

We want legislation that will work. During my contribution I would show the unworkability of this Bill. We want legislation that will not be struck down, because the point Sen. Dyer-Griffith misses is if we pass bad legislation, it looks nice in a box, I tick it off, passed, but when you have that first case that goes before the court and is struck down on unconstitutional grounds, what have we accomplished? Nothing! I want legislation that can be operationalized and I will show where some aspects of this Bill cannot be operationalized. I want legislation that will produce evidence that could be used in a court in a timely manner, so that the rapist cannot escape. And during my contribution I will show how that may not be possible. My contribution will address these issues and some more.

One area of the Bill—when I go through the Bill clause by clause, I will show the danger in it, but I mention it now. In any country that debates DNA legislation there is always one industry that pays close attention to it. Do you know what industry that is? That is the insurance industry, because the insurance industry wants to know who is risk for diabetes, who is risk for hypertension and who is risk for this type of cancer so they could refuse you insurance coverage. That is a big debate going on all over the world. Australia now has that big debate; the security of DNA profiling, your profiles.

It also has implications when you keep the DNA of innocent people who have not been charged and employers get their hands on that. You can be denied jobs. That is the danger of indefinite storage of DNA profiles. I will come to that, because, one of the markers used in DNA screening—there are 10 markers that are used—currently can accurately predict your chances of developing type 1 diabetes mellitus, insulin-dependent diabetes. I could use your DNA profile and tell you who is likely to have diabetes. An insurance company can use that to discriminate against you. An employer can use that to discriminate against you. But this Act allows for innocent people, not charged for anything, to have their DNA profile stored indefinitely. I should be able to stop my contribution now. If that does not scare the bejesus out of people, nothing will. If we are still going to sit here and pass this piece of legislation as is, after that one piece of information, we are in a bad way.

Madam Vice-President, another issue—and if we look at the US experience—and we are making the same mistake that the United States made and the United Kingdom. That mistake was they broadened the categories of persons to collect samples from so broadly that they ended up with backlogs of thousands and thousands of DNA samples. Do you know what the result was? Women who were raped and wanted to have their rape kits tested, had to wait three to six years to get their rape kits tested, because the system was so broad, the database was so wide and resources were so limited, there was not a timely bringing back of evidence to the court to convict a rapist. The result of that was that the perpetrators, the rapists, were able to go on raping over and over and over, while a woman's rape kit is lost in a labyrinth of hundreds of thousands of rape kits. That is part of the problem.

The other part of the problem with the US system, and I hope it does not happen here, so I am sounding a warning now because of the propensity of governments, notice I use the word “governments”, to give out contracts for anything. There will have to be contracts for these kits. The United States is suffering from the lobbying of the providers of rape kits and DNA kits. There is a particular company called Gordon Thomas Honeywell Governmental Affairs, which seems to have a monopoly on the provision and testing of kits. What is happening in the United States, state by state, is that they lobby to have DNA legislation passed that is so broad, because it is good business for them. It is good business. You have United States policy being driven by commercial interest. We need to avoid that here. The other company that is driving this in the United States is a company called Applied Biosystems. I hope that we get good DNA legislation

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and when we get that to operationalize this thing, it does not descend into a contract thing with friends and family and then have government policy being driven by commercial interest.

I now turn to the Bill. I want and the People's National Movement, we want, DNA legislation. Going back to the priest who talked about leadership, by PR, I was speaking to about three laypeople over the past week and they all said: "I hope Terence, when you go to Parliament, you pass this piece of legislation as is." I said: "Have you looked at it?" They said: "No, we want DNA legislation." I said: "Yes, I want DNA legislation too." When I read some of the offensive parts of this legislation they said: "True, de Government want tuh do dat? Well ah did not know." But that is the Rohypnol effect, the date rape drug. When I told them clause by clause, what I find offensive and showed it to them and have them read it—these are laypeople—they were amazed.

The first clause, page 2 states:

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

In other words, retrospectivity. It is a legal construct agreed upon that you do not pass laws retrospectively except for serious, or to right historical wrongs. I have recited the facts of *R v R* in this Senate. Yes, that legislation was passed retrospectively to correct an historical wrong against women, that of marital rape. It was held from the 1600s, to quite recently that once a woman is married she consents to sex. That has now been overturned. That was one example of retrospective legislation, but that was to correct an historical wrong. Now we have this, because all the thousands of people caught in the net for the state of emergency, up in the leaking jail in Santa Rosa and wherever, would have had their buccal swabs taken. Do they know that? And, now, when this Bill comes into effect, they can go retrospectively and charge them. "So, ah did not commit ah crime yesterday, you took my buccal swabs yesterday ah pass dis law tomorrow, yuh guilty." That is not good law. It is unconstitutional.

Page 3, what is a crime scene?

"(b) anything found on or any foreign object found within the body or any part of the body of the victim;"

So, a person's vagina is a crime scene. [*Interruption*]

Hon. Volney: It is.

Sen. T. Deyalsingh: My ears become a crime scene—I will explain later. It is amazing how, when I give way for you to correct yourself you do not. When I am speaking—this issue of invasion of the body and invasion of the person has been debated and ruled upon in the United States under the Fourth Amendment. And, unlike the hon. Minister, who used wrong reasoning from Lord Brown—because that decision was overturned. What does the Fourth Amendment say?

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation.”

They operate the federal system, meaning each state can have some latitude in how they apply the law. I will be as objective as I can be, because many cases went before the Supreme Courts of many states. Do you know what the result is? They are unable to come down on one side or the other to say that DNA sampling, taking your blood without consent, is constitutional or unconstitutional. But this is the road we are travelling down.

6.45 p.m.

The Minnesota Court of Appeal: it held it was a violation of the Fourth Amendment; Virginia Supreme Court: not a violation. So I am giving both sides of the story. The Federal District Court, Third Circuit Court of Appeals: it was a violation. The Federal District Court, Ninth Circuit Court of Appeals, held it was a violation. The point I am making, Madam Vice-President, is that we are treading on dangerous ground. The United States does not even know whether this offence is, the Fourth Amendment or not. I am not using one-sided logic to bolster my argument and cut down theirs, I am giving you both sides of the story.

Madam Vice-President, when we come to page 3 on DNA profile, DNA profile means a profile of the DNA of a person obtained through forensic DNA analysis, and includes a partial profile. One of the issues facing jurisdictions which have been applying DNA legislation for years, and which I want the hon. Minister to consider, is the point of taking a DNA sample. The legislation is silent on it, but I think it is a point which needs to be considered. Are we taking the sample on booking, when the person is booked? Are we taking the sample after a person is charged? We need to look at those issues. The Minister might say it may be in the regulations, I hope they are, but according—if I follow up on the point of Sen. Basharat Ali, there are no regulations, we need to see the regulations, because that is an important—“yeah,” very important.

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Page 4: “Forensic DNA Databank means the databank established under section 7”, I have no problems with that. I would just like to ask of the hon. Minister whether we in Trinidad and Tobago intend to link up with the CODIS system, which is the Combined DNA Index System set up by the Federal Bureau of Investigation. I think we should. I think about 35 countries currently link up with it, and I think that the hon. Minister of National Security might be quite interested in that. So it is a suggestion I am throwing out to the hon. Minister of Justice, to consider linking up with CODIS.

Madam Vice-President, I come to page 6, clause 5: “The Trinidad and Tobago Forensic Science Centre,” and then clause 7(2), “DNA profiles stored in the forensic DNA Databank may be kept indefinitely.” This was a point Sen. Nicole Dyer-Griffith spoke about so eloquently, that she sees no problems with the indefinite keeping of the DNA samples. My good colleague, Sen. Faris Al-Rawi spoke at length about the law. We are here to pass laws and she is right she is not a lawyer, she is absolutely right. I am not a lawyer, but I could read the laws and understand them, and every single jurisdiction points to the unconstitutionality of the indefinite keeping of DNA profiles; and I stand corrected. I will give way to anybody here who can tell me that I am wrong, including the lawyer Sen. Bhagaloo. I will give way.

Madam Vice-President, the European Court of Human Rights, recently, unanimously, voted that the policy of indeterminate retention violated international public law, and they ordered 850,000 samples be purged from the system. I will read from the *Telegraph*, by Tom Whitehead, Home Affairs Editor:

“Samples of those charged but not convicted, of serious violent or sexual offences will be kept, but no more than five years.”

So they have put a statutory limit, five years, but for what type of crime? Serious, violent or sexual offences, not indefinite! The European Court of Human Rights has ruled that it is wrong.

“The policy was announced as the Tories accused Home Secretary Jackie Smith of acting illegally by failing to abide by a European ruling last year which said holding such profiles indefinitely was unlawful.”

I do not have to be a lawyer to know that this is unlawful. The European Court of Human Rights has said it is unlawful.

The Scottish Parliament, has passed a law that everybody who is acquitted, their profiles must be removed from their national DNA base, Scottish law. The South African model has done the same thing, but we in Trinidad and Tobago, we do

not want to learn from their experiences, we want to have this Bill and then have it struck down as being unconstitutional. I want DNA legislation, but I want constitutional DNA legislation. [*Desk thumping*] That is the point which the Government is missing.

We want DNA legislation, but DNA legislation that when I bring a perpetrator before the courts, he does not walk free on grounds of unconstitutionality. Because he is going to take it to the Privy Council who has to interpret all laws consistent with the European convention of human rights, and that is the point the hon. Minister of Justice keeps missing, when he says we are not European. But by retaining the Privy Council, Madam Vice-President, hear what, we are European, because that is the law we have to follow. [*Interruption*] And he can laugh all he wants—[*Interruption*]—we are European, because this Government did not have the guts to swallow their pride and reverse themselves after they reversed themselves on the Caribbean Court of Justice issue. So we are retaining the Privy Council.

I go to page 7, clause 8(2)—and if the hon. Minister is so disgusted by my contribution, you know, then we do not need a democracy; just pass laws and forget what the Opposition has to say.

Sen. Cudjoe: “Do not waste your time!”

Sen. T. Deyalsingh: I am a Trinidadian, but unfortunately, because we do not want to go to the Caribbean Court of Justice; we have to follow European laws. “Ahhhhhhh!”

“The Minister shall appoint the Custodian from among suitably qualified persons on such terms and conditions as he thinks fit and the appointment shall be notified in the Gazette.”

Madam Vice-President, if this does not remind you of the FIU and Susan Francois, nothing will. We warned this Government on the FIU Bill, that the appointment of Susan Francois was illegal, unlawful, and unconstitutional. Did they listen? No. The hon. Attorney General stood in this Parliament and proudly declared that he, the Attorney General, personally checked the references of Susan Francois, when that is the job of the Public Service Commission. Here now, you have a Minister who is going to appoint a custodian. Why is the President of the country not appointing the custodian or the Public Service Commission? What does this Government have with by passing independent bodies to do what they need to do? [*Desk thumping*] Can anybody tell me? Because they did not listen

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on the FIU issue we are now blacklisted again. Do hon. Senators across there know that? We are blacklisted—French President Nicolas Sarkozy himself is calling Trinidad and Tobago a tax haven for criminals. And one of the reasons, Sen. Moonan, is that the FIU legislation is tainted by political interference, right?

Sen. Moonan: You did not read it correctly.

Sen. T. Deyalsingh: And because they scuttled the Revenue Authority.

Madam Vice-President, the remuneration of the custodian and the deputy custodian appointed under this clause, shall be a charge upon the consolidated fund. If it is we have to charge this on the Consolidated Fund, then moneys have to be allocated; and I stand corrected. I have two publications here [*Holds up booklets*]: *Estimates of Development Programme, for the Financial Year 2011, and Draft Estimates of Development Programme 2012*. In 2011—correct me if I am wrong again, the Ministry of Justice, from the Consolidated Fund, has been allocated \$5million. Am I correct hon. Minister?

Hon. Volney: It is in the budget.

Sen. T. Deyalsingh: It is in the budget. Okay. Under 2012 the Ministry of Justice has been \$8.2 million. In those two years, Madam Vice-President, they have been allocated \$13.2million from the Consolidated Fund. These came from these two publications, Government publications. [*Holds up booklets*] These publications do not emanate from Balisier House, or the office of the Leader of the Opposition.

Sen. Al-Rawi: If they did, it would be correct.

Sen. T. Deyalsingh: When I look at the details on the following pages, I see nothing about housing DNA samples, buying DNA kits, training persons to conduct DNA analysis, but I will come back to that quite soon.

Clause 10, page 8:

“The Custodian shall—(a) maintain the Forensic DNA Databank; (b) conduct searches against the forensic DNA data bank.”

Madam Vice-President, this brings me to an issue, “conduct searches.” So I am assuming that you have a rape victim, she wants to get her rape kit tested. I have spoken about the influence of private sector interest like Honeywell, driving DNA legislation so they could sell kits. Madam Vice-President, to illustrate the point I which I want make, I go to the article:

“The DNA Debacle: How the Federal Government Botched the DNA Backlog Crisis”.

If you will permit me to read a little, Madam Vice-President?

Madam Vice-President: [*Nods head*]

Sen. T. Deyalsingh:

“Kelly Greene spent three years living in fear, waiting for police to catch the stranger who raped her.

First there was a three-year wait for a crime lab to test the DNA evidence that her attacker left on her leggings. Then, when the test results finally came back, she was horrified to learn that the man had committed an earlier rape.”

So she was raped, she is waiting three years to have her kit tested in that intervening period he raped again. Do you know why? Because the DNA legislation in the United States is so broad, they collect so many millions of samples, that when you want a sample for somebody who is the victim of rape tested, you cannot get it tested. It is the mistake which they made, it is the mistake the United Kingdom made, it the mistake which we are making. We want DNA legislation, but we want DNA legislation that will suit the victims, not business.

“Had they been able to test the DNA in that earlier case, my rape—might—never have happened...”

Madam Vice-President, when you read this publication it is a litany of woes, of how victims, like rape victims, have trouble getting their rape kits tested, because of backlogs, all because:

“The firm Gordon Thomas Honeywell Governmental Affairs, lobbies the Justice Department and lawmakers on behalf of the world’s leading producer of DNA testing equipment.”

I hope our country does not fall into this same trap.

Madam Vice-President, I go on:

“The largest known backlog is the Los Angeles County, where more than 12,000 rape kits—envelopes with blood and semen collected from sexual assault victims—remain untested.”

It is the same persons who both Sen. Nicole Dyer-Griffith and I want to protect, but if the Bill is so broad as it is here, their kits are going to get lost. And I go on:

“This is a betrayal of victims; it’s a betrayal of public trust...About half of the 1,000 kits collected on at the Abarbanel’s Center each year are from child victims...”

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So the same Akiel Chambers and the like that we want to protect, child victims ranging from four months to 17 years old, she said the prosecutors must sometimes postpone trials while waiting for kits to be tested. Some offenders use the delays to seek out more victims. I do not want to go down this road, but this Bill, because of its breadth, will take us down that road.

Debbie Smith, a rape victim from Virginia, drew broad support from lawmakers and the public because she had to wait six years for her attacker's DNA to be tested. It is a horror story. The broader the legislation—and the United States and the United Kingdom have suffered from this, whereas the Canadian system is more targeted. I would recommend to the hon. Minister and his colleagues that they take a look at the Canadian system and the Scottish system.

I go on again to page (1)8:

“Subject to subsection (2), a police officer shall take a non-intimate sample from a person without his consent where—

(a) the person is a suspect...”

In other jurisdictions, the taking of a sample from a mere suspect has been ruled unconstitutional. We are walking down the same road. There is a saying, Madam Vice-President, that to do something wrong the first time is a mistake; to do it the second time is a choice. We can learn from the mistakes of the United States and the United Kingdom. This will be struck down for unconstitutionality. It cannot stand the test of clause 13, reasonableness. The 2007 Act which Sen. Basharat Ali spoke about, which he recommended, has a lot of those safeguards. I am just a suspect and you want my DNA? I am just a suspect. A person is not a victim of an offence, attends a crime scene and is required by an investigating officer to give a non-intimate sample.

The US Supreme Court says it is reasonable to assemble a database of convicted offenders because convicted offenders have a lesser expectation of privacy. If you are convicted, then your DNA is fair game. I have no problem with that because, as criminals, your DNA has a decreased right to privacy. A recent congressional study predicted that argument will not hold up when it comes to taking samples of people simply arrested or charged with a crime. This is not me talking; this is the United States Supreme Court.

Let me re-read the last line. They are saying that the argument will not hold up, the argument being taking DNA samples, when it comes to taking samples of people simply arrested or charged with a crime. We are making the same mistakes that the United States made and they now have to spend billions of dollars to clear the backlog.

Madam Vice-President, how much time do I have again?

Madam Vice-President: Five minutes.

Sen. T. Deyalsingh: Thank you, Madam Vice-President. Clause 14: where a repeat non-intimate sample is to be taken under clause 13(1), a police officer shall cause a notice—So, I take a sample from you once; “I ain’t have nutton over yuh head”; I come a second time, I take a sample. I come a third time and take a sample? Why this continuous assault on the person to be taking a repeat non-intimate sample? I just do not get it; it may be struck down on the grounds of unconstitutionality.

I go to clause 15 and this is where I will go back to the budget statement. Clause 15:

“(1) A non-intimate sample shall be taken from a person specified in the Third Schedule without his consent.”

Now, when you read the Third Schedule, it talks about taking samples from the protective services. I think I am correct. Who constitutes the protective services? It also mentions firearm users. Let us stick with the protective services.

Under the definition of the protective services, you have 7,000 police officers, 2,000 prison officers—the hon. Minister, Sen. Brig. Sandy, can probably say if I am off or generally correct. Between the army, the coast guard and the air force, you have another 5,000 approximately and fire officers, about 2,000. You have a total of roughly 17,000 persons that you are telling the Minister of Justice to test. I have no problem with this. Your protective services, you would have their DNA—sure.

Sen. Brig. Sandy: Madam Vice-President, just for the edification of the honourable Senate, the defence force is not part of the protective services.

Sen. T. Deyalsingh: Madam Vice-President, I stand corrected, but I would like to suggest to the hon. Minister that we include it. Why should we exclude them? So we have roughly about 17,000 persons we can test. This is where I was talking initially about the practicality of a broad DNA testing system, too broad; and there the rape kits get caught up in this.

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My little research shows that the cost of DNA testing ranges anywhere from a low of US \$200 to US \$500 per sample. I stand corrected. A rape kit requires a different type of testing. It is more complex and goes up to about US \$1,400. Those are the prices that obtain in the United States. When they come down here, because of contractual obligations, they may cost more.

So if we use a range of US \$200 to US \$500 per test, if we are to test all these people under the protective services, inclusive of the defence force, which I think should be included, it is going to cost the hon. Minister and the Ministry of Justice US \$3.4 million, but his budgetary allocation for 2012 is TT \$8.2 million. Where is the money coming from? And that is using a low figure.

If I use a US \$500 figure, it goes up to US \$8.5 million—8.5 x 6.3 is how much? , roughly TT \$50 million, but the 2012 budgetary allocation: draft estimates, development programme, social infrastructure and so on, is TT \$8.2 million. This is the point I am making. The rape kits will get caught up in this and we will hear a case come before the court. We already know that it takes about two to three years for evidence to be brought back from the forensic centre to the Magistrates' Courts. That was given to us in an oral reply by, I think, the hon. Minister of National Security.

Now we are going to burden that system because it has not been resourced; it is underfunded; and just testing people under the protective services is US \$8.5 million. That does not include staffing, building, resourcing, setting up your database and all that. This is just testing kits for protective purposes. It does not include, under the Third Schedule, testing for firearm users, who, again, I have no problem with. They should be tested. If you want a firearm, you have a decreased expectation of privacy and I agree with that part of the Bill. Let us test everybody who is a legal firearm user.

But I am saying, hon. Minister, through you, Madam Vice-President, that you have to look at the cost and where the money is going. Should the money go here or to the testing of kits for rape victims or victims of violent crimes? This is what I mean, Senators, when I say the Bill is too broad. The objective we want to achieve will be lost in all this. We need to take a step-by-step approach.

Madam Vice-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. Cudjoe*]

Mr. Vice-President: Before I put the question, I would like to ask all Senators to put your phones on silent. While I appreciate your messages coming in, I really do not wish to hear them from the Chair and I am sure they will be recorded via the sound system. Please put them on silent.

Question put and agreed to.

Sen. T. Deyalsingh: Thank you, Madam Vice-President, for that rather lukewarm response to my extension from the Government Benches. [*Laughter and crosstalk*] A rather lukewarm response.

Before I leave the issue of cost, right now there are over 40,000 cases before, I think, the Port of Spain Magistrates' Court and we are now going to bring thousands more of DNA kits. We want the legislation, but we want legislation that will work and not get bogged down in logistics.

I move quickly to clause 16 and I have to take issue with my friend,

Sen. N. Dyer-Griffith, when she says: "Why should people object to having their DNA tested; we go to the United States and we put—?" Sen. Nicole Dyer-Griffith, when you go to the United States, you go there of your own free will. You are giving up your DNA; you are giving up your fingerprint freely.

What this Act purports to do is that the Minister responsible for national security is of the opinion that if a sample is required from a person in the interest of national security, he may, in writing, request the Commissioner of Police to make arrangements—I like the word—for a non-intimate sample to be taken from the person—and he could use force, too, eh. Is this in keeping with what you thought?

I went to the Remembrance Day celebrations on Sunday and Sen. The Hon. Brig. Sandy was there with his medals and so on. Sen. Sandy, we love you. You are a good man. You have served this country well. [*Desk thumping*] Notice the response is no longer lukewarm. People like you we owe a debt of gratitude. Heaven forbid! You could have been one of the people that we could have been commemorating, but you are alive.

Sen. Sandy, this part of my contribution is not about politics, but the event did happen. I refer to the Reshmi Ramnarine affair. Whether or not you were misled, that is gone, but it boggles the mind to think that a man as honourable as you could have been so misled by that whole Reshmi Ramnarine affair; that she would have been at the top of the SIA—is it the SIA?—feeding information to you as to

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who is a person of interest. I do not want any political appointee, no matter how honourable, no matter how decent, no matter how loved, to have that type of power over me. Other jurisdictions that give their Minister of Security that type of authority, that authority is given but on certain conditions.

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We could visit other legislation from other jurisdictions to give you a certain degree of latitude to command DNA samples from people you are interested in. I understand national security. I understand that we live in an age of terrorism, cybercrime. You may want to get the DNA from a computer keyboard for someone doing cyber-crimes; I have no problem with that. But can you tell me, Madam Vice-President, can this hon. loved patriot tell me that every successive Minister of National Security is going to be endowed with the good qualities that he has? I think the answer is no. So we want to fight crime; give the Minister of National Security this power but under some conditions.

Madam Vice-President, I go to the vexing clause 19, victims of sexual offences. A qualified person may take such samples as he thinks fit from an alleged victim of a sexual offence without the consent of the alleged victim. When we marry that with clause 23—[*Interruption*]

Sen. Dyer-Griffith: Would the hon. Member give way?

Sen. T. Deyalsingh: Sure!

Sen. Dyer-Griffith: Madam Vice-President, the hon. Senator raised an important point, and I would just like to find out, hon. Senator, if you would give an idea of what some of those conditions might be, that you mentioned.

Sen. T. Deyalsingh: He must have some reasonable interest in that person that some sort of supervising body whether it is the National Security Council can look at and deem, okay, we need that person.

Sen. Al-Rawi: Internationally you cannot use this.

Sen. T. Deyalsingh: You can do that by, again, going back with CODIS. With the CODIS system, would we be participants in the CODIS system? We could flesh out that in regulations. Thank you. [*Crosstalk*]

This legislation tells—now I have spoken to two criminal lawyers on this piece of legislation, one this particular clause—whether we admit it or not, like it or not there are some rape victims who do not wish to prosecute. Fact of life! But this legislation tells a rape victim who does not want to prosecute she has no

choice but to be held down forcibly and be violated again because you can take an intimate sample by force. The same thing with a child, this cannot be right. If the rape victim does not want to pursue the matter, that is her choice. Why are we taking away that choice from the person? I would love to know the reason for it.

Madam Vice-President, I have only a few minutes left. Clause 25 deals with the keeping of samples for long times, I think we have done that. Clause 25(4), deals with the destruction of samples, where the Commissioner of Police does not object to the destruction of a sample on a list referred to and so on. We are giving the Commissioner of Police authority to destroy a sample. My question is: where is the Director of Public Prosecutions? Because the same case that Sen. Nicole Dyer-Griffith spoke about, Akiel Chambers, if the Commissioner of Police has destroyed the swabs taken from Akiel Chambers and not the DPP and the DPP wants to reopen the case, you know what? Samples gone! Samples gone! We have not learnt from ousting the DPP in the anti-gang legislation, that was a mistake, if we do it a second time, that is by choice. I am not making that choice. I cannot make that choice after having the experience of the anti-gang legislation being used in a fashion not intended by Parliament. Cannot! I would like to see the DPP involved either by consultation or enshrined in law before a sample is destroyed. So if he wants to reopen a case, he can.

Madam Vice-President, before I close I want to reiterate for the Government, for everyone to hear, I want DNA legislation. I think I have put a strong case forward that certain parts of this legislation do not pass constitutional muster. I urge the Government to rethink the issue. It is only certain parts. We are not throwing out the entire Bill. Let us not have Sen. Basharat Ali come back here 14 years from now and say “Why we eh pass it?”. Let us do it. But let us pass a Bill that could pass constitutional muster. And if my arguments have not persuaded you morally—because I understand party politics, if the “whip” say you have to vote, you have to vote. But if I can just stir something in your consciousness, individually I would have won.

Sen. Al-Rawi: Well said. [*Desk thumping*]

Sen. T. Deyalsingh: Madam Vice-President, in closing I would like to make some recommendations to bring this Bill up to constitutional muster. It is partly of my writing but also partly from a study done in England, so I do not claim sole authorship of it. Some principles for the retention of DNA: Samples should continue to be taken from those committing serious offences or some grade of offences as per the Canadian Act in accordance with those terms, but destroyed if not convicted with the DPP to be consulted. I recommend that to the Minister of Justice.

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DNA obtained should only be used for intelligence and potential evidence in the context of criminal activity, and should not become an attempted means of storing the genetic characteristics of everyone in this country—because part of this Bill, Madam Vice-President, talks about using your DNA for research purposes. If you collect my DNA for criminal matters, why do you want to use my DNA afterwards for research purposes without my consent? It goes back to the point I was making, it could be used as a marker for disease. I could be denied insurance coverage; I could be discriminated against in my job.

So I would urge the Government to reconsider its use of DNA for research purposes. If I want my DNA used for research purposes I will give it up for that reason, to UWI or a drug company. But I am not giving it to a Government who collected it for a crime or suspected of a crime, or for rape, for them to give it to a pharmaceutical company for research. That cannot be right.

Sen. Al-Rawi: Breaches the data protection rules.

Sen. T. Deyalsingh: DNA taken from a suspect should be retained whilst that person remains subject to investigation by the police or until such time as any relevant criminal proceedings have concluded.

When a child under the age 18 is convicted of a serious offence comprising certain crimes of violence and sexual offences, DNA samples and profiles should be retained indefinitely. That is for a child. In the case of a conviction or any recordable offence DNA should only be retained for five years. Now I do not totally agree with this. In Australia and the UK, their minimum age for criminal responsibility is 10 years. They are saying, under 10 you cannot keep a child's DNA sample.

No DNA samples or profiles should be retained on children where criminal proceedings initiated against them did not result in a conviction. So you have a child, you have his DNA, the child has been exonerated, why do you want to keep his DNA? Explain that to me. Where an adult is convicted of a serious offence example, rape, murder, manslaughter, robbery with aggravation, their DNA should be kept, but again not infinitely. We could build it into the statute five years or 10 years depending on the seriousness of the crime.

Madam Vice-President, I hope I have raised the mist that has descended on this country—leadership by PR. I hope that I have provided an antidote to Rohypnol, I hope I have awoken the consciousness of people that this Bill will fail on constitutional grounds, and I also urge this Government, once and for all in their second year of Government to bring to this Parliament their legislative agenda. Madam Vice-President, with those words I thank you. [*Desk thumping*]

Sen. Corinne Baptiste-McKnight: Thank you, Madam Vice-President, for the opportunity to add my tuppence to this very important debate. I note that the title of this Bill is the Administration of Justice (Deoxyribonucleic Acid) Bill. So I have looked at this Bill hoping to see the extent to which it does justice to everyone. [*Desk thumping*]

Now, I want to say from the outset that we all realize that DNA is not the silver bullet that is going to stop crime. DNA testing can help, will help. But in order for the DNA testing to do its job, there is a plethora of other stuff that has to be put in place. And I would really have liked the hon. Minister to tell us exactly where we are situated in terms of having this DNA contribute effectively to the solution of our crime problem.

We have all known for some time that the facility that houses the forensic centre is not adequate. We have all known for some time that there has been talk of expanding it, of moving it. Now it is going to be absolutely essential in the short term to provide additional space for this centre in order for it to fulfil its current function. So that when we are thinking of expanding the scope, it becomes more essential to identify, not only to the public but to the people in the centre now, who will have to cope with the additional workload, that attention is being given to ensuring that they will have the resources and the facilities at their disposal in order to perform.

7.30 p.m.

You know, I am a “knock about”. [*Laughter*] Last night when I reached home, I was told that the Minister of Justice was on television cussing out the forensic centre people.

Sen. Hinds: Yes.

Sen. C. Baptiste-McKnight: I said, well, you know, I did not hear it, and I said, “No, that gentleman would never do such a thing.” [*Crosstalk*] The problem about it is, we cannot, on the one hand, be saying to people, “You are essential to us, we need you to perform at your best” and, at the same time, demoralizing them [*Desk thumping*] by not saying, we are going to give you the resources that you need.

Now, let us add the fact, as has been pointed out, that there is an Act which has not been fully implemented. We cannot blame those who passed the Act, because there has been time within which nothing has been done to right the wrongs that

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were inherited, but this, I take it, is another attempt to right a wrong. Now, I have a serious problem with every time there is a problem, rather than analyzing it and finding a workable solution, we pretend to start all over from scratch; pass a new Bill.

Now, let us look at the new Bill that we are going to pass, and I would start with the definitions. Let us look at just the essentials. We would look at “intimate sample” and then we would look at the “non-intimate sample”. If we compare the definition in the existing Act with the proposal in the Bill before us, we will recall that we were told by the Minister that the attempt here is to simplify the definition, but in simplifying the definition we are deleting certain specifics which, if I understand rightly, can end up having a justice say, when a case comes that deals with a urine sample, “No, this is not acceptable because it was explicitly removed.” This is just my understanding of it, because here it says materials taken from any part of the genitals, so I imagine that would include pubic hair and other orifices, that is not the mouth. It also removes a venous blood sample even though we have been told that the blood is the most efficient material for a DNA sample. I do not think that a drop of blood would probably be as effective, as perhaps, a teaspoonful. It might just make it unnecessary to have to take a second sample, because the first one was not enough. I do not think that you can get more than a couple drops out of a prick of a finger. The whole idea of dental impression is, again, removed. I do not understand why. I would have thought that in a case like this more is better.

Then we go on to the “non-intimate sample”, and we find that nails and skin impressions are, again, deleted. Why? It just makes no sense to me. [*Desk thumping*] The only way you can have a sample of a nail is if you get it in a crime scene. That does not make sense, at least, not to me.

Let us look at Part III of the Bill which deals with the custodian. I would not repeat what has been said by those who spoke before me, because I share those concerns [*Desk thumping*] but my additional concern is, who supervises the custodian? [*Desk thumping*] Now, it is not only a matter of who supervises the custodian, because there must be some mechanism, but in order to be able to terminate him, one of the conditions is that he must fail to carry out the duties or functions conferred upon him under the law. How is this going to be determined?

Now, I get the impression—and I hope I am not wrong—that the current Minister responsible for this function is energetic, efficient and hard-working. Here, again, we have no guarantee that this is a condition that would always be so, but my heart goes out to him if, in addition to everything, he has to oversee this custodian and deputy custodian in order to provide them with annual reports, because an annual report is necessary.

I do not know whether any Minister wants the weight of having to decide what the qualifications are for a job that I do not think really falls within his sphere of immediate knowledge. That is a difficult task. You could go on the Internet and google it, but there is room for error. There is the additional problem: will these two officers become public servants? Will they be part of the public service since they are paid out of the Consolidated Fund? Where do they stand? Are they the Minister's private property? I do not think he wants that.

Then we get to the matter that the custodian will have adequate staff. What is adequate staff? Is it adequate in numbers? Is it adequate in quality? They must fill the post. Is it adequate in terms of specific qualifications? If you are working in a DNA lab, you need a range of different qualifications, because I do not think it is the same person who will be testing gunshot, will be testing blood and so on. So that "adequate staff" does not quite hack it. It is a little vague; very unacceptable, especially when the funding for it is coming out of my pocket. [*Desk thumping*]

I think since these ladies and gentlemen are going to be housed in a forensic unit, there must be some reporting relationship within that unit, and I think that should be spelt out there. That is not for the regulations, that has to be somewhere here. We have the functions of the custodian split between clauses 8 and 10 so, perhaps, we can marry those and have the functions in one place.

Unfortunately, at clause 11(2), I really do not think that if the Minister gets a report, and he has a month within which to lay it in Parliament, there is no need for "as soon as practicable thereafter", because it is that "as soon as practicable thereafter" that means most of the reports that are destined for Parliament reach years later.

Moving on to Part IV where we have the obtaining of these samples, I have several problems with this. A person may volunteer to give a sample. I just want to leave for a moment, the point that this person is volunteering may be for reasons of thinking that he or she could be helpful by offering DNA. They could be volunteering in order to ensure that they are exonerated; they could be volunteering in order to solve their own problems by virtue of things like paternity and all of that, but I want to leave the fact that the person is not mandated to, and I will come back to this when we get to the retention of the samples.

Now, everywhere a person who is a suspect is treated as a detainee and an accused. This is an unacceptable violation of this person's rights. [*Desk thumping*] Now, you cannot suspect someone without real evidence, because we have seen

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this happening in recent times, and treat them in the same fashion as someone who is accused, or as someone who is already convicted and detained. I think that common decency requires that such a person be notified and requested. [*Desk thumping*] Absolutely nothing short of that!

When those unfortunates who will have to give mandatory samples find that their samples are lost or destroyed through no fault of theirs, I think that at that point, they, too, must be requested and notified. You cannot put people in double jeopardy like that. [*Desk thumping*]

7.45 p.m.

I think the same for 13(d), a person who is not a victim but attends a crime scene, and here, too, however you treat this, this is one of the aspects of this Bill that drives home to me the need to do public education on all of these pieces of legislation. Trinidadians and Tobagonians are by nature curious; normal folks move away from an accident, run away from a gunshot, my people “beeline” for it. [*Desk thumping*] So you have to educate them ahead of time. If you go there, you become part of the crime scene and you are treated as a suspect. I think a little more thought has to be given to all of that.

[MR. PRESIDING OFFICER *in the Chair*]

I am considerably disturbed by 13(2)(d). I understand that the definition of juvenile residential facility is a juvenile correctional facility, but you have children in a juvenile correctional facility who are there because they are out of control, which means they are the offspring of out-of-control parents, and for simply being that unfortunate these children are going to be in a DNA bank—come on. I mean think of it, many of you have children whom you try very hard to keep on the straight and narrow but there is nothing that guarantees that you could not have a problem.

Would you like to think that your son, daughter, niece or nephew falls off the reins—simple—driving home from a party with their friend and they are stopped by the police and there is marijuana in the car that is being driven, get picked up—DNA swab—but you know, it means that your 16-year-old has got into that DNA bank for life. Think about that. The youth who goes to St. Jude’s, to YTC, serves his or her time, comes out; I do not know whether in our law the conviction stays with them for life. I hope that it does not.

Hon. Senator: They can make applications.

Sen. C. Baptiste-McKnight: Okay, you can make an application to have it expunged I am told, but there is no way that they could get out of the DNA database. That is not right, that is absolutely unacceptable. [*Desk thumping*]

I would like to look at 16, and you know this is very personal to me because outside of these hallowed halls I have two modes of dress: vagrant and semi-vagrant, so I could easily imagine myself being railroaded—a person of great national security interest—and when I find out this, is when Dr. Gibbs, like in Commissioner of Police, makes arrangements for an officer to arrest me and bring me in for a DNA sample—not good enough. Because I will tell you something, this is the point at which my karate would kick in and he would get hurt and I would have to pay \$10,000. And I know that I am going to end up with two years in jail. [*Crosstalk*]

Sen. Al-Rawi: I will defend you.

Sen. C. Baptiste-McKnight: Thank you, see, even better. [*Crosstalk*] You know, there is a funny side to it, but this is exactly what this says here. If whoever is deemed to be a national security threat, does that remove the right for that person to be properly notified that they are required under section so and so, of whatever law to come down and give a sample, at which stage I can now walk with my free lawyer? But as it is here, no. We are just removing too many rights. [*Desk thumping*] And I will say that it is unfortunate that this Bill comes at this time because it gives the impression that Government is only interested in denuding the rights of the citizenry. [*Desk thumping*]

I am heartened by the fact that at 17(4)—and I want you to note this very carefully—a deportee who comes back home, he has been here for some years, under this Bill he is required to give a sample of his DNA, and would you believe that a police officer of the rank of superintendent or above shall cause the notice to be served personally on the deportee, but he could just “raff” me and pull me in—arrested, to get—no, no, no. [*Desk thumping*] My plea here is that everybody who is required should be given the same courteous treatment as the deportee. [*Desk thumping*]

Hon. Senator: Well said! Well said! [*Crosstalk*]

Sen. C. Baptiste-McKnight: Madam Vice-President, as usual—

Hon. Senator: No, Mr. President!

Sen. C. Baptiste-McKnight: Oh, Mr. President—

Hon. Senator: Presiding Officer.

Sen. C. Baptiste-McKnight: How could I? I beg your forgiveness.

Hon. Senator: “Next thing they take a sample, you know.” [*Laughter*]

Sen. C. Baptiste-McKnight: I am looking at 18 which deals with getting samples from missing persons. I do not know how a police officer is going to collect something from a missing person, so that I would suggest that you think in terms of requesting samples so that it would assume that you are requesting something of the missing from the present. [*Interruption*] That would be even better. Of course, I would not repeat what has been said about 19, because as a female, I feel pained to think that of all the legal people who were involved in this not one of them was female and not one of them could have figured that this was abusive. [*Desk thumping and crosstalk*]

Part v, I find very interesting and let me tell you why. The protocols for collecting and storing samples were excised from this version of the Bill, but you have the procedures for post collection. I would think that consistency alone would require that these protocols for collection and storage be part of the Bill, and do not feel that it is not done elsewhere. My colleague, Sen. Basharat Ali, mentioned that we have been working on this for 12 years, but if you look at the history of the Canadian legislation, you will see that it took them 12 years, from 1995—2007, to get to where they are. Why? Because these things take time, and would you believe that their law includes the protocols for collecting and storage because it is essential that this be part of the law. [*Desk thumping*]

It is not a matter of putting it in the regulations, because when you put it in the regulations and they pass through here like a full PTSC bus, we miss it; we do not see it, so that anything that you leave out we do not have an opportunity to properly assess and put back in. We would put back in these collection and storage protocols and of course let us deal for a moment with the retention of samples.

Why should the sample of someone who voluntarily gives a sample in order to assist, to exonerate himself or herself, or as a result of needing to deal with another personal issue, why must that sample be kept for 10 years? Further, why should that profile become part of the databank unless the person gives written permission to have it as part of the permanent bank? I think that in the UK this is what happens; voluntary samples, for them to become part of the databank the owner must give written consent, and I think that that needs to be considered in our legislation.

8.00 p.m.

[MADAM VICE-PRESIDENT *in the Chair*]

Further, people who are not charged or convicted, their samples and profiles should not form a part of the permanent record. [*Desk thumping*] I know that this database is going to be computerized and as such it might probably be convenient for the custodian to differentiate between crime scene samples, other samples and your Third Schedule samples. I can be convinced otherwise, but I feel that it would be better for these databases to be separated. But, as I said, I can be convinced that this is a better idea.

The register at clause 27 poses a serious problem for me, because it is not a register. It is a series of registers lodged all over the country in police stations, many of which, one, are unsuitable; two, have no proper area in which these things can be properly stored. In addition to that, every qualified officer, i.e., every doctor who takes a sample, keeps a register this is madness. How many registers? The information that has to be on the register, if somebody breaks into a doctor's office, in the hope of getting some drugs or something, and goes away with his computer, wow, register gone. [*Desk thumping*]

In addition I would like you to look at clause 27(3)(f). In the case of a child, all that is required is that the person taking the information has to state whether the child's representative was present. I would be happier if some identifying mark of that representative were involved, because it would not be unknown for this to be done without a representative and whoever is doing it just ticks the box, "Yes, a representative was present". Not good enough. Identify the representative with some form of national identification that would be acceptable.

Moving on to clause 30, which purports to identify areas of offences, subclause (c) says it is an offence to break the seal or open or cause to be opened any DNA package. Is there any reference to DNA packages anywhere in this Bill? No; it is there in the existing legislation where all of this is part of the collecting procedure, so that if you violate the collecting procedure then you have a problem. This makes no sense here, unless you reinstate the collection and storage procedures. Same thing goes for (h); same thing goes for (d). You cannot violate handling procedures that are not part of the legislation.

One of my favourite ones is clause 31. There is something about this Bill which gives me the impression that it was not fully realized that we are dealing with human beings—[*Laughter*—]—people with feelings, people with reactions. You are telling me that you fine a person \$10,000 and imprison them for two years for refusing to give a sample, and you are talking about somebody who has done nothing. [*Desk thumping*] I think we have to have another look at this.

Hon. Senator: In a state of emergency.

Sen. C. Baptiste-Mc Knight: But the person is supposed to create a state of emergency on whoever is trying to get the sample. [*Desk thumping*] That will not do.

I cannot quite understand my objection to 32(2), but I know I have an objection. [*Laughter*] Let me try and explain what it is. If evidence exists in the form of DNA, someone can ask to have access, to give a sample that it can be tested against that evidence. What if the evidence does not exist within the system? There is a 50-year-old gentleman who has been forced to pay maintenance for a child for 16 years, and he has been protesting that the child is not his. All of a sudden he is aware that DNA is the thing to prove that this woman “been digging out my eye for 16 years”. Under this he cannot apply to the Commissioner of Police, because they have no evidence in the system. “De evidence alive and walking about de place.”

Sen. Ramlogan: They could do that in normal law.

Sen. C. Baptiste-Mc Knight: They could do that in normal law? What is the other aside, Mr. Minister?

Hon. Volney: This is a criminal Bill.

Sen. C. Baptiste-McKnight: Oh, this is a criminal Bill? So it is not criminal for somebody to insist that somebody pay alimony for a child that is not theirs for years? Come on.

Sen. Ramlogan: You ask for a paternity test, but not under this Bill.

Sen. C. Baptiste-McKnight: But it is DNA samples we are talking about. You know why I am indulging in this with you all? You are not getting the point. The ordinary “John Quackoo and Mary Blinky Eye” out there are having the same problem to understand this as we are. It is not a matter of not wanting to understand. This is the problem that happens with every piece of legislation that is passed in this Senate, and it has nothing to do with this Government, even though we have seen it more blatantly with the gang legislation, which in the joint select committee and again in this House, we insist that you have to train the police in how to manage the thing. [*Desk thumping*] You have to make the public aware of what the legislation is.

We are a lawless society, but we are lawless because nobody takes the time to tell us what the law is; that is the point I am making. We have to tell people; we have to educate people about this. We have a Ministry of Communications now, so we might do better. And the nice thing about it is that it is a lady, and women always do a little better. [*Laughter*]

Let us move on to clause 33, where it says quite disturbingly that in criminal proceedings a document purporting to contain information required to be recorded under this Act is admissible as evidence of the facts and opinion stated—
[*Interruption*]

Madame Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Member's speaking time be extended by 15 minutes. [*Sen. B. Ali*]

Question put and agreed to.

Sen. C. Baptiste-McKnight: I thank you all for wanting to prolong the entertainment hour.

Sen. Ramlogan: “We listening, man, we listening.”

Sen. C. Baptiste-Mc Knight: Madam Vice-President, I am saying that all of this is admissible without proof of the signature and without proof of the appointment of the person who recorded the information. Is this serious?

Hon. Volney: This is standard evidence law.

Sen. C. Baptiste-Mc Knight: Then we must change it. It does not make sense. Something comes up, you do not know who sent it, but it is admissible.

Hon. Volney: The Evidence Act. All the time that has been there for years.

Sen. C. Baptiste-Mc Knight: Okay, if you all are happy with it. I guess that clause 36 is normal too, that you validate everything that is done validly under an existing bit of legislation. That is normal too? Okay, right, if you want to repeal it.

My last question: is the forensic centre covered by or exempted from the Freedom of Information Act? I thank you.

Sen. Helen Drayton: Madam Vice-President, I will be brief as possible. I want to open my contribution on this DNA Bill by posing a question first and making a statement. The question is this: Is it unreasonable to expect that draft regulations would be submitted to Parliament simultaneously with proposed legislation that is fundamentally inconsistent with basic human rights protected under the Constitution?

I recall on more than one occasion that this Bench has made such a request, and I do recall that Members of Government, who were not too long ago in Opposition, were vociferous in their demands for similar draft regulation to accompany certain Bills. The reason is simple; in the context of such legislation, the regulation is so

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core it might very well be primary law. [*Desk thumping*] So it is to ascertain as well that the rules and procedures which underpin a particular piece of legislation do not constitute unusual use of power and do not go further than the specific law intended in the first place. With a Bill of this nature, such scrutiny is necessary by Parliament. The best time to review the draft regulation is when we receive the Bill, so that we could review the context and the whole framework that underpins the specific law. [*Desk thumping*]

Under our Constitution, the rule of law and Parliament's legislative responsibility are critical components of governance. Parliament's duty is to ensure that the regulations are consistent with the spirit of the Constitution and the law.

And if Parliament chooses to delegate that responsibility by agreeing that the regulation will be subjected to negative resolution of Parliament, then of course the answer there is that when such regulation is completed, if there is objection then of course a Member of Parliament could raise that objection on a Motion. But we all know that that is not a short and efficient process.

8.15 p.m.

So that with general pieces of legislation that is okay, but when we have legislation that is so robust and so draconian in nature, and which infringes rights, then I think that Parliament needs to see that regulation.

So, that Madam Vice-President, I want to propose that the DNA legislation should be subjected to affirmative resolution of Parliament—[*Desk thumping*]

Hon. Senator: Excellent!

Sen. H. Drayton: —because the DNA Bill, all of DNA law is about the collection, it is about the assessment, the evaluation, the matching and the storage of such materials, and therefore, I want to submit that it is primary law. So, that we are debating and discussing legislation in isolation of a substantial part of the legislation.

Hon. Senator: Well said!

Sen. H. Drayton: So that I want to suggest that the way this Bill has been brought to the Senate is not acceptable. I said that I would make a statement and the statement is this. In the years that I have been in this Senate I have never seen such a patently flawed legislation—

Hon. Senator: Wow!

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Hon. Senator: “Oh good!”

Sen. H. Drayton:—and such an offensive piece of legislation. [*Desk thumping*] I was quite taken aback in reading the Bill and more so, given the recent experience with the anti-gang legislation, and let me say this that my record with respect to the anti-gang legislation is there. I did stand here and I did say that where the evidence was concerned it was a total waste of time, those were the exact words. And I did challenge the authorities, let me see how you would implement that legislation. So when I make reference to this legislation, I would only urge that the Government listen and take what we have to say on board.

Sen. Hinds: They never do.

Sen. H. Drayton: I cannot understand why a Government with respect for the rule of law, our Constitution and the essential principles that shape a democratic way of life, would want to implement a law that is so contradictory to all such principles. [*Desk thumping*] This law is disproportionate—

Hon. Senator: Well said!

Sen. H. Drayton:—in relation to the rights of citizens.

Now, normally when I feel strongly about flaws in a bill I would simply bring amendments or I would suggest that it go to a joint select committee. In this instance I think that this thing is so terrible and so consistent with what we hear about life in a police state—

Hon. Senator: Woo!

Sen. H. Drayton: —that we should simply withdraw this legislation. [*Desk thumping*] Now, for the viewing public—

Sen. Deyalsingh: Country easy to run.

Sen. H. Drayton:—I know we have said that this is a highly technical piece of legislation. I want to summarize it very succinctly. This Bill in essence says, that we want DNA legislation, which I agree with. I agree that we need DNA legislation, we need legislation that is robust to help detect crime and therefore, resolve a lot of issues in our environment. So that all that is fine, but what this Bill does, it says that your blood and biological material can be taken from intimate and non-intimate parts of your body by the police or someone else, without your consent, and that the person taking such a sample can use force, albeit reasonable force, but it is force, and if you are a victim of rape, they could hold you down, spread-eagle, and take it.

Hon. Senator: Oh my God!

Sen. Deyalsingh: And you are immune from prosecution.

Sen. H. Drayton: I want to be very graphic with respect to this piece of legislation.

Sen. Hinds: Horrendous!

Sen. H. Drayton: Right. It also says, you do not have the opportunity to consult or have your lawyer with you.

Hon. Senator: Wow!

Sen. H. Drayton: It says that your spouse or someone you trust—

Hon. Senator: I think we should walk out.

Sen. H. Drayton:—cannot be with you when it is taken. And I want to submit through you, Madam Vice-President, to the Minister, when you look at clause 20(b) and (c), if someone entered your house and raped someone you love, and you need to take that person down to the station, your spouse, your daughter, she has to give a DNA sample. The only person she feels comfortable with and who would comfort her, it is you her spouse. This law says you cannot have a person of the opposite sex.

Hon. Senator: Libya boy!

Sen. H. Drayton: Okay. So you cannot go with your spouse. Is that what you intended, hon. Minister? Is that the intent of this legislation?

Sen. Beckles: Misprint.

Sen. H. Drayton: Or misstep? Anyway. If not, clause (b) and (c) need to be explained, it needs to be explained. [*Interruption*] I am not being political, it needs to be explained.

It also says that it can be taken, if you interpret the legislation, in a quasi-private environment because this is a police station. But I think to compound everything else, Madam Vice-President, this law says that if the police is brutal, if is malicious, you have absolutely no recourse [*Desk thumping*] because full immunity is given to the police.

Sen. Hinds: Shame!

Sen. H. Drayton: Is that right?

Sen. Cudjoe: No way!

Sen. H. Drayton: Is that right?

Sen. Deyalsingh: Country easy to run, man.

Sen. H. Drayton: So that if they did anything bad to your child, to your daughter, or if they did anything bad to your spouse or to you, you have no recourse.

Now, I listened to what you said, hon. Minister, but I want to suggest that incidents of false allegations by victims or by alleged victims is not an excuse for bad law. [*Desk thumping*]

The role of the court as present in the current legislation in giving authority to take DNA samples in certain situations, that will be abrogated and placed in hands of the police and in the hands of the political directorate. Is that right?

This Bill says that law-abiding citizens with a licence, a certificate or a permit to have a firearm, a non-intimate DNA sample shall, shall be taken. So I submit to all the business people out there, all the individuals who have a firearm illegally, that you will be required if this law is passed—

Hon. Senator: Legally.

Sen. H. Drayton:—legally, you will be required—

Sen. Al-Rawi: Unlike the criminals.

Sen. Hinds: And those who have the illegal one, they “ain’t” business with.

Sen. H. Drayton: —to subject yourself to a DNA, forthwith. You have done nothing wrong, there are not allegations against you, you are not suspected of any crime but what the Bill also says, and this is why it is so contentious, that it can be done without your consent. And I ask what consent? What is the purpose of that?

Let me say this, I think it is very reasonable that if you are applying for a dangerous weapon, in this day and age I have no problem that a DNA sample has to be taken, but why without consent? It is a simple thing. If I do not want to give my consent, you do not give me a licence.

Sen. Ramlogan: What if you already have it?

Sen. H. Drayton: If you already have it and the law says that a DNA sample is required and you do want to give a DNA sample, you have an option. The law has given you an option of consent, okay. Now if I refuse, you do not have to force me to take a DNA sample, you just confiscate my weapon under the law.

Hon. Senator: Revoke your licence.

Sen. H. Drayton: It is a licence, revoke it.

Sen. Hinds: No!

Sen. H. Drayton: So I do not believe that it should be left also to the presumption, it should not be left to presumption that the police would ask for your consent first. That should be a requirement under the law.

Again, I listened attentively to the Minister, and none of the arguments put forward justify unacceptable and objectionable contents of this Bill. [*Desk thumping*]

Now, the Minister adequately justified the need for forensic DNA legislation and we all agree that we need such legislation. We do not need wanton abrogation of the respect for citizens' rights.

Hon. Senator: "A Kamla State!"

Sen. H. Drayton: Now in viewing 16(1), it gives the Minister of National Security the power to order the police—well, that has already been expounded upon, I am not going to go into detail. It basically says that there is a security threat and the Minister therefore can arrest that person without a warrant and take the sample without the person's consent.

And let me emphasize again, if we are under a national security threat, it is reasonable that robust action needs to be taken and taken promptly, but that is all the more reason to have a proper legal framework in which it is done.

Hon. Senator: Well said!

Sen. H. Drayton: We are a democratic country [*Desk thumping*] that is all the more reason for good law. So this is an intrusive and an invasive power which requires little or no rationale for a citizen to be seized off the street and a sample taken, and that is unacceptable. [*Desk thumping*]

Under the existing law, section (4) it says that:

"...a police officer shall seek the consent of the suspect... before he gives his consent the police shall—

(a) show him a copy of the authorization and where necessary read it to him;"

If you have to take DNA from me, if a police officer comes to take—without a warrant—DNA from me, at least—at least—let me see some document or something that tells me that he has the authority to do so. In this day and age anybody could turn up at your door and say that they are police—what? It just does not make sense.

Now under the current law the person has the right to consult with and have a lawyer present. This Bill now takes away that right. That is not right. Yes. And under the current law if a person refuses then there is a process which allows you—the person has an option. You have an option, and therefore, the police could now take action if you refuse. But this law as I have said it is left to the presumption that you will be offered the option of refusal or consent, at least if we are all interpreting it a certain way, then something is wrong with the language in this piece of legislation.

Now further, while clause 16(4) of the Bill states that a person shall be released immediately after the sample is taken provided there is no other reason for which he could be lawfully detained. I find that a little bit disingenuous because that has to be read in the context of other laws which say that the conditions for arrest without warrant is that the police must have reasonable grounds or reasonable suspicion. So that the police, at will, can hold you or detain you for 120 days if the police so desire.

So as a lay person I have to assume that the law is an unambiguous intention to protect the right to life, liberty, property and other such fundamental rights. When we make laws that give the police the rights to arrest without warrant, throw you in jail on nebulous grounds, such as police suspicion, take your blood and other biological materials, samples, without your consent and by force, then give the police immunity from wrongdoing, then what we are doing is maximizing the opportunity for abuse and abrogating citizens' rights disproportionately.

8.30 p.m.

And abrogating citizens' rights disproportionately. Now, granted rights are not absolute. The Minister said that, and I agree with the hon. Minister, individual rights are not absolute, but neither should the power of the State be so absolutely disproportionate as to be repressive that it undermines and violates the very essence of the rule of law in a constitutional democracy. [*Desk thumping*] So we are maximizing opportunity to criminalize innocent people, and even though they are set free, for the lack of evidence, they may very well be innocent, they are branded for life. That goes contrary to the intent and rule of law.

Now, the Minister also made reference to Akiel Chambers and I have to respond to that, from all that is in the public domain. If this Bill was law that would not have helped bring the criminal to justice. [*Interruption*] Because I do not think laws—[*Desk thumping*],—and this is what we are trying to do. We are putting laws upon laws to try to deal with gross incompetence and

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inefficiency, and laws cannot deal with that. [*Desk thumping*] If there was competence, if there was efficiency and if there was the will on the part of the authorities to bring that murderer to justice, it would have happened. So, no legislation like this would have protected Akiel Chambers.

Now, getting back to the regulations, and a number of persons have spoken, a number of Senators have spoken on this and I am not going to prolong it—but what standards would the DNA bank adhere to for purposes of quality assurance evidence control and minimizing opportunities for contamination? Who would do periodic reviews to ensure that practices are consistent with policies designed in accordance with ISO forensic standards?

So, the answer to that I am sure would reside in the regulation. So, this is one of the situations, as I said before, like procurement law, where the substance or core law is in fact the regulations, and it is why regulations should be approved by affirmative action of Parliament. Regulations are required for the police service—who is the collecting agent—regulations are required for the National Forensic DNA Bank, which would be testing, identifying and matching samples; regulations for the DNA custodian who will determine whether there is a match or not and who should be an independent body. And unless there are synergies between these arms there will be major issues, and the legislation cannot or will not be properly implemented. So, let me read clause 21:

“A police officer or qualified person who takes a sample from a person under this Act shall, as soon as practicable,”—I do not know what is practicable. What does that mean? An hour? Two hours? A day? Five days? Practicable to whom?—“submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis.”

Is this a standard for the police by which they should send the sample to the forensic centre? This is not a standard! This is not implementable. This Bill is not implementable. It is not! [*Desk thumping*] Further, what framework or bodies of procedures inform the independence of the custodian? Madam Vice-President, there is another reason why regulations should be the subject of affirmative resolution of Parliament in situations like that. It is a reason of ethics. [*Interruption*] It is the reason of an ethical value system that demonstrates full transparency to facilitate proper decision-making. And that is another reason why we ought to have these draft regulations. [*Desk thumping*]

This Bill is asking us to validate things done in the past by the forensic centre. Now, I do not know what rights they have done and I do not know what wrongs they have done, so I am not validating that. [*Interruption*] Furthermore, if this Bill becomes law it would apply to investigation and prosecution of offences

committed before the implementation of the Act. I am not supporting that. Now, is the forensic centre currently operating in accordance with ISO forensic requirements? This Bill has made no mention that the Forensic Science Centre must obtain accreditation. [*Desk thumping*]

In closing I want to just sum up that this Act should require a person to give their consent, and if not, then establish that it can be taken without consent under specific procedures. And there should be a level of authority before taking a sample. I should know that the person taking the DNA has the authority to do so. This Act should not give blanket immunity to the police or anyone taking DNA samples. [*Desk thumping*] The hon. Minister of Justice argued that a guilty person would not consent to DNA taking. I think that is a moot point. It is a moot point because the law has to provide for the options of refusal before taking by force. It is a moot point. [*Desk thumping*]

So I close with more or less the same statement I made when I closed my contribution on the anti-gang legislation. It is this. I am in support of DNA legislation. [*Desk thumping*] I will not support legislation that puts innocent people in harm's way. This is a bad Bill; it is a very flawed Bill and should not become law. I agree with the Minister that there is need to balance national interest and individual rights. This Bill does not do that. This Bill is disproportionate.

I thank you, Madam Vice-President. [*Desk thumping*]

Madam Vice-President: Before we have the next speaker, I would just like to advise that dinner is available for Senators. Again, you can stream out one by one, or as long as you maintain a quorum in the Chamber.

Sen. The Hon. Dr. Bhoendradatt Tewarie: Madam Vice-President, hon. Senators, I have listened carefully to the contributions. Most of the contributions were quite critical of aspects of the Bill and the Bill itself.

Sen. Hinds: The whole Bill.

Sen. The Hon. Dr. B. Tewarie: And more than that, I think that there are issues of genuine concern that have been raised.

But I did hear the sentiment expressed both by Senators of the Opposition, if I could single out, perhaps the particular case of Sen. Deyalsingh, who said that we want to pass DNA legislation, but we want legislation that can stand up to scrutiny, and I heard Sen. Helen Drayton of the independent bench, also indicate that, basically, she would like to support DNA legislation, but she is uncomfortable with

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significant aspects of the Bill. I did say that we on this side are listening and paying attention and I think that it would be reasonable for us to say, let us pass good legislation and let us work out the modalities to make sure that we get an excellent Bill coming out of this particular debate.

So, let me address some of the issues that were raised. The issue of accreditation was raised and I will deal with that because I did prepare some of that, but I do want to deal with some of the issues that have been raised. One of the issues raised in the debate, for instance, was the issue of leadership by public relations, and I want to take the opportunity to say just a sentence or two about that.

You know, this is a Government that has been in office for just about 18 months or so, and prior to that there, has been a series of administrations over a long period of time. And, in the 18 months that this Government has been in office, I think that on serious and deep scrutiny, whatever miscalculations one might want to attribute to it, whatever errors, mistakes or missteps, as you say, I think it is fair to say that this Government has tried to do right by the people of Trinidad and Tobago; [*Desk thumping*] tried to offer good governance; tried to get the country in a mode that we can make change as a country together, and also tried to engage the people, wherever they are, in whatever institution, organization, communities, whatever their interest, so that in the process of dialogue and discussion, we can move the country forward.

But I think that the scars of governance over the years, for the country, have been so deep that—and the experience has created a kind of skepticism in this society—that you find yourself in a situation today in which, even when you do the right thing, there is skepticism about what you do. I think that in a fundamental way this is a serious state of affairs for a society. I listened to the contributions here and a lot of them are based, I would say, on a deep amount of emotionalism, notwithstanding the validity of many of the arguments; the concern, for instance, over human rights, which are real, over what an abusive policeman might do, which are real; or what taking advantage of what the law allows might mean for the person on the receiving end of such injustice, you might say.

There was also—and I think I can say this in the way that Sen. Al-Rawi and Sen. Deyalsingh presented it—a certain amount of, in my view, unnecessary alarm about the manner in which the Bill was chastised [*Interruption*] in terms of what it contained and what the contents meant in terms of this society. I would say then in summary that there were genuine issues that were raised, which we are willing to engage, but there was some element of unnecessary, in my view,

emotionalism and there was as well a tendency to alarmist theatrics which— notwithstanding the fact that you may not think that this is the perfect Bill—I do not think are justified by the intention of this Bill. [*Desk thumping*]

Hon. Senator: “Too much pandering, man.” Too much pandering.

Sen. The Hon. Dr. B. Tewarie: I will give an illustration. [*Interruption*] I will give an illustration: for instance, the issue of lobbying by the private sector in the United States, which has become a disease in Washington. It has crippled the society. [*Interruption*] There is no way that the same kind of spirit of lobbyist intent exists in this society under any administration. Not that lobbying does not take place; not that it is not a fact of life, but it is difficult, in my view, given the 18 months of this administration—and if you think I am wrong you can say what it is—for you to identify any instance in which heavy lobbying has led to any legislation being brought in this Parliament in the last 18 months to serve any special interest. It will be very, very hard to do that.

8.45 p.m.

The issue of the retroactivity of the law and how terrible that would be, that you pass a law in which you can charged somebody for something that they did before; is that not the basis on which we saw so many people who, allegedly, might be known offenders in this society, with evidence prior to the legislation for the Anti-Gang Bill? Was that not the reason why under the Bill—because there was no retroactivity—that no charges could be brought before the courts of law?

Sen. Al-Rawi: [*Inaudible*]

Sen. The Hon. Dr. B. Tewarie: No, there was a real legal problem because there was no retroactivity built into the law, no evidence prior to the day the law was passed could be brought before the court. That is a fact of life. I am not a lawyer but I try to understand what is involved. Then this thing about denuding the rights of citizens. This law is brought not to chastise and castigate innocent citizens and ordinary citizens. This law is brought for the fact that you want to have the capacity to determine the truth about guilt or innocence on the basis of scientific evidence in a situation in which we have seen that even the inherited system of court processes can go awry in the determination of guilt or innocence; and it can work both ways. But based on this scientific intervention which is now possible, it is possible to determine that finally.

Sen. Al-Rawi: Hon. Minister could you? Thank you for giving way. Just on a short point. You mentioned the issue of retroactivity in the 2007 legislation and I would just like to point out to you that section 3 of the 2007 Act, applies to

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investigations, prosecution and offences committed before on or after the coming into the operation of the Act. So I do not know if that may assist in your point or if you could clarify.

Sen. The Hon. Dr. B. Tewarie: No, it reinforces my point because if it was in the 2007 legislation, what is the quarrel in 2011? No I am not giving way again. [*Desk thumping*] Just one second, you will have other opportunities. [*Desk thumping*]

The issue of regulations is a serious issue—I mean, I myself feel that if you bring a law the regulation should be with it. But I mean as in everything else our institutions operate on the basis of precedent. And because the precedent has been set over so many parliamentary sessions, the laws are brought and the regulations are then brought afterwards, and on the basis that you give a sense, so to speak, of the regulations.

The precedent has become the norm and that does not mean that it is not better to have the legislation and the regulations together. But I do not think that not bringing the regulations with this particular Bill, should be regarded as such an exceptional case; should be seen as such an exceptional case, again that something will be seen as begin amiss in bringing the Bill without the regulations.

There were many other comments on which I should perhaps respond within the spirit in which I engage—which is to say, that we are willing to engage the real issues that have come up, the substantial issues in the Bill, but I do want to take the point that Sen. Corinne Baptiste-McKnight made about the lawlessness of the society. She said that we have become a lawless society—

[The Attorney General whispers to Sen. Dr. Tewarie]

She said that we have become a lawless society, and I cannot remember how she conditioned that. But I want to say this, how does a society become so lawless over a 50 year period, or a 30 year period, or a 20 year period? And the reason a society becomes so lawless over a 50 year period or 30 year period or 20 year period is because we give it permission to become lawless. The citizens consent to lawlessness as a way of life and the society that we have today for which we now have to intervene by a state of emergency to maintain order, is a society that has been created overtime by permission granted to lawless behaviour, [*Desk thumping*] and with Governments acting to support lawlessness, and citizens consenting to lawless behaviour as the norm in the society condoning that behaviour. And I want to tell you, we have a serious crisis in Trinidad and Tobago and part of the reason for this is the licence and permission that have been

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granted, administration after administration, citizens over generations, seeing the society falling apart and disintegrating, becoming worse over a period of time and unwilling to have the courage to intervene to take the society back. [*Desk thumping*]

I know that Sen. Hinds has not spoken, but I just want to quote three things from his last presentation with the 2007 Bill, which he introduced.

Sen. Ramlogan: Sen. Hinds? Sen. Hinds? “Oh good lawd!”

Sen. The Hon. Dr. B. Tewarie: And he said in presenting the Bill.

“To tell you how we have gone off the ground, a population database containing 231 samples has been developed. A staff database containing 70 samples has also been developed and is consequently being upgraded. In other words, they have begun to do the business. The sum of 2,381 profiles of exhibits pertaining to old and cold cases has been done from October 01, 2005”—[*Interruption*]

Sen. Ramlogan: “Oooh papa!”

Sen. The Hon. Dr. B. Tewarie: —“to September 30, 2006. That means that while we do not yet have the passage of this Bill and its application from a legislative standpoint, since 2005, because of their training, members of the Forensic Science Centre and its agents have been putting together profiles and storing them for cold cases, a very important aspect of this system.” [*Desk thumping*]

Hon. Senator: That is the blimp or what?

Sen. Dr. B. Tewarie: I am introducing that statement simply to indicate, that some of the arguments that had been used here, in a sense have become a fact of life in the country, not under this administration. I want to say this. Listen to Sen. Hinds:

“In the United Kingdom a police officer can take a non-intimate sample on specific occasions without the person’s consent. This arrangement has contributed and is statistically demonstrable, as having contributed to a significant increase in that country’s crime detection rate, a matter on which those who are responsible for crime detection in Trinidad and Tobago, find themselves under substantial criticism.”

And listen to this, Madam Vice-President. This is Sen. Hinds presenting the Bill:

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“Any power that as legislators we can give the police to improve their crime detection rate would not only be good for that organization but good for all of us.” [*Desk thumping*]

I was going to say—I was going to deal with a third one, but I have made the point.

Sen. Hinds: Bring it, bring it, man. Bring it and come and let me get up after.

Sen. The Hon. Dr. B. Tewarie: Let us look at the Bill now in some kind of context. This Bill seeks to repeal and to replace existing legislation. I want to make that point. The legislation exists, it already exists. This, what we are doing is updating, upgrading the legislation in our times. And this DNA Bill, the existing legislation took effect from 2007, and that repealed and replaced the 2000 legislation. So it was done before. Both versions were found to be flawed—and you are saying that this one is flawed—and need to be strengthened in order to be an effective weapon in ensuring that the perpetrators of crime are brought to justice.

What this Bill seeks to do, is to basically use a scientific basis for fighting crime. And any country which is serious about winning the fight against crime—and this Government has shown repeatedly that it is serious about it—will do everything in its power to ensure that all necessary legislation is in place to aid law enforcement with their efforts. In seeking to tighten the loopholes in the existing Act, specifically section 19, the Government has realized that there were other components of the Act which need to be strengthened and has sought to do this through the Bill which we are now debating.

Section 19 deals with obtaining an intimate sample through an order of the court:

“(1) Where a suspect refuses to consent to give an intimate sample, and investigating officer may make an application to the court for an order directing that an intimate sample be taken without his consent.”

Now, the hon. Senator and Minister in making his presentation talked about a particular case in the Court of Appeal in which this matter came up and in which the learned judge ruled and pointed to the deficiencies in the Bill before. Given all our experience in this country and given the reality of Trinidad and Tobago, and given the opportunity that science provides, I think it is opportune that we in fact pass this DNA Bill, as everybody seems to agree, even if it is necessary to engage some of the issues that border on constitutional concerns and human right concerns. I think those issues can be resolved. But I want to remind Senators of this honourable Senate, Madam Vice-President, through you, of the times in which we live not only in Trinidad and Tobago; and I want to say something about the times in which we live.

9.00 p.m.

This is the time in which just over a decade ago, terrorism has changed forever the nature of freedom, the nature of democracy and democratic systems, the nature of lawmaking, and it has challenged the character of justice in our time. I want to say that that is a reality of 21st Century life, and every piece of legislation that we will have, and in other countries that are serious about themselves going forward, is going to cause moral and ethical concerns and dilemmas for that society, if it is a serious society. And the issue is not to go back in the past as if the present does not exist; it is to wrestle with the moral and ethical concerns and to come up with the innovative interventions that are required to deal with the reality of 21st Century society, because we are never going to get back to 20th and 19th Century societies again.

The world of tomorrow has been unleashed, the power of technology is here; globalization is a reality; world travel is there; interconnectivity and rapid communication, that is the reality that we are dealing with. And in that reality we have got to continue to wrestle with what is justice; what is freedom; how do you protect the rights of the individuals and at the same time deal with those who will threaten all life, liberty and property. That is going to become more and more of a challenge in our modern society.

The second thing is that we are dealing, not just with times of uncertainty, but with times of upheaval. You are dealing with a world that is very, very much in turmoil. We have seen the whole movement away from dictatorships, from the Middle East to North Africa; we have seen a situation in which the society that we have taken for granted, and with globalization people said that capitalism will flourish and spread, and that same capitalism now is under question, and Wall Street is under occupation, and we had the Arab spring in the Middle East, in North Africa. That is the world that we are dealing with, in which you do not even know how the world is going to pan out in a decade.

This is an age in which globalization and technology, I want to say, have empowered the criminal and criminal elements as never before. Globalization might have been good for business; it might have been good for communities and connectivity; it might have been good for education; it might have been good for trade, but globalization has really been wonderful for criminals in the world. And criminal organizations have built huge businesses, huge capacities; they have easy movement; they are connected as networks, and we, in Trinidad and Tobago, are not immune from this.

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So we have to deal with our local criminals, which could not be a huge number; it would be a small percentage. We have to deal with criminals exported to us after they have gone abroad, and that could not be huge but they have to be managed, because they are coming with a higher level of scientific precision than the ones who are resident here. We have to deal with the globally connected criminals who are connected to our own criminal elements and who see us just as a society, ready and easy for plunder with easy sea borders and with an easy system in which you can blend in this society, as nothing. We have got to deal with that; that is a reality.

This is not the 19th Century. This is not 1950; this is 2011, when an 11-year-old boy could take a gun and “wipe out your head” and have no conscience about it; in which a man could snatch a woman and throw her in a car; go in the bushes, abuse her with a set of friends. That is what we are dealing with today. And when the Government brings legislation to deal with that kind of criminality and to bring scientific precision to bear on the containment of such criminality and to decide, once and for all guilt and innocence, this cannot be seen as a draconian measure. There may be elements which you find offensive; there may be elements that you feel need to be toned down, but you cannot call the whole legislation draconian. The intent is not draconian; the intent, in fact, is to protect the society from criminals. [*Desk thumping*]

The reason I am speaking in this passionate way about these things is that I believe sometimes that we are our own worst enemy in the way the skepticism that we have developed and the suspicion that we have developed about everything in this society make us throw out the baby with the bath water. I want to say this is a state of emergency. Where is the evidence of abuse by the Government of Trinidad and Tobago in the state of emergency? There is absolutely no evidence of abuse by Government in this state of emergency. [*Desk thumping*] There may have been excesses by police and the law has taken its course in these matters. The law has taken its course. Criminals and alleged criminals have been brought before the courts; the law has taken its course, and in the state of emergency crime has come down; people have been able to enjoy peace. [*Desk thumping*]

I want to say one of the redeering elements of a society is that it has the capacity to retrieve itself, because, believe me, that is what we have to do. If we continue along this trajectory there is no likelihood of civilized life in this country 100 years from now.

Sen. Hinds: Alarmist!

Sen. The Hon. Dr. B. Tewarie: That is not alarmist; that is the trajectory you all set in motion. [*Desk thumping*]

Hon. Senator: You walked into that one.

Sen. The Hon. Dr. B. Tewarie: But if we intervene together—and that is why I want to deal now at the level of thought. We cannot be excessive ourselves in dealing with a piece of legislation that is not malicious in intent. This piece of legislation is not malicious in intent. It does violate sections 4 and 5 of the Constitution, but I want to say this. The law provides the terms and conditions under which the deviation can be made to those sections of the Constitution, and you are the lawmakers here, and it is in that context that you have to see us. You have a debate; you express your point of view; we find the basis as legislators on which to make legislation, and we do what is right for the society.

I want to say this. This adversarial politics is going to cost the society very dearly if it is not a responsible form of adversarial politics, because at the end of the day what we do here, or what we do not do here in one administration, is going to have an effect thereafter. Therefore, if we think about the society as a whole and what we need to do; where we are now, we need this legislation badly, and out of it we will get a new institution; out of it we will be able to build capacity, and if we are serious about how we do this, the training and development that would take place across the board in support of the institutions that we create here out of this legislation, will, in fact, redound to the benefit of this society. [*Desk thumping*]

I will close simply on the issue of accreditation, because it was raised, and it is legitimate. Sen. Basharat Ali is not here now, but he did raise it, and Sen. Drayton also raised it. I just want to say what the situation is. The TTFSC is still in the process of documenting all its policies and procedures. The position of the quality manager, as far as I am aware, is still to be filled, and these are crucial processes in the accreditation process. So there are missing ingredients to the accreditation process.

Dedicated people are needed to lead this process, and the dedicated people were not there in place in order to make it happen yet. In the absence of accreditation, though, how does the TTFSC maintain standards, and what are the standards that are being adhered to, and what will assure the public that testing is being done by acceptable standards? I think that that would be one of the concerns until accreditation is achieved.

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The TTFSC subscribes to proficiency testing through Collaborative Testing Services and the College of American Pathologists, that is to say, the proficiency testing is done through these two agencies: Collaborative Testing Services (CTS) and College of American Pathologists. In addition, the quality assurance programme utilizes NIST (National Institute of Standards and Technology) traceable standards as part of the quality control. Standard operating procedures are updated and both internal and external calibration of instruments and equipment are performed. TTFSC tries to remain compliant to ISO-17025—I think you mentioned—and FQS-1 accreditation guidelines. Internal audits are also performed by staff trained at the TTBS.

All I want to say at this point is that it may not be formally accredited but the process is in train and once these requirements are met together with what it has done internationally—what has been done internationally—and its links internationally, it will, in time, be accredited. And as you see in the legislation, that is a requirement for it. I will not go into the other issues related to accreditation; I just wanted to give the fact that it, in fact, was not accredited, but to give the assurance that it is in process and that it, in fact, is on the road to accreditation.

I have been touched by many of the matters raised in the debate about the legislation. But I want to say before I deal with some of that, that we are not in such bad company. You know, the hon. Sen. Faris Al-Rawi said that some of the Senators on this side might not have read the Bill. There is many a time most of us come here over-prepared and we do not speak. Having read the Bill—and we have all our stuff—we do not speak. That is a fact of life among all the Senators here. They come here fully prepared and as the debate goes on, they decide, well, they will not speak this time.

But I want to say we were very prepared. All the things he raised about the European Union and the European courts and so on, they are documented here in this file. I went through all of them. I went through *Newsday* in Trinidad and Tobago and I went through some of the Internet items which recorded decisions that were made in the United Kingdom, in Scotland, in New Zealand and so on. But I want to make only one point here, which is that in doing this legislation we are not in such bad company.

9.15 p.m.

I want to say the countries that have done this legislation, they are 54 in number that have already done it, and there are 26 other countries who have stated their intention to do it, on the basis of 2011 information. And this is a document on “National Forensic DNA Databases” put together by the Council Responsible for Genetics and they have outlined the countries that have completed legislation and what they have done and the countries that have stated their intention. A number of Caribbean countries, including the Bahamas, have stated their intention but have not yet done it. So we are in pretty good company in terms of what we are seeking to do and what we are seeking to achieve.

I do not want to go on speaking for the sake of speaking but I do want to close on this note. I started by saying that I felt that some of the contributions, while valid and justified in the criticisms were a little over emotional. I said that in the case of two contributions in particular, I thought they were very alarmist, and I do take that point of view. It was almost like the Government was moving to sweep away the human rights of ordinary citizens in the population, and everybody in this honourable Senate knows that that is not true, it could not be true, and it is the furthest thing from the truth. So when we get it back to the point at which we can have a reasonable discourse, the DNA legislation for Trinidad and Tobago is absolutely needed. We need it because the scientific precision that such legislation will give us the opportunity to intervene with is of value to the guilty as well as the innocent and certainly to the society at large.

It is a significant movement scientifically for us, and it gives us the capacity to establish scientific strength in the process of detection of criminal behaviour in the society, and we need to move in that direction; this is the 21st Century and we need to move in that direction. Let us not let concerns based on our skepticism about Government and its motives deter us from doing the right thing for Trinidad and Tobago in this legislation. If there are things that need to be corrected, let us correct them. But let us pass this legislation so that we can move on to build a society that is based on laws but that is also committed to justice as well as human rights. Thank you very much. [*Desk thumping*]

Sen. Shamfa Cudjoe: Thank you, Madam Vice-President, for the opportunity to make my contribution on this Bill, the Administration of Justice speaking particularly to the use of DNA in crime fighting.

The previous speaker, Sen. The Hon. Dr. Tewarie, just closed off by saying we need this legislation very badly, let us pass this—they would accept recommendations—let us pass this Bill and get it right. Before we pass this Bill, we need to get it right. We do not need to get it right and then pass it. We are going to end up with the same problem that we had with the anti-gang legislation. [*Desk thumping*]

Now, before I actually go into what I want to say, very quickly, I want to point out that while the legislation is critical to crime fighting and while we need the legislation very desperately, right now, the legislation on its own is not enough to do what we want to do.

So, Madam Vice-President, let me say for the record, I did not plan on entering this debate because when I read the Bill I felt it was very technical as it relates—I think it was something more fitting for the lawyers. I am by no means a lawyer and I by no means a scientist.

Sen. George: You do quite well.

Sen. S. Cudjoe: I was encouraged to participate in this debate last night. When I was tucking in, I was going to bed, I was flipping through the Channels on the television and I passed on CTNT—what used to be channel 2 & 13 back then—an interview, the Minister of Justice, Hon. H. Volney, was being interviewed by—I cannot remember the name right now but the gentleman who accompanies Jessie-May Ventour on mornings. And I got the chance—

Sen. George: Paul Richards.

Sen. S. Cudjoe:—Paul Richards, thank you—to hear about the last ten minutes or so of the interview. And it was right there and then, I decided I was going to try to throw my “two cents” in, because after listening to the Minister I had some concerns. When I tuned in to the interview, they were discussing three topics. They were discussing the provision that speaks to the morale and social implication of collecting data from random citizens in the interest of national security. They were speaking about whether or not DNA records of innocent people would be destroyed, and at that point in time when the Minister was asked, if the DNA information for the DNA profile, DNA records for innocent people would be destroyed, he said that has not been sorted out yet.

Sen. Hinds: What?

Sen. S. Cudjoe: Yes, he said that has not been sorted out yet, that still needs to be worked out. Yet the Minister—and the Government—is asking us to pass this legislation without these things being sorted out. And the third thing they were discussing were the capabilities of the judicial system to ensure that this piece of

legislation come to life and operate effectively in solving crime. Now, when the Minister was questioned about the capabilities of the criminal justice system to get this legislation on using DNA to fight crime to work, he said we are ready to go. He said, "We are ready to go, the only thing we need is the legislation. The resources are in place, the facilities are in place, we are ready to go". And it is right there and then I decided, you know what, this cannot be, because it is the same thing that we said with the anti-gang legislation. This cannot be; we are not ready to go. Before we implement legislation like this we have to make sure we have the facility in place, we have to make sure our human resource is properly trained and that we have all that is necessary to really bring this thing to life, so that it works out well and do what we want this legislation to do. Now, that discussion on the television last night, it reminded me, it brought back memories and it made me very afraid. It brought back memories and took me on a trip down memory lane in the last session where we passed the anti-gang legislation.

Now, we come here and debate for very long hours. The Opposition has its recommendations, the Independents have their recommendations, and we all throw these recommendations across the floor, hoping that the Government would take our advice or at least consider. What we have been doing is passing legislation one after the other, out the hip, out the neck, just passing legislation without doing our homework, and without going and doing the consultations that are necessary to make these pieces of legislation applicable and being able to be implemented.

This is a key example; it is what—9.25 p.m., 35 seconds past 9.25 p.m. and you look around the room and many of us are not here. We can barely make a quorum right now. Are we really listening to each other's contributions and taking recommendations and doing what is necessary to improve this legislation so that it works for us? Or is speaking on the Bill just a formality? So we find ourselves debating here, debating but debating with whom? And taking what recommendations?

The same thing that happened in the anti-gang legislation, and I felt embarrassed when it came out in the news and everybody started saying the anti-gang legislation is fundamentally flawed and the first thing the Attorney General got up in the media and said, "Well, this was passed unanimously" and blamed the PNM, because they made us pass this bad law. We all sat there together. And it was embarrassing. Then you hear the same thing about the data protection legislation. Really and truly we are not taking each other's considerations and recommendations; we are not considering these things at all. So when we go out

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there and we have flawed legislation, it is nobody else but us here to blame; we are the ones to be blamed, because look at us right now, the Minister who piloted the Bill is not here, Attorney General, many of us are not here right now to give our recommendations.

Sen. George: And where are your people?

Sen. S. Cudjoe: When you have your turn you will speak. A couple of the things we agreed to under the anti-gang legislation: we agreed to have consultation with the experts; we agreed to have the public meetings, and public education before the implementation of the anti-gang legislation. And here we go, August 15, legislation was assented on August 21st, which is a mere six days, not even a week, after the state of emergency; a couple days after that police busy in the street making arrests under the anti-gang legislation. Whatever happened to the things that we agreed on: to have consultation with the legal fraternity; to have consultation with the people who are experts at this and to go out there and have public education, have public meetings, so that the people on the ground could really understand the legislation? We agreed that it was groundbreaking legislation. It was something that was fairly new in our little hemisphere. Not many other Caribbean islands have anti-gang legislation or they are now implementing or now considering anti-gang legislation.

So I do not want to be caught in that again. I am telling you I was particularly—I was very embarrassed. And I do not support any legislation—there should be no half stepping in legislation that is so important in crime fighting. One little mistake could cost somebody the rest of their life behind bars.

We also encountered a very embarrassing situation with the anti-gang legislation, where officials and members of the legal fraternity got in the media and were saying, “The police not doing their work properly”. So we pass all the blame over to the police. I hate to disappoint Sen. Dr. Tewarie but I want to get this thing right before it is passed. I want to repeat that this legislation cannot do it alone, it is not just the legislation that brings things to light.

I remember discussing the anti-corruption legislation, Sen. Mary King was a Senator of this House when we debated and passed the anti-corruption legislation but that did not to stop Sen. Mary King from doing what she had to do. [*Desk thumping*] So the legislation alone is not enough, we have to have the systems in place.

9.30 p.m.

So the legislation alone is not enough, we have to have the systems in place.

This DNA legislation is very, very critical in crime fighting; it is a very sensitive issue, not just to us but across the region, all across the world as it relates to national security. So, it is well and good to talk about all the wonderful things that the DNA in crime fighting can do—talk about how it could have helped little Akiel Chambers and how it could have helped this person and that person that was raped.

But, Madam Vice-President, the truth of the matter is simply having the legislation is just simply not enough. I think that maybe, especially as I listened to the Minister last night, he was talking about these numbers of cases of somebody got raped and if we had DNA legislation then we would have been able to send the criminal to jail.

I feel like the Minister was probably suffering from an acute case of CSI syndrome, because we have gotten to a point as a society where we are watching too much *Law and Order*, *Murder She Wrote*, *CSI*, *Ghostbusters*, *Bones*, *Dexter* and all these unrealistic shows on TV, where in 45 minutes Jessica Fletcher solves a crime and that kind of thing. [*Crosstalk*] I know what I am speaking about because it is a very critical issue in crime fighting today to the point that some states in the US have created legislation against using members of the public to be jurors—people who watch these stations and watch these shows.

So we have a problem now; if we are really keeping up with technology and what is going on, we should know this. We have a problem now where the community, where the members of the society, we overly on forensic data and you cannot allow yourself to be mesmerized by this. Because, Madam Vice-President, it is not just the legislation. We have to have the systems in place. Simply matching the fingerprints or matching a hair sample is not enough.

Madam Vice-President, in your little 45-minute show on television where a crime is solved by some eagle-eyed lawyer, eagle-eyed investigator that sees a drop of blood from across the room and goes and collects it, and that kind of thing. Madam Vice-President, in reality, dealing with DNA legislation and handling DNA is not as cut and dried as you see it on TV. There is a great deal of science that goes into handling DNA. Now, in the real world, it is not that cut and dried; it is not that the fingerprint would always belong to the possible suspect. In reality, science is not always so conclusive.

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In reality, DNA evidence is really easy to come by as you would see on TV. To tell the truth about it, collecting a drop of blood or a strand of hair or some material from under somebody's fingernail that might not be enough to match to the real criminal because it might not be enough of the sample. DNA samples degrade very, very quickly. So there must be very careful deliberation as to the protocols of collecting and handling DNA samples. Now, Madam Vice-President, do not get me wrong; I agree that DNA profiling can be a powerful tool in crime fighting and in criminal investigations, but I think the Minister forgot to tell us last night that while the legislation is important, the success of using DNA evidence in courtrooms also depends on a number of factors.

Madam Vice-President, there must be proper collecting and handling of evidence by police officers and crime investigators and all other staff and forensic specialists involved. Careful analysis must be unbiased and must provide proper reporting from the forensic lab. DNA analysis must be fair and appropriate and there must be proper interpretation of the results, and there must be accurate and effective reporting of results to judges and jurors.

Now, Sen. Dr. Tewarie spoke about this unnecessary alarm from the Senators of the Opposition Bench and from the Senators of the Independent Bench. Madam Vice-President, that struck me because when you look at cases in other countries, you get to see how a minor mistake in handling DNA profiles and handling DNA records, how a minor mistake could throw off a whole case. An innocent person could be put behind bars and a guilty person could be set free, can walk free by a minor mistake. So to say there is unnecessary alarm, I want to urge Sen. Dr. Tewarie and the others like him to take a look at these cases that we have seen internationally.

I heard some of the other Senators quoting cases that were way before my time, but I am more familiar with some very recent cases like the OJ Simpson case. I was about 11-12 years old but I remember listening to bits and pieces of the OJ Simpson case and we could see clearly how poor handling and mismanagement of DNA records threw off the case.

So, Madam Vice-President, before we set out here to say that we are going to pass this legislation and so forth, I want to hear about training for the police officers because we give the police officers in this legislation a significant amount of power and responsibility to collect and handle these samples. I have not heard anything about training for police officers to make sure they do their jobs right. [*Desk thumping*] Now, that is where we make the mistake because we do not train the police officers, and then when something goes wrong, get in the public

and emasculate and demoralize them and say, “they did not do their jobs right”. So, Madam Vice-President, let us do what we are supposed to do, and that is what we are urging the Government to do: tell us about how you intend to invest in training the police officers.

Madam Vice-President, I want to point to the same OJ Simpson case and I want to quote from a study that was done by Mr. William C. Thompson, he is a professor from the Department of Criminology, Law and Society from the University of California. He said, firstly, police must be trained to prevent cross-contamination. There was a lot of sloppiness on the part of the LAPD—the Los Angeles Police Department—in the handling samples prior to DNA testing.

So the police were poorly trained with respect to sample handling, they were not following written protocols in the collecting and handling of the DNA samples, and they did not understand the purpose and importance of precautionary measures, such as simply changing the gloves, and they made several errors even when attempting to demonstrate proper sample collection and handling technique, and this attributed largely to cross-contamination of DNA.

Madam Vice-President, we can learn from Houston, Texas, where police officers were suspended because there were various problems with the methods that they were using in handling DNA, including poor calibration and maintenance of equipment in proper record-keeping and a lack of safeguards against contamination of samples. In that last case, the police lab was prevented from entering data into CODIS which is the national databank. So, I want to know in our case, who is responsible for monitoring these labs and monitoring the information that is entered into our national databank, and I do not see anything pertaining to that in the legislation, so before we pass this legislation we have to get the specifics right.

Madam Vice-President, we have a situation in our country where we do have—whether we like to admit it or not—we do have rogue officers in our system. I sit here very often and I hear Members of Parliament speak very highly about the police service, and I speak very highly about the police service also; but from my personal experience, I know and I have experienced and I have fallen victim to rogue police officers. I woke up with a gun in my face—rogue police officers looking for the neighbour in my home. But, anyway, we have rogue police officers within our police system and we need to find a way to treat with that because those few rogue elements, they cause a problem for the entire police service.

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Madam Vice-President, we may want to look at examples from the same OJ Simpson case where there were police officers who were collaborating with the prosecutors and they went back to the crime scene and put blood on the back gate of the property. They were given access to the labs and they went there and switched swabs and switched tubes and took out blood samples and so forth. So, that raises another issue as to who has access to the databank—the information at the databank, who owns that information, because when you read the documents from INTERPOL, they are offering training for police officers but they are saying that the information that is entered—and they are offering to share information back and forth between governments as it relates to DNA and other information in the databank.

But, Madam Vice-President, the Government, these countries must be able to say who is responsible for safeguarding that information; how and if this information is going to be destroyed. We have to say that before we can interact and get involved in the different opportunities that INTERPOL is offering. If this legislation cannot say simple things like that; for instance, we are holding DNA legislation for an unidentified length of time; there is nothing within the legislation or I have not heard the Minister or anybody else speak about how we are going to destroy, whenever. Let us say the Commissioner of Police decides, since he has the only say as to whether or not the information would be destroyed, how is it going to be destroyed?

I do not want to be sitting in my living room some Sunday and reading the newspaper, like I did for the SIA case, that two Israelis came to Trinidad and Tobago and tore up our data. We need to know how this information is going to be preserved, how it is going to be stored, how it is going to be handled and how it is going to be destroyed.

As it relates to the accreditation of the lab facilities, Sen. Basharat Ali, Sen. McKnight, Sen. Drayton and Sen. Dr. Tewarie would have dealt with that, and that is very critical. We need to make sure that we have trained forensic professionals because in the same OJ Simpson case, there was a forensic professional by the name of Collin Yamauchi, and he admitted that he would have spilled some of OJ Simpson's blood on a glove and some of OJ's information from the DNA profile—I think they call it alleles—got into the blood drops from the Bundy crime scene in the OJ Simpson case, and that should not have been so; but it was later in the criminal investigation that he admitted to that kind of foul play.

And it was simply from him not changing his gloves on time and not cleaning his tools properly, so there were small traces on some of the things that he was testing.

9.45 p.m.

Madam Vice-President, another important thing we have to consider is the storage facilities for these samples. Also, in the OJ Simpson case and in the recent Amanda Knox case where the young lady was charged in Italy, for killing her roommate—in my days of going to school if your roommate died, you got an A throughout the whole semester. Anyway, I do not know if that would have been her reason for killing her roommate. She was able—[*Interruption*] yes, in the United States if your roommate dies in that semester, you get all A's. I do not know if it is the same in Italy why the American student killed her roommate.

What is critical in these two cases is that, for instance, in the OJ Simpson case, the DNA was not properly handled and it was able to be degraded very quickly, simply because when the police collected the evidence from the crime scene, they stored it in plastic bags and they then put it in a truck that was too hot and created moisture in the bag, and that degrades the profiles very, very quickly. It made me think about: what are we going to do? Do we have the proper storage and transportation facilities to bring DNA evidence from south and places that are out of the central; from wherever the centre is? It makes me think about Tobago. Let us say there is a murder in Tobago and these forensic specialists have to come over and get this back to Trinidad, do we have the proper storage and transportation facilities?

Another thing that made me think about Tobago also was clause 21, which states:

“A police officer or qualified person who takes a sample from a person under this Act shall, as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis.”

I want to know, how long is “as soon as practicable”? Let us say it is in the case of Tobago again and you have to wait on a flight, wait on a boat or for the storage container or whatever special equipment that they use to transport this from place to place, or God forbid if the boat is on dry dock and you cannot get that profile and evidence to Trinidad on time—or maybe we have plans to set up similar facilities in Tobago. I think these are things that we need to consider, because having the legislation alone would not do it. You may have the legislation that gives the police officers the authority to collect the DNA profile and then they do not do it right, they do not store it at the right temperature, they do not store it in the right plastic or paper bag or whatever they store it in, they did not collect enough; they were not informed that they have to collect multiple samples just in the case something happens to this first sample, you have a little back-up. There are serious things that need to be considered.

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I read about a case in Houston, where a technician, Jacqueline Blake, had to resign after the justice department began to investigate her on charges that she failed to follow proper procedure during her analysis of 103 DNA cases in the past few years.

I read about another case where the specialist would have lied on her résumé about her qualification in analyzing guns and bullets. The last 200 cases that she would have done over the years would have had to be retried. Are we prepared for that kind of thing? We have to make sure that we get this legislation right. It is not enough to say: “Let us pass it, and then we will do the little cleaning up after. We have to get together as a Parliament, Opposition, Independents and Government, and really put our heads together to try to get this right. Not just us though, we have to consult with people like the DPP, as it relates to destroying evidence and consult with the professionals in the forensic science area, because they would know what facilities they have, what resources they have and what they need. I think that not enough—as much as this Government boasts about consultation—is taking place and we find, at the end of the day, after legislation is passed, the people with whom we should have consulted in the first place, get in the media and start crying that we did not consult with them. So, to prevent that kind of thing, I think we need to go back to the drawing board and do our homework and get this thing right.

You say: “Okay, let us pass this today.” The Minister says that we are ready to go. Then, next week you hear somebody is locked up and they are going to use DNA profiling to help solve the crime. We end up looking “shame” and looking stupid again. I do not know if that is unparliamentary, but when you hear the talk in the media, that his how you feel because you sat here and you deliberated till late hours of the night and there was the promise and the understanding that we would do all that was necessary before we implement and put this law into work, and then it is not done because the Government is “hot and sweaty and go ahead and do dis thing” and then we all end up looking crazy.

Madam Vice-President, another thing we need to consider is the integrity and the qualifications of the staff at these labs; the people who are going to be taking these samples testing them, handling them, storing them and so forth, because in some cases, the prosecutor pays the members at the lab or a company, to operate in their favour to switch swatches and to do several different things to operate in the prosecutor’s favour.

For instance, there is a case where there was a switching of swatches where one lab technician Andrea Mazzola in the same OJ Simpson case, she would have initialled the test tubes with the blood samples, and later on, when they went back to the lab to get the tubes there were no initials on the tubes and they recognized that they were switched. Who is policing the people at the lab? Who is checking their qualifications? Who is monitoring them and making sure that they meet the standards and operate in the way in which they are supposed to?

In 2003, in Boston, an FBI scientist named Kathleen Lundy admitted that she knowingly gave a false testimony about her specialty in bullet analysis. That is the one I just spoke about.

We have another case in Houston where the lab technician would have interfered with the evidence and framed somebody for rape. In a society where, sometimes you question the justice system, sometimes you question the independent bodies and sometimes you question people who are supposed to be independent, and you question professionals who are supposed to live up to their professionalism and do what they are supposed to do as citizens who are trained and educated in certain areas, sometimes they fail you. There needs to be checks and balances in the system, to ensure that we can minimize shortcomings in this legislation.

One other thing I wanted to deal with was international standards. Now, the fact that our lab is not yet accredited, raises some fear in me as to following international standards, because we would set our legislation here. But, let us say a tourist came to Trinidad and Tobago and was murdered and that is the time when the international agencies step in, and then you are under scrutiny and you are embarrassed. It is the same thing that happened in the Amanda Knox case, where the young lady was accused of killing her roommate. What they did in Italy, when she was first found guilty, is that the labs in Italy used a lower DNA limitation. So the technicians in the United States, an independent body, decided to write to Italy and take the case upon themselves and recognized, "hey" Italy is using a lower limitation and that could make contamination more likely, simply from using the wrong gloves on the specimen or on whatever they were inspecting on the knife.

Madam Vice-President, while we make our own legislation, and we are not accredited yet and we seem to be making our own standards, we need to really examine the international community and see what they are doing throughout the region and throughout the world. INTERPOL offers assistance in training forensic professionals and training police officers. I really think that we need to tap into that before we get this thing rolling.

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Finally, I spoke at the beginning of my contribution about the *CSI* syndrome and the *CSI* effect. This thing is real. I did not make it up. There is a situation where the jurors, probably in the High Court and in different jurisdictions, you find them asking for strange—they have high expectations of forensic evidence—things where they have—I am not a lawyer, I do not know what you call regular evidence that is not forensic. But, anyway, there was a case where a young lady was raped and the saliva found on her breast matched the saliva of the person that was found—[*Interruption*]

Hon. Senator: The accused.

Sen. S. Cudjoe:—of the accused, and the jury said that that man was not guilty, because they really wanted—she said she was raped in a park—to know why the soil on her shoes was not tested to see if it was the same soil in the park. This was 2004, in Priora. I think that is in Italy. Sometimes the public—a lot of people on the ground—and the jury comes from regular people. It is not legislators, so they probably do not have access to this information and really just tapping into *CSI & Law Order*. There is need to educate people that it is not just about having the legislation, or—what you see on television is not real. There is so much more that goes into making this evidence feasible to stand up in a courtroom. While the legislation is critical, we need to have solid evidence that would stand up in the courtroom.

Just like the anti-gang legislation, I do not want to make that mistake again, so I would not support this legislation as it is. The Opposition offers its hand in working to come up with something that is feasible, something that is workable and something that is of a very high standard and not legislation that says: “Oh, you want anti-gang legislation? You have that. You want DNA legislation? You have that,” and we are here shooting out the hips and shooting out the neck, unconstitutional legislation, just to say anti-gang legislation done, bang, bang, bang bang ,bang. This done. That done. That cannot be right in operating a country; in running a country. Trust me, Madam Vice-President, they did not believe it when they were in Opposition. It is not that easy. We really need to put our heads together and come up with something that can work for all of us.

10.00 p.m.

Madam Vice-President, I see the need for consultation with the legal fraternity in creating this legislation. I see the need for consultation with the DPP, with the professionals in forensic sciences.

Before I close, I want to go back to that interview last night. Before I go back to that interview, Madam Vice-President, I want to make a comment on the statement which said that this Government tends to be running on PR. Because this Bill makes mention of the Children's Authority and it raised the interest in me as to what is going on with the Children Bill, I hear that it is coming soon. I have been hearing it is coming soon since I started here in June 2010. We wait until something happens, and then somebody gets in the media and "skin up dey face, and cry and say: Oh little Daniel, I will bring the legislation next time".

Madam Vice-President, that cannot work. For today, a dog attacks somebody, a dog attacks somebody next week, we will say, okay—what is it, "the Dangerous Dogs Act is coming", and everybody sitting on their seat waiting for you to shoot legislation off one after the other.

Now, Madam Vice-President, we would hear at sometimes somebody would get up and say: "This in our legislative agenda." Where is this legislative agenda? We are into our second—"Its coming, its coming." I have been hearing it is coming since I got here, and I would not believe it until I see it and I am still waiting on it.

So before something else happens to another child and we get in the media and cry, and talk about it for days and apologize to poor little Daniel and poor little Akiel, and Hope and all these persons, let us put our heads together and get this thing done, and not just get it done, get it done in the right way. [*Desk thumping*]

Madam Vice-President, I want to close with my concern about last night's interview with the Minister. The Minister said that we are ready to go. And by these cases I would have just highlighted showing our lack of resources, both human and technical, probably also financial resources in getting this thing to work, I do not feel like we are ready. I know that there are many persons out there in the public who also feel that we are not ready. So when I heard the Minister say last night, "We are ready to go"; it really struck me, Madam Vice-President.

So I want to urge the Minister and the Government again to really get back to the drawing board and do your homework and really make sure we are ready, "cause I ain't voting dis until we ready." One final thing for real, real this time. It is because I was not prepared to speak, Madam Vice-President, but I will tell you one final thing.

We come to this Senate—it is what, 10.03 p.m., and 33 seconds after 10.03 p.m. And we debate this thing for a very, very—we debate legislation for a mighty long time, and we pretend that we are taking each other's

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recommendations, but we do not. And most times the Government comes to this Senate without any intention whatsoever of taking recommendations from the Independents or the Opposition.

So as I said in the beginning, sometimes I feel that this is just a formality, because they come here not prepared to take our recommendations anyway, but when the thing flops, get out in the public and say: “Oh blame the PNM, we sat there and we did it together”.

I listened last night intently as I was going to bed and the Minister saying—I listened to him saying that this Bill passed in the Lower House, and for it to pass in the—he needs it to pass in the Upper House. So the interviewer, Paul Richards, was like well, okay, the Opposition did not vote for it. He said: “Well, you know, the Opposition is going to get up and make their noise, you know—like we are not really considering them anyway—I just need four votes from the Independents, just four. I just need four votes from the Independents.”

Hon. Senator: “Wait! Wait! He have it ah ready?”

Sen. S. Cudjoe: “So what Sen. Ali says, doh mind, what Sen. Baptiste-McKnight say doh mind, what Sen. Drayton say doh mind. Probably he hoping on Sen. Balgobin or Sen. Ramkissoon or—”

Hon. Senator: Who were not here?

Sen. S. Cudjoe:—Sen. Armstrong who did not speak as yet. But, Madam Vice-President, to come in the public domain on TV and say: “You know that the Opposition is going to stand up and make their noise, but that does not really matter, and they are going to start with Lord Haw Haw. I am sure the public knows who Lord Haw Haw is.” Those were his words.

Madam Vice-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. T. Deyalsingh*]

Question put and agreed to.

Sen. S. Cudjoe: Thank you, Madam Vice-President. So I looked on and he was like everybody knows who “Lord Haw Haw” is. If that is the attitude which the Government comes to the Senate with—and we have seen it more than one time, we have seen it many times—but they know well and good that they were not intending to take our recommendations, and when all falls, go out there and blame it on us.

What I have to say, we are all here in this Senate to create legislation which is good, not just for us as legislators, but for the people out there in Trinidad and Tobago whom we serve. When we receive these Bills sometimes four days in advance just like this Bill, when we receive this paperwork sometimes on the very same day, or the night before the topic which you have to debate change, but we go and we do our research and we come here prepared to give our recommendations. For the Government to come here and say: “Oh Mr. Haw Haw is going to start, and then they are just going to make their same old ramblings, well, I do not care about—all I need is four—“

Hon. Senator: Which four?

Sen. S. Cudjoe: “—just four out of nine.” Madam Vice-President, with this sloppy legislation, might I call it “wotless” legislation in local parlance; I hope he gets his four votes. With that said, Madam Vice-President, I thank you.

Sen. Deyalsingh: Well said! [*Desk thumping*]

ADJOURNMENT

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Madam Vice-President, I beg to move that this Senate do now adjourn to Tuesday, November 22, 2011 at 1.30 p.m. which is Private Members’ Day, when we will continue the debate on Sen. Hind’s Motion, regarding the strength and deficiencies of the Trinidad and Tobago Police Service.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.08 p.m.