

*Leave of Absence**Tuesday, November 29, 2011***SENATE***Tuesday, November 29, 2011*

The Senate met at 11.00 a.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Nicole Dyer-Griffith who is out of the country.

SENATOR'S APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. RABINDRA MOONAN

WHEREAS Senator Nicole Dyer-Griffith is incapable of performing her duties as a Senator by reason of her 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 29th November, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator Nicole Dyer-Griffith.

Senator's Appointment
[MR. PRESIDENT]

Tuesday, November 29, 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 28th day of November, 2011."

OATH OF ALLEGIANCE

Senator Rabindra Moonan took and subscribed the Oath of Allegiance as required by law.

VISITORS

Bishop Anstey (High School) East

Mr. President: Hon. Senators, I just want to welcome the students from Bishop Anstey (High School) East who are with us this morning. [*Desk thumping*] I trust that, as usual, you will be a great example to the students who are looking forward to hearing from you. [*Laughter*]

PAPERS LAID

1. Civil Aviation [(No. 1) General Application and Personnel Licensing] (Amdt.) Regulations, 2011. [*The Minister of Transport (Sen. The Hon. Devant Maharaj)*]
2. Civil Aviation [(No. 2) Operations] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*](Civil Aviation [(No. 3) Air Operator Certification and Administration] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*])
3. Civil Aviation [(No. 5) Airworthiness] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]
4. Civil Aviation [(No.6) Approved Maintenance Organization] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]
5. Civil Aviation [(No. 8) Aviation Security] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]
6. Civil Aviation [(No. 9) Aviation Training Organization] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]
7. Civil Aviation [(No. 12) Aerodrome Licensing] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]
8. Civil Aviation [(No. 14) Aircraft Accident and Incident Investigation] (Amdt.) Regulations, 2011. [*Sen. The Hon. D. Maharaj*]

**ADMINISTRATION OF JUSTICE
(INDICTABLE PROCEEDINGS) BILL, 2011**

Order for second reading read.

The Minister of Justice (Hon. Herbert Volney): Thank you, Mr. President, I beg to move,

That a Bill to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, and to provide for a system of pre-trial proceedings relating to indictable offences and other related matters, be now read a second time.

Let me just say first, Mr. President, I am deeply humbled to be in the Senate over which you preside. I think it is the first time that I am on my feet while you actually preside. I am very happy to be here. [*Desk thumping*]

This significant piece of legislation, Mr. President, has been developed at the behest of our Government determined to transform our overburdened criminal justice system. Commanding much concern, and in urgent need of reform, is the procedure known as the preliminary enquiry. A prime source of delay, this pretrial hearing prolongs the life of an indictable or serious criminal matter by an average of five and a half years. The procedure for the conduct of this hearing is set out in the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

By way of explanation, prior to an indictable offence being heard in the High Court before a judge and jury, there must be a preliminary enquiry before a magistrate. This enquiry is purposely essential, and was originally intended to serve as a filtration safeguard against abuse. In other words, the prosecution is required to establish a prima facie case against an accused person to justify sending that person to face a trial before a judge and jury.

Over the years, these enquiries have outlived their usefulness as the dynamics of volume and systems have changed. With the spiralling increase in serious criminal cases, the number of indictable offences coming before our courts has risen and, I should say, has risen dramatically. Our courts are ill-equipped to hear all these matters immediately and adjournments are inevitable. By the time the enquiry is ready to proceed, witnesses cannot be located to give their testimony. They may have fallen victim, being subjected to bribery or bribery attempts, intimidation, harassment and, in some cases, even death. Physically and psychologically challenged witnesses, such as the elderly, children or victims of sexual offences are forced to relive their traumatic experiences. Months, often

years, have elapsed by the time the enquiry has been completed, and where the accused is committed to stand trial, he endures another substantial period of delay until his trial actually begins.

Several jurisdictions around the world have modified their pretrial system while our jurisdiction has shamefully lagged behind. Those on the other side are well aware of these troubling issues. In fact, the then PNM government spoke of abolishing these enquiries but, unfortunately, there was no palpable action. What they did manage to produce was a poorly drafted Bill that was ultimately discarded. Mr. President, there was no proper policy pillaring this legislative attempt, or this failed attempt at coming up with a draft legislative measure. What is more, its provisions were merely—to use the language of my friends in the other place on the Opposition side—cut and pasted from the St. Lucia legislation into our Indictable Offences (Preliminary Enquiry) Act. The result was an inadequate piece of draft legislation fraught with complications.

Our Government, therefore, saw the need for a complete overhaul of the procedure as crucial and salient, and we have stayed the course, and on this day delivered this measure for parliamentary scrutiny and, hopefully, approval.

The new procedure proposed for Trinidad and Tobago provides for a case management system that would force cases to move quickly through the courts. There has been overwhelming support for this initiative. The hon. Chief Justice, at the opening of the law term on September 16, 2011 had this to say, and I quote:

“In the area of Court Procedures, there are major changes that have been in the planning stages and will be rolled-out in the coming year. The most significant will be the elimination of Preliminary Inquiries. Draft legislation has been prepared after extensive consultation and I am assured...”

That is the Chief Justice:

“that it will be brought to parliament within a few weeks.”

So said, so done! [*Desk thumping*] I continue:

“This is expected to bring a major transformation to the criminal litigation landscape...We confidently expect that, with the employment of the criminal case management rules that have been proposed, the average age of indictable matters in the system will fall drastically, thereby ensuring speedier justice. It will also have a knock-on effect at the level of the

magistrates' courts...As some of the workload is reduced it is expected that magistrates will be able to devote more time to summary trials, thereby reducing the average time to completion.”

11.15 a.m.

Mr. President, this Bill is a highly anticipated one that will be the nexus of the criminal justice process. It will introduce case management principles and sanctions for transgression. It will also, most importantly, afford justice to persons who have had their rights stifled by a weakening system.

This Bill, which is divided into four parts and comprises 35 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 the Senators here present in the Upper Chamber. It received unanimous support in the Lower House, and I look forward to an even better Bill at the end of the day with the aid of hon. Senators. Our Constitution recognizes that Parliament may abrogate the rights provided under the Constitution, where the legislative measure is reasonably justifiable. I humbly submit that this Bill is both timely and necessary in the public interest to ease the anxiety and suffering of the many affected. I will address those provisions of the Bill which would be inconsistent with the Constitution.

Clause 31 of the Bill is inconsistent with the right of freedom of the press which is guaranteed in section 4(k) of the Constitution. It restricts the printing or publishing of information regarding certain matters at a sufficiency hearing. Although the Indictable Offences (Preliminary Enquiry) Act, has a provision at section 41, which is similar to clause 31 of the Bill, the penalty for contravention of this clause has been increased from a fine of \$2,000 or imprisonment for four months, as it was felt that the current penalty was an insufficient deterrent.

The increased fine is meant to deter publishing and broadcasting houses that are prepared to pay a miniscule fine in comparison to their profits. Persons are innocent until proven guilty, and there is a real possibility that the case may be dismissed at the pretrial hearing stage. Accused persons and their families ought not, and I repeat, ought not, to be subjected to adverse perceptions by members of the public, especially in sensitive cases involving sexual offences where one's reputation is at stake.

Witnesses are integral to any criminal case, and they must also be safeguarded and assured that they will face no adverse consequences such as intimidation or harm, including death, if they come forth to testify. They must have the confidence to assist law enforcement and prosecutorial authorities. In August

2007, Waldron Samuel, a state witness, age 24, was shot multiple times in Cunupia. He was due to testify five days later in a preliminary enquiry for a case in which the accused was charged with four murders. This example illustrates the need to prevent information about witnesses from being published in the interest of safety in order to protect their identity.

According to the Canadian code, the courts may impose publication bans to protect the fairness and integrity of any case; the privacy or safety of a victim or witnesses and the accused himself. In the United Kingdom, proceedings in court must be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Another important rationale for this penalty, is in the event that the case goes to trial, there is a possibility that potential jury members may be exposed to facts disclosed at the pretrial hearing which can compromise the trial, as such, jury members would enter the courtroom with preconceived notions about the case. We need to safeguard against the publicity associated with high profile matters, in general, like the Dole Chadee case, where there was massive publicity, both before and after the preliminary enquiry, and key witnesses, Clint Huggins included, who had testified at the preliminary enquiry were killed.

Issues arose surrounding the jurors to be selected for the trial. It took over a month to select jury members, and the exercise involved the oral examination of each potential juror to see whether they were affected by the ways of adverse publicity. Many were held to be disqualified. The jury pool had to be supplemented by praying a tales, literally selecting people in and around the court to be potential jury members. You would remember, Mr. President, persons in the sea, bathing down in Chaguaramas, they were brought to the court literally with their towel around them, because they were within the vicinity of the court. After discussions in the other place with my friends on the opposite side, a compromise was reached and they agreed with the suggested increase in penalty to \$150,000, and imprisonment for two years as they too appreciated the seriousness of reporting evidence in a pretrial hearing.

Mr. President, Clause 4 of the Bill would interfere with the concept of due process law, which encapsulates the right to be allowed to complete a current appellate or other legal process, without having it rendered nugatory by executive action before it is completed. Clause 4, allows pending cases to benefit from this

new procedure where either party so chooses. Once there is such an election, the matter must be transferred to the High Court. For the vast majority of cases the accused will elect to benefit from this new system. For others who deliberately wish to benefit from a slow moving justice system, for reasons best known to themselves, they would be prevented from wasting the precious time of those agencies whose resources are already over-expended where the prosecution elects to have the matter determined, in accordance with this Bill.

Mr. President, despite these inconsistencies, cases have been decided and the principle established that the new procedure does not interfere with the accused's right to a fair trial. This Privy Council decision was elucidated in the case of *Hilroy Humphreys v. The Attorney General of Antigua and Barbuda*, reported in the 2008 Privy Council reports. Mr. Humphreys argued that the abolition of the preliminary enquiry deprived him of the right to a fair hearing guaranteed by the Constitution of Antigua and Barbuda. The Privy Council held that and I quote:

“In the Board's opinion it is a mistake to argue that because the old system provided a fair hearing, the change or abolition of some element of that system results in the new system being unfair. Systems of criminal procedure may differ widely without being unfair...The question in each case is whether the requirements of a fair hearing are satisfied.

The Board agrees with the Court of Appeal that they are.”

And this is a decision of the Privy Council. There is no further step that the European courts are in whatever condition they are, whether in the human rights court or otherwise, so it is our law here in Trinidad and Tobago. Permit me, Mr. President, and hon. Senators, to now address you on the salient aspects of this Bill.

Part I of the Bill comprises clauses 1 through 10, and would provide for preliminary matters. The Bill will come into operations on such date as is fixed by the President by proclamation. Mr. President, our Government wants to ensure that the stakeholder agencies are in a state of readiness when this Bill comes into effect. We anticipate that much skepticism is being created as concerns are raised in relation to the feasibility of the legislation. Common trepidation surrounds the lack of sufficient human resources, infrastructure, and efficacious processes that are necessary to meet the timelines imposed by this legislation.

Mr. President, be assured that these issues have been considered and although the tight task may appear herculean, we have the cooperation of the stakeholders, who have been asked to review the legislation and identify their resource

requirements. This Government, our Government of the People's Partnership, is prepared to provide any and all the necessary resources that are required to give full effect to the legislative intent of this Bill.

In fact, I am today the bearer of great news. Much doubt was expressed in the other place by my friends on the opposite side as to whether the Ministry of Justice would be able to deliver on its promise to construct four additional high courts: two in the east; one at Carlsen Field in central Trinidad and another in Siparia. I was denigrated for not having "cut a blade of grass", at these proposed sites, but intelligent minds can attest that in projects of this magnitude, much work is required in the planning stages before we proceed to construction. I am happy to announce that our Government has advanced to the next stage, or is advancing to the next stage of public procurement.

Cabinet approval is at present being considered to these mentioned sites, and the Ministry of Justice has sought the authorization of Cabinet, a matter that is presently before Cabinet, to engage a named special purpose company to oversee the procurement process in accordance with the regulations outlined in the Central Tenders Board Act, Chap. 71:91. Members of the public can anticipate the ceremonial turning of the soil in January 2012, in these designated areas and an expected delivery date of January 2015, for these neoteric courts that would house both the magistrate and high courts. Trust me, Mr. President, this Minister of Justice—I may not be able to get it started in January 2012, but I will do my utmost to ensure that that is done.

Clause 6 of the Bill would provide for the institution of proceedings. Mr. President, an indictable matter is initiated by the laying of a complaint by the police. This traditional method has not been affected, but rather an additional method has been included, as a means of ensuring that the DPP—Director of Public Prosecutions—has conducted an evidential assessment of the case before it goes to the court, where the DPP has all the relevant information about the case from inception; the proceedings may be instituted by him or her, by the filing of an indictment, instead, or in addition to a complaint.

11.30 a.m.

Clause 7 would provide for the issuing of summonses. Members opposite in the other place suggested the inclusion of section 42(3) and (4) of the Summary Courts Act, Chap. 4:20. We listened, and mindful of the arguments there, we took a closer examination, but our Government has decided to include these provisions as they provide important safeguards, where a summons has been issued within 48 hours of the matter being heard.

Part II of the Bill comprises clauses 11 through 18. Clause 11 provides for an initial hearing to be held before a Master of the High Court. The number of masters and the extent of their role will be a matter for the Judiciary. Masters will relieve the burden on High Court judges who will be left to focus on trials. The introduction of this new office of Criminal Master has several advantages. It ensures that the indictable offence case management is not bifurcated in any way between the Magistrates' Court and the High Court. Magistrates will now be able to concentrate on summary trials, as judicial time at the Magistrates' Court is currently at a premium. The post also allows for upward mobility of magistrates. Those on the opposite side in the other place suggested that even retired judges be considered for this position. I too agree, but essentially suitable persons for this position would be determined and be a matter for the consideration of the Judicial and Legal Service Commission.

At the initial hearing, preliminary issues will be addressed, including applications for bail. Arising from the initial hearing will be a document called a Scheduling Order, which is set out in Schedule I of the Bill. It introduces formal case management features to the criminal justice system. One of the substantial reasons for delay in the progression of a hearing is the absence of legal counsel. The Scheduling Order would specify the dates by which the accused must retain an attorney-at-law or a legal aid attorney must be appointed. The Legal Aid Authority must satisfy an order of the court to appoint a legal aid counsel within three weeks of the initial hearing. This three-week time frame is realistically feasible, given that the representatives of the Legal Aid Authority suggested it.

The Scheduling Order would also set time frames for disclosure by the prosecution and the defence. The parties are expected to abide by these time frames which were devised after much stakeholder consultation. The prosecution has a three-month period to file evidence it intends to use at the sufficiency hearing and serve on the accused. The accused can utilize this three-month time frame to secure legal representation and obtain legal advice from his attorney.

The accused is granted an additional 28 days, after the prosecution files its documents, to file any evidence intended to be used at the sufficiency hearing. Once these documents have been filed and served by the prosecution and the defence, the court has a 28-day time frame to list the matter for its next stage, which is a sufficiency hearing.

Clause 12 provides for the summary trial of certain indictable offences. The Director of Public Prosecutions will have the exclusive jurisdiction to determine whether such offences should be tried in the High Court or the Magistrates' Court.

This would apply to that category of offences called “triable either way”, and the offences as currently exist have been listed in Schedule 2 of this Bill.

Clause 13 would provide for the notice of alibi. The accused would be required to provide this evidence within 48 hours of the initial hearing. This proposed change in the law is as significant as it is necessary, given that in the current system an accused is asked to give notice of his alibi within 10 days of his committal, which could take several years, during which time the notice might contain fabricated information.

In the other place, the case of the *High Court of Trinidad and Tobago v Garrison Adams* was cited. That may be wrong; it could not be the High Court of Trinidad and Tobago. It must be “The State of Trinidad and Tobago” was cited, wherein Justice Anthony Carmona commented on the need to amend the laws of Trinidad and Tobago in relation to alibi notice, as he felt that the law in its current form afforded accused persons the opportunity to fabricate alibis and, by extension, manipulate the criminal justice system.

Mr. President, the course to the defendant of providing pretrial notice must be weighed against the benefits which that notice affords our criminal justice system. The right against self-incrimination must be weighed against the fact that this is a mere procedural change. The accused is still being required to give particulars of his defence before the trial, except that less opportunity is given for the accused to concoct false information. There is also the safeguard at clause 14 of the Bill, allowing alibi evidence to be given at the trial, although not provided within 48 hours of the initial hearing, where certain conditions are met.

Despite formidable justification, some disinclination was felt by Members opposite in the other place, who expressed that the time requirement for providing this notice of alibi should perhaps be increased to 10 days, as opposed to two days from the initial hearing. Mr. President, this issue was reconsidered by the Government and there really is no compelling reason to widen the time frame. An alibi is an alibi, and once an alibi represents the truth of the facts, it should be indelibly stained in the memory, the mind, of the person who is asked to give it, and it should be fresh in the mind of the person, or fresher when given shortly after the time of the allegation that is made against him. He should have no problems remembering within 48 hours. We are seeking to deal with fabrication. The longer a person is given to provide him with the opportunity to fabricate an alibi is greater the temptation to do that. That is what this measure is intended to guard against.

However, consideration was given to the fact that accused persons who may be unrepresented at the initial hearing, may wish to argue at the trial that they did not sufficiently understand the requirement of providing alibi notice, and seek to adduce this evidence at the trial. To ensure that a mockery is not made of the legislative intent, to ensure that alibi evidence is provided promptly, all persons charged with indictable offences will be entitled to legal aid representation from the time of detention. This will be legislatively provided in the Legal Aid and Advice (Amdt.) Bill, 2011, which is presently before Parliament.

Clause 5 of that said Bill seeks to create a new section 4A that will authorize the Director of Legal Aid to prepare and maintain panels of attorneys-at-law who are willing to serve as Duty Counsel, with the responsibility of providing legal representation for minors and persons detained on suspicion of having committed a capital offence. This provision will be amended on the floor to extend to persons who are suspected of having committed any indictable offence. As such, accused persons who are in need of legal representation, at that early stage, will be appointed a duty counsel who would be able to provide advice in respect of the notice of alibi when that time arises at the initial hearing.

Mr. President, clause 16 would provide for adjournments at an initial hearing. I will reiterate that masters must be alive to their responsibility to limit adjournments in order to achieve the overall objective of this legislation, which is the timely and efficient disposal of cases, a feat that cannot be achieved by the court readily granting adjournments without good and sufficient reason.

Part III of the Bill comprises clauses 19—31, and introduces the sufficiency hearing, which is the second major stage of the pretrial process. Clause 19 would provide that the sufficiency hearing must be held before a master. By providing that the master conduct his hearing, as opposed to a judge, there will be no issue of having to implement measures to ensure that the same judge conducting a sufficiency hearing is prevented from presiding at the substantial trial. In the overall interest of expediency, this clause provides that the sufficiency hearing may proceed in the absence of the accused, unless there is ample reason to adjourn in his absence.

Clause 20 would provide for the conduct of the sufficiency hearing. The master must review witness statements, documentary evidence and exhibits, as well as hear submissions from the prosecutor and the accused, if any, in order to make a determination of whether the accused should be put on trial. There would be no cross-examination of witnesses at the sufficiency hearing. Much was said on this issue in the other place, and models were cited of jurisdictions around the world that abolished preliminary enquiries, but retained cross-examination of witnesses at pretrial hearings.

This Bill has been the subject of much consultation, research and hard work. Much thought was put into this issue. In fact, a previous draft contained a limited right of cross-examination of witnesses at a sufficiency hearing, where the master deems it necessary. But this Bill belongs to the people of Trinidad and Tobago and suits our litigious attitude.

Could you imagine a case where an accused person is denied cross-examination of a witness? It would immediately become the subject of challenge for defence attorneys against the use of a master's discretion to permit cross-examination. The distinction between what is deemed necessary and erring on the side of caution would become blurred, and eventually the court would hear arguments that this once limited right of cross examination is now an expected right that the accused has, no matter what the circumstances. That is the reality we must face.

I would cite the Council of the Law Association in relation to this issue, when asked to provide comments, and I quote:

“Denial of cross examination at a sufficiency hearing is not unconstitutional, given that the accused has the right to full cross examination at trial. As such, it is submitted that were cross examination to be allowed at sufficiency hearings, it would have the potential to make such hearings unnecessarily lengthy, if the judge does not control the proceedings. Current experience has shown there is little control. If cross examination is allowed, the expected amelioration in delays in the criminal justice system might not materialize.”

Mr. President, the issue was also discussed at a stakeholder meeting in April of this year, wherein the Director of Public Prosecutions stated that a limited right to cross-examine witnesses at a sufficiency hearing, with leave of the court, would be abused in our jurisdiction. Our Government undeniably had no alternative but to respect the views of the learned minds that are intimately involved in the justice system, and omit any provision for cross-examination of witnesses at the sufficiency hearing stage.

11.45 a.m.

Clause 21 would provide for the admissibility of prosecution witness statements and the conditions attached thereto. Since the evidence being submitted at the sufficiency hearing would largely be in the form of witness statements, the Bill ensures that the removal of the right to cross-examine by the defence is balanced by certain safeguards in the form of admissibility conditions for such witness statements.

Mr. President, this clause further provides that depositions taken and exhibits admitted in proceedings, instituted prior to the coming into force of this Act, will be admissible as evidence at a sufficiency hearing.

This will ensure that evidence already admitted by the Magistrates' Court at a preliminary enquiry can be utilized at the sufficiency hearing. Additionally, Mr. President, provision is made for audio or videorecorded statements, as well as transcripts of proceedings before the Integrity Commission or a commission of enquiry and evidence obtained under a mutual legal assistance treaty to be admissible as evidence at a sufficiency hearing.

I put out at this late stage for discussion, Mr. President, on the floor of this Senate Chamber and of honourable Senators, whether it is that this group, this source of evidence, should be further enlarged to include the recorded evidence at a coroner's inquest. It is not in the Bill, but on reflection, Senators present may feel that rather than a coroner's inquest which is held with the decorum of a courtroom, under law, where evidence is taken, and which basically determines whether there is a case for a charge to be proffered; whether all that evidence needs to be reintroduced in the form as in this Bill or whether all that evidence could not form the basis, on the basis of a statement under this Bill—for the purpose of consideration by the master. You know that is something that came to mind and I do not know whether it is Senators on the other side, honourable Senators—*[Interruption]* I was dealing with clause 21—*[Interruption]*

Hon. Senator: Thank you.

Hon. H. Volney:—and I would really like to know how Senators feel about the addition of this other bit of evidence.

Clause 24 would provide for the discharge of an accused where the evidence does not disclose that a prima facie case against the accused is made out. The master is required to state his reasons for the discharge in open court. This clause also provides for a situation where an accused is discharged but additional evidence in support of the same offence becomes available. In such an instance, the prosecutor may apply to a master for a further sufficiency hearing.

A discharge is not an acquittal, therefore, the accused cannot claim that there is an abuse of process. A discharge means that there was not enough evidence to put the accused on trial, and therefore, there is no issue of double jeopardy. The prosecutor would have seven days from the date of the application to file this additional evidence.

Clause 25 would provide for an order to put an accused on trial, where the master finds that the prima facie case is made out against the accused, and the order is listed in Schedule 5 of the Bill. A further case management function of the master is introduced in this clause. After the indictment has been preferred, the master must satisfy himself that the case is ready for trial so that any outstanding matters must be dealt with to ensure there would be no delays at the trial stage.

Clause 27 would provide for the sole discretion of the DPP to prefer an indictment. However, there is major concern regarding the late filing of indictments on the part the Director of Public Prosecutions. Over the years, this of course has been largely due to the workload of the honourable gentleman, but now that he would have his staff, his legal staff, in the office as opposed to driving all over the countryside to attend to preliminary enquiries, one anticipates that the Director of Public Prosecutions and his office will be able to deal with indictments, the filing of indictments, within 12 months.

However, if for whatever reason that timeline is not met, the accused may apply to a judge for a discharge, and the judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied that in all the circumstances of the case it would be just to do so. This however, would not to apply to certain offences outlined in Schedule 6, such as murder and rape, where the ends of justice outweigh such delay.

Mr. President, clause 28 would provide for an accused who wishes to plead guilty at a sufficiency hearing to be ordered for sentencing before a judge within 28 days of entering the guilty plea.

Part VI comprises clauses 32 through 35 and would provide for miscellaneous matters. Clause 32 would provide for the rules committee established by the Supreme Court of Judicature Act to make rules of court to explicitly set out procedural guidelines in connection with the Bill. I have been told that the Judiciary has already prepared draft criminal procedure rules which are to be finalized.

Clause 33 would provide for the repeal of the Indictable Offences (Preliminary Enquiry) Act, and also the continued application of that Act where applicable.

Clause 34 would provide for the discharge of the accused on the grounds of delay, except for the offences identified in Schedule 6 where the time of coming into force of this Bill, the trial at the assizes has not commenced within 10 years of the commission of the crime, the judge shall discharge the accused.

The Government is aware of the need to bring closure in criminal causes, and that the ends of justice must be balanced against the endemic delay in the system, which is due in part to inadequate resources of the respective agencies to satisfy the volume of cases that are before the courts.

My friends on the opposite side in the other place indicated their willingness to revert to the original provision, which stated that where proceedings were instituted prior to the coming into force, of this Act, and the trial has not commenced within seven years, the accused shall be discharged.

Our Government has chosen to extend the period to 10 years as a matter of public policy. Although the intention would be to have these matters concluded within seven years, as a matter of public policy, as the victims of these crimes must also be considered and closure must be had as soon as is practicable.

Mr. President, and Senators of this honourable Senate, the Bill aims to equilibrate efficiency and fairness. This Bill decrees for a favourable intervention to alleviate the current pitfalls of the criminal justice system, without which a cataclysmic result will ensue. It advances a much needed revolutionary change to the justice system. Not just a movement of pretrial hearings from the Magistrates' Court to the High Court, Mr. President, but a genuine paradigm shift shall materialize.

Mr. President, representatives from the Judiciary, the office of the Director of Public Prosecutions, the Criminal Bar and the Law Association, the police, the prisons, the Legal Aid Authority and the Forensic Science Centre have been involved in extensive deliberation and collaboration.

A subcommittee of the Judiciary has been set up with certain key stakeholders, including personnel from the Ministry of Justice, with the directive of developing definitive strategies to ensure that these agencies are in a state of readiness when this extremely cardinal piece of legislation comes on stream.

Having regard to the forgoing submissions, Mr. Speaker, Mr. President, I beg your pardon, I commend the Administration of Justice (Indictable Proceedings) Bill, 2011 to this honourable Senate, and I beg to move.

Question proposed.

Sen. Fitzgerald Hinds: Thank you very much, Mr. President, for my opportunity to make a contribution to this very important debate.

Mr. President, may I take this opportunity to welcome you; it has been quite some time, welcome back, Mr. President. [*Desk thumping*] Your successor in title as it were, did a remarkable job in your absence, Mr. President, and I would like to say so. [*Interruption*] [*Laughter*] We will find out.

Mr. President, the Minister, I must say his tenor, his tone, was a long distance away from the tone that he had set the last time he came here. It is amazing what a little beating in a Parliament could do. [*Desk thumping*]

Hon. Senator: I am surprised.

Sen. F. Hinds: He was far less sententious this morning—far less sententious—and I give credit to our friends on the Independent Bench and of course my learned friends on my left, on the Front Bench here. I mean you all have really straightened the Minister out, welcome to the Senate again, hon. Minister, welcome.

It was not his approach when he came on the DNA Bill; on that occasion he was egoistic I might say, eccentric, and he—some say eccentric—found himself, you know, in the line of fire in this Senate. He described it as a baptism of fire. And, of course, it led to a very learned Independent Senator Drayton, for the first time in all my years observing the Parliament, she described his bill on that occasion, as the worst that she had ever seen in her long stint in this Senate. So when I heard—and I agreed with her—the Minister say this morning that the last administration produced a Bill to eliminate the preliminary enquiry—this Bill—and that it was poorly drafted, I said to myself, “look who talking, eh?” It was the worst we have ever seen!

Hon. Senator: Atrocious!

Sen. F. Hinds: Atrocious is the word I think she used, to the point where the Senators drew his ire, and he was condemnatory of them and then later on he rendered a feeble, crocodilian apology.

But, Mr. President, the Minister’s calm this morning really does not—you know he did a good job in covering over the calamity that is his Government. His calm papered over the calamity that is his Government. If you relied on his persona and his tone this morning, you would think that this was the most stable, sensible, sober Government that we had ever seen. You did a good job, but that is not the case; yours is a calamity, a detriment to the people of Trinidad and Tobago. We fear you. We fear you.

12.00 noon

Mr. President, the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, as now exists, the one that the Minister is attempting to repeal, I must ask him, was that poorly drafted? The answer is clearly no. It has worked; it has worked for the last number of decades in this country, particularly since the post-Independence era. There have been some amendments along the way, but it

worked. The Government is at a point now where the thinking is, as is happening in other jurisdictions in the Commonwealth, to remove the preliminary enquiry, largely with a view of cutting down the time that is wasted in that process and a couple other peripheral matters. But the Government is repealing the entire Indictable Offences (Preliminary Enquiry) Act. It is not amending it.

When he came here with the DNA legislation on the last occasion, another Independent Senator, it was Sen. Corinne Baptiste-Mc Knight, quite wisely and properly suggested, if you had issues with that DNA legislation, the Act of 2007, considering that we had repealed the 2000 Act and we had another attempt in 2007, why did we not just amend it, but this Government likes to get the rid of everything that it meets and start afresh. Many of the provisions of the existing Act were taken, cut and paste style, lock, stock and barrel and are now in the Bill that is before us for debate here. That is a fact! I had a close look at them all. Again, this is an attempt to deceive, to be deceitful on the part of the Government, which is their wont and they cannot avoid it.

The Minister said, and he gave us a firm pledge, that the judicial centres, buildings—four of them housing High Courts and Magistrates' Courts—called judicial centres, in recognition that we need more courts in order to deal with the heavy caseload in this jurisdiction. He said intelligent minds will understand that this procurement process would take time and all that sort of thing. He assured us that he would do his utmost to get it done. But he would have some problems, if I rely on what he had said previously. Let me quote quickly, Mr. President, from an article dated July 31, 2011, an interview with the Minister, where he is quoted extensively, written by one Anika Gumbs-Sandiford. It had to do with plans to pull the courthouse project and the Minister himself claimed that there was mischief in the making. I would quote very quickly for you:

“A controversy is brewing over under whose purview the construction of four courthouses should fall—whether it be the Justice Minister Herbert Volney or Attorney General, Anand Ramlogan. This follows claims that Volney, who is the Member of Parliament for St. Joseph, has formed a construction company in partnership with former United National Congress MP, Carlos John.”

Let me say upfront that Mr. Volney, in this article, vehemently denied any suggestion that he formed any construction company with Carlos John, a former UNC MP and Minister and a close friend of the Government, who financed and campaigned with them in the last election. He denied it and I might say I believe him. He challenged the Prime Minister, “If there is a scintilla of truth in this get

me out of your Cabinet”, and I believed the Minister. But the point is he went on to say this came from inside his Cabinet. It is his colleagues, and he said he had a rude awakening to what was public life and this, from his own mouth, demonstrates how vicious his own colleagues are. Hear what Minister Volney went on to say on that matter concerning these courthouses; he said:

“...as Volney awaits further approval from Cabinet”—for plans and for money to develop these four courthouses he said and I quote—“They want the job. They want the job as if I have it. It is not even mine...the job being to construct court buildings...They want the job. They want the portfolio. Whoever is behind it wants the portfolio because they know under the Minister of Justice Herbert Volney there would be an incorruptible process. So the idea is to sully the above-board work I have done,’ a fiery”—volcanic—“Volney said. Volney further told *Sunday Guardian* that he was informed that the shifting of the project was discussed between two of his colleagues.

‘The information I got is that at some nightclub, two Cabinet colleagues were talking about courthouse construction.’—imagine—‘In a nightclub! It is madness, malice, mischief and idle talk. Parties take place on Saturday night, so the germ was being spread last Saturday night’.”—at a party.

That is Minister Herbert Volney. So, while he promises us today—the Minister—that we will construct these buildings, he did not tell us whether he has cleared up that mist, and that mischief and malice on the other side, but we wait to see, we look forward to that.

Mr. President, the Minister made reference to the alibi question and he said that it was long pondered upon and the Government insisted that the accused must, at the initial hearing, within two days of it, he must state his alibi. For those who listen and do not know, an alibi is a defence in law where an individual claims that “I was not present at the scene of the crime and therefore could not have committed it”. A man may be in prison. It has happened before; he is a former judge. Persons were in prison and accused of committing a crime on the outside and it would take a lot of time to get the records from the prison to demonstrate that he was incarcerated. I encountered that in practice as an attorney. The Minister simply said after much consideration, they insisted that it be two days of the initial hearing, when in the previous law, a person had to notify the magistrate who is doing the preliminary enquiry or he had 10 days after his committal so to do.

I want to tell the Minister of the reality; not all of our citizens are as fluent and as educated as you are. There are young men who leave south and central Trinidad and come up to west Trinidad on a Saturday night lime. They may not even know the name of the street they are on; they may not even know the name of the person who they are going to lime by; you would hear them say I was in St. James by a “pardner”. He would hardly be able to tell you which street and the names of the persons who were present to support his alibi. That is the reality!

So to take this haughty attitude and assume that everybody would have everything—the crime could have taken place, he could be claiming by way of alibi that he was in a casino, a very public place with hundreds of hapless and unfortunate young people who waste their lives and money in there. But he would not know their names. He may be able to say, “They does call one ‘Baga’; they does call one ‘General’”. He does not know their names, he does not know their addresses, so he would need time in order to get this. Those are some of the realities. He may say, “Look, I was on the Brian Lara Promenade that Friday afternoon at five o’clock”, but he does not know the names of the people who he was around. So, we need to take it a little soft, Minister, and understand that this is not the world of 19th Century squires, some of whom are converted to 19th Century liars—some of whom.

Mr. President, the Minister said much thought and debate went into the question as well about the issue of cross-examination, a fundamental issue. He said that he consulted with the Judiciary. Well, I can say here, without being or manifesting the behaviour of one Gary Griffith, in his obnoxious behaviour to the Judiciary recently, which no other Minister has denounced, that our judges have been very, very fair in their dispensation. I have never heard a single practitioner criticize judges like I heard Gary Griffith. [*Desk thumping*] Not on the basis of race! We have judges of all hues on the bench and I have never heard a practitioner say anything about race, about any judge in this country.

I have been told about issues, challenges for the Judiciary, but those challenges are now gone—thank God!—transferred to another place, a matter to which I shall return in another place. But, Mr. President, he said that he contacted, as well, and got a feedback on this from the Council of the Law Association and they all agreed that limited cross-examination on these witness statements and on the witnesses in the sufficiency hearing would lead to abuse by lawyers and time would be wasted, and that he balanced the question of time as against the public interest.

Section 16 and section 24 of the existing legislation dealt with and permitted cross-examination. But this Minister, just like his Government, is very extremist in its orientation, this Minister is on record as saying we should hang people in

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[SEN. HINDS]

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Woodford Square, while elements of his Government are abolitionists. This Minister told us at the beginning of this wasteful and unnecessary state of emergency, that you must be careful, the police would shoot you on sight, quite contrary to the law and the Constitution. A former judge! This Minister is an extremist, hardliner and that is the same for his entire Government. You see their behaviour? A little threat from somebody and scandal all over the world—Muslims! Terrorism! Terrorists!

Mr. President, we ended up with a headline, “Drug lords behind plot” while the police are telling us—and the police must investigate matters before they come to preliminary enquiry—that the investigation is in its infancy stage, they had not a clue as to the causes or the reasons for the information they got, they are investigating, but yet the Prime Minister already concluded drug lords were behind the plot. And she said so in a press conference, when Mr. Gibbs is the one who told us that the investigation had now begun; but the Prime Minister knew.

Let me say, Mr. President, death threats are not new, you know. On one occasion—and the matter may very well come to a sufficiency hearing—in the not too distant past there was a threat and when the police investigated the threat, the police told the Government—and the Prime Minister, who was the victim of that said her vehicle, her SUV—that it was not politically motivated. The Prime Minister insisted, outside of the police investigation that it was. So, they are well known for scandal.

And talking about scandal I saw a headline in the *Newsday* of November 26, “Five-year olds being raped”. When I read the article, it pointed out that the speaker from the Rape Crisis Society, I think it was, pointed out that of the 91 reported cases to that organization last year, 31 of the victims were between the ages of five and 17. No mention as to whether only one was age five or two, and I submit one is too much. One is immoral, illegal, wrong and ungodly. But at the end of the day in Trinidad and Tobago, we wind up with headlines like these in the *Newsday* and other papers all demonstrating our penchant for scandal, hysteria, bacchanal and political expediency, as my political leader described the noise over threats to kill people in that Government.

So, Mr. President, the question of cross-examination is a fundamental issue in relation to this. Hearsay evidence can easily get into these witness statements, and the law—common law and statute law—is very familiar; judges, magistrates, lawyers, victims, accused, very familiar with what hearsay evidence is and what it does. So when the Minister dismisses any opportunity for cross-examination, what the Minister is doing is allowing potentially, damaging and dangerous

hearsay, to get into evidence on the basis of a sufficiency hearing, and therefore if cross-examination was possible, as is the case now, even limited cross-examination, it may very well be that the accused may have come out of the jeopardy he is in, far earlier than he would, without the opportunity to test what could easily be hearsay, in these statements, presented to a master for a sufficiency hearing leading to a committal and then we deal with the hearsay at the trial and the situation comes back to right where we started.

12.15 p.m.

If you listened to the Minister today—well let me, before I do that; I can quote from the case of *Horncastle and others*, and I got this from the Criminal Bar Association’s Report on this matter. The Minister mentioned the Criminal Bar Association and I want to congratulate very honestly, sincerely and profusely, the Criminal Bar Association, because I am in receipt of a copy of their submissions in relation to this Bill and they made a major contribution to it. I really want to commend Senior Counsel, Pamela Elder and her team of the Criminal Bar Association, and I am comforted to see many of their recommendations have found their place in the Bill that is before us, and that brings us real pride and real comfort.

Horncastle and others is a simple statement from Lord Justice Thomas in that matter, *Horncastle and others*, 2009, EWCA Criminal at page 964 and he is quoted as saying:

“The law in England and Wales has in consequence always insisted that it is ordinarily essential that evidence of the truth of a matter be given in person by a witness who speaks from his own observation or knowledge. It uses the legal expression ‘hearsay’ to describe evidence which is not so given, but rather is given second hand, whether related by a person to whom the absent witness has spoken, contained in a written statement of the absent witness, given in the form of a document or record created by him, or otherwise.

The obvious potential weakness of hearsay evidence is that the fact finder...”

In this case the master in the sufficiency hearing, and may I continue the quote:

“never sees the person who gives evidence upon which he must evaluate, and the parties cannot ask supplementary or testing questions which are likely to help judge the truthfulness and accuracy of the evidence, when

those attributes are in doubt. Conversely, if the person cannot be brought to court, an exclusionary rule will deprive the fact finder of evidence which may well help him to arrive at the correct answer in the case, and in many instances will eliminate evidence of whose truthfulness and/or accuracy there is little room for real doubt.”

And, of course, Lord Justice Thomas continues at great length. And there are quotations from other judges in here, all really making the simple point that at the sufficiency hearing, if cross-examination is not permitted, hearsay evidence can be used in the decision as to whether to commit or not and it will one day become available to the accused, but he would have spent time in custody and living with the serious charge over his head until such time.

So it is a fundamental shift and the Minister cannot paper it over so lightly.

Mr. President, may I continue. The Minister told us absolutely nothing. He gave us the policy, some of it, that is driving this, largely to save time, and he told us nothing about the surrounding circumstances. In other words, he provided us with a wheel, but he did not provide us with the oil or the lubricant that will make that wheel turn smoothly. In other words, hon. Minister, you put legislation in place, but there are a whole host of matters around the legislation for the thing to make sense, for it to be workable.

What are we tackling here today? The rationale is to reduce delays, to improve the criminal justice system, but the police must as we said first, detect and solve crime. And I told you that your Government, you all have not done very much to solve or to reduce crime. In fact, I want to go on record as saying the conduct of the current Government encourages crime. It has created a platform for criminals. Criminals do not tremble when you all are in office. Criminals are laughing at you. A piper—I told you the last time I was here, a piper, a frequent, unfortunate, hapless piper, who traverses Duke Street and Prince Street everyday told me for the entire three months of this state of emergency he got access to more rocks than ever before. Nothing stopped!

If the hon. Minister of National Security drove down in a heavily tinted vehicle to Nelson Street now, he would see the cocaine trade flourishing—and you cannot have it to sell in rocks, if it did not come in bulk. Nothing has happened! You all have weakened the security platform in this country. [*Desk thumping*] You have. That is the reality of it. And there are a host of things that you did, from Resmi Ramnarine, to dismantling SAUTT, the OPVs, the scandal you created, and right now you are destabilizing the sociology of our country creating

Muslim/Hindu troubles raging on the outside there because of the recklessness of your Government; destabilizing Trinidad and Tobago, and then talking about solving crime. That too is a matter to which I shall return.

Delays in the system—and I agree with the Minister. One of the major setbacks with this criminal justice system in particular—because they have done much to improve it in civil, in the civil realm they have sped up the process, painful at times, so much so that the lawyer tells you that if a man goes to court and files a claim that you stole the Red House from him and you do not put in a defence, judgment could be given against you. That is how drastic it has become, but they have sped up the civil justice proceedings. And now we are trying to do the same with the criminal justice proceedings, which is a laudable objective. We do not have a problem.

What are some of the issues? The absence of an audio digital recording system; magistrates still having to take handwritten notes. Well that is not the case in the High Court. So masters probably and in the judicial centres that are to be built if he succeeds in getting around the Attorney General and his other colleagues in the Cabinet, who he claims are trying to undo him with those contracts to ensure that they are corruptible—he said that by implication. He said they want to take it from him because with him it will be incorruptible. It means that if they have it, it will be corruptible. That is an easy deduction. So he thinks his colleagues are corrupt. He said that, and I could repeat that without fear of challenge.

Absence of audio digital recording systems. The client or accused could not afford a lawyer. You know something, Minister, the Vindra Naipaul issue—and I have no sympathy for those who committed that crime. Let me say, I knew the woman; I had the opportunity to meet her, a dear and enlightened and beautiful soul. She was kidnapped and murdered in this country. To this day they cannot find the lady's remains. It is a most sad and horrific thing. And whenever Christmas comes, I remember the goodly lady for reasons I do not have to disclose here, a beautiful soul. But the guys, I think about 12 of them, who have been charged for her murder, they had their preliminary enquires, all completed, indictments laid. The matter comes up time and time again on the cause list in the High Court, but the matter cannot go on. You know why? No lawyers are taking the matter. Not a lawyer. The legal aid lawyers are poorly paid, the case will take about seven or eight months; they are not prepared to do all of that work for the small legal aid fees. You have Dana Seetahal, Senior Counsel and Israel Khan for the State on one side and that requires some heavy duty representation on the other side.

The Minister, I am told, attempted to persuade his Cabinet to make a special dispensation for fees in that matter to permit senior counsel to be paid reasonably well, above the normal legal aid fees. He went to Cabinet with it. His Cabinet rejected it. As a result, these 12 men are languishing there, ready for their trials and cannot have a trial because no lawyer wants to do it and the legal aid is not paying sufficient to get it, so that is a situation. I do not know how a sufficiency hearing or this new procedure will improve that. These are the realities.

Lawyers not present: lawyers are burdened. When you have your matter in the civil court and Madam Justice Dean-Armorer wants you there or Mr. Justice Harris, you have to be there. If you have another matter in the Magistrates' Court, preliminary enquiry or otherwise, it has to take second place. The learned judge demands your presence. And so it works. The sole practitioner is under serious stress. That too holds up.

Late legal aid appointment holds up lawyers from getting on with the work to defend people, part of the delay.

Police officers absent on exercise duty. For example this government shut down the whole country for a state of emergency and when it was due to come to an end, Mr. President, they shut it down again. Last week Wednesday, air guard, coast guard, fire service, police, prison, everybody confined to barracks because the Prime Minister heard somebody wants to threaten her life. A whole crisis in bacchanal style they create—hysteria—shut down everything and police officers cannot come to court to look after the matters. I was in court last week. They told me they are on delay, right. Sick leave, vacation leave, retirement, preretirement, courses, all of these things keep police officers away.

Delay because the court itself is pressed, did not have time. The magistrates are on seminars, sometimes they are late, sometimes they get sick, they are human.

Tight court schedules, part-heard matters, so the magistrate may start a matter and then get transferred from Port of Spain to Couva, and then you have all kinds of problems: court staff absent, industrial action, no note taker, a bomb scare in the magistrate's court, building problems, no electricity today, no water, faulty sewer like Tunapuna. The Attorney General came here and made a hullabaloo when I raised the question of the Tunapuna sewer. Up to now the Tunapuna court cannot function. It is sharing space on evenings in Port of Spain under that Government. Maybe they like the sewer, I do not know, they would not fix it.

And a matter I will have to raise with the Attorney General again. Witness unavailability especially in murders. Witnesses have to go to work. Some employers are not wanting to hear you have a matter in court—we have our work here in the factory floor to do, we want you to be here. Witnesses have problems.

Late filing of witness statements. That is a major one. When the police are supposed to file the witness statements and so on, there are delays.

So all of these things contribute to the delays in the system that we are trying to address this morning and the Minister had nothing to say about that. He presented the legal framework, he told us a little about what was driving it and then he told us nothing else. It would not work. We need to hear about the lubricants to make the wheel turn; but you will learn.

Delays in obtaining forensic reports: two years, two and a half years, police officer “charges” a man for marijuana, it has to go to be tested, to be proven to be a narcotic or cocaine or heroin. Two years before it comes back from the Forensic Science Centre. Prison officers are not bringing prisoners today, “Justice on time”, not at all. Industrial action. Sometimes no water in the prison, so when they wake them up at four o'clock in the morning to have a bath to come to court, there is no water; no court on that day.

Certain matters, state counsel is required; shortage of strength at the DPP's office; no state counsel to attach to the matter. You have to wait a very long time. All these things contribute to delays. I want to tell you, it is not just the buildings, it is not just additional judges, it is a whole host of things, hon. Minister, and you will learn, you will learn.

So when you come with a huff and puff and criticize the last administration according to the old people “b'am bye you go see am”, you will learn, right.

We tried to improve the system with a paper committal which permitted some cross-examination, but that too became bogged down; as I said late submission of witness statements and so on. You have cases where enquiries were held up as a result of that.

I am submitting, in conclusion on this, that most delays had nothing to do with the actual procedure, but had to do with these peripheral things that impeded the process from working smoothly. And therefore I must ask, if we could resolve those problems, if we had not been seized of those problems, would we be doing what we are doing today? Because while there is a lot of talk about removing the preliminary enquiry, the real issue is one of delay. So we have to consider that.

12.30 p.m.

So, Mr. President, let me look at a couple of items of the Bill. Clause 6, a complaint is made in writing to the master, and, of course, at clause 6(2) the DPP may prefer and file an indictment whether or not there was a complaint. And where the DPP files such a complaint, the master may summons the accused, and so on. So we are still clear that the DPP remains and retains the authority to file and prefer indictments, and that will be maintained and the Minister correctly explained that we have added to it in this Bill to allow for another window in that respect.

Clause 8(6):

“Where an accused is apprehended upon a warrant, he shall, without delay and as soon as practicable after he is apprehended, be brought before a Master or, where this is not possible, a Magistrate.”

And clause 8(8) says:

“Where there is a delay... the police shall provide reasons...”

But there is no real sanction, because even if the police provide reasons, what happens after that? What do you do? I know that you said if there is no indictment after 10 years then the matter can be discharged. That is the position of the Government. And in relation to any sanctions, they do not exist as it relates to Schedule 6, where you have rape and murder. So in terms of that Schedule—and it is there for all of us to read—there are a whole host of offences. In other words, the sanctions are very soft for delays and other such things in this Bill that is before us, and if the sanctions are soft and/or unworkable, we will be right back to where we started, with backlogs and nothing would be done.

So I am saying, all the provisions for discharging matters, except that long list, including murder and rape in Schedule 6, those can never be so discharged, not until 10 years, according to the Minister. So in any event, the procedure for discharge or a sanction for delays on the part of the State—very soft. And, therefore, I envisage that we will have problems to continue as a result. As I said earlier, when there are delays in filing indictments, there is no real sanction either, and in those cases—because right now I understand the DPP personally signs indictments. The Minister worked in the DPP’s office. Is that correct, Minister?

Hon. Volney: Yes.

Sen. F. Hinds: And is that the law? So he cannot delegate that function to another person. I think we should amend that, because the DPP as a person—it is not the office of the DPP, must prefer and file an indictment, it is the Director of

Public Prosecutions himself and, therefore, that is a problem. So you may want to consider taking some action to fix that, so that he would not be burdened with that. [*Desk thumping*] Because part of the reason for the delay is that there are mountains of files in the DPP's office and he needs to get to them, and he has to spend a lot of time defending himself from the Attorney General and elements of the Government who try to interfere with his function on a daily basis. [*Desk thumping*] So that is a problem!

In *St. Lucia*—and we did follow, and the Minister is still following, some of the guidance and the best practices out of *St. Lucia*—a judge is empowered to dismiss a matter for unreasonable delay, and that is not encumbered by a long list of exceptions of particular matters, as exist here. So I am saying, you give on the one hand saying there are sanctions, but you take back on the other, and that is a serious one.

Clause 8(6): where arrested on warrant, as I said, he must be brought immediately before the master. Clause 10, magistrates and master share a concurrent jurisdiction. Magistrates have been doing this work for a long time, and I gather that is what will have to happen, because the masters that now exist in the High Court are not versed in criminal law; they would largely have done civil law. So you will have to train a batch. You will have to recruit masters; you will have to train a lot of them in the criminal law. I suspect you may have to take some magistrates and upgrade them. But when you do that you leave a hole in the magistracy. Ninety per cent of the cases begin there, so we will have backlogging there anyway.

Hon. Volney: Five masters.

Sen. F. Hinds: Five masters. Okay. So you take five magistrates and you make them masters. You will have to get five more magistrates to replace them, and, in fact, far more than five.

And while you are at it, I honestly think our magistrates deserve to be treated with a little more—you know, their status should be raised. They do not have diplomatic passports; they do not enjoy some of the privileges. Imagine I saw the other day—I hope she does not take offence at this—the Chief Magistrate driving herself. I looked at her through my car window. Poor lady, she looked a little tired, because she works hard; from nine in the morning until four o'clock in the evening, taking notes, listening to submissions. Then I saw her driving herself in a traffic jam. I mean, you know, I think we should look seriously at making their terms and conditions a little better. They do a whole lot of stuff: liquor licences; summary offences; bail applications; they respond to appeals when appeals are made; respond to judicial review—[*Interruption*]

No, this is in not a laughing matter. You all are enjoying cushy jobs at taxpayers' expense right now. I know you all are having it nice. Some of you would have retired and now you are getting retirement pay. You are having it real nice; you are comfortable. So I am just bringing the reality to you, you know. I know how you are having it sweet. I know—and giving the people a little “colour me oranges”.

Just as an aside, I drove through the Beetham this morning and I saw about 50 orange jerseys: “colour me oranges”, all sitting down. So, like it is orange, apple, grapes and “pootigal” too. They are having a laugh; they are having a ball. And I understand from a couple of them that persons who have jobs in the regional corporation and in the very HDC, are in orange jerseys working “colour me oranges” and “pootigal”. They are having a big laugh at you all. “Yeah.” You all do not understand how “de ting does work”? But you will learn. Hands up, hands down, “they laughing at all yuh, after yuh try to humiliate them.”

So, Mr. President, I do not want to be distracted.

Hon. Member: You are distracting yourself. [*Laughter*]

Hon. Member: Yuh talking tuh yuhself or what?

Hon Member: Distracting yourself.

Sen. F. Hinds: No, “uh” hearing mutterings coming from the other side and I will not be distracted by Minister Emmanuel George. That is his sole purpose. He does nothing else; only mutterings.

So, Mr. President, may I continue? Case management in criminal matters is not new. The former judge must know. Master Morris-Alleyne, as she then was; Judge Mohammed, they spent a lot of time doing a lot of work putting together basic proposals for a case management system in criminal matters as well. It was successfully done in the civil court, with some pains; with some challenges, but it was done, and the same could be, and must be done in respect of the criminal arena. And I am hearing, and I am happy to hear this—the Minister assured us that the Judiciary has assured him that some criminal rules have been already drafted to be finalized, so we must wait and see and will take it from there. The Scheduling Order, that is an important concept, to try to streamline the thing, but as I said, there appears to be little or very weak sanctions.

Clause 11, very elaborate in terms of the Scheduling Order and we need to look at the St. Lucia experience. They have a whole list. I imagine it will come with the criminal rules in terms of how we will deal with delays on both sides in respect of that.

Clause 11(2)(c)(ii), a suggestion from the very Criminal Bar Association that we should, in this legislation—Minister, I think you picked it up—waive the reading of charges. For example, the Piarco Airport enquiry with the friends of the Government, the charges were very voluminous, very long, and back charges as well. Magistrate Daniel, the report showed, spent five hours reading 134 charges to persons who were before him on a preliminary enquiry. I think we should allow for waiving of it. I think there is some provision in the Bill. I do not want to detain myself with this, but I think we should allow the master to have the right to waive reading the charges and serve them in writing on the other side, to the accused, in circumstances where the master considers it helpful or necessary. Because as the provision in the Bill before us stands, if the prisoner in this matter with Magistrate Daniel, assuming he was a master—Melville Daniel—if this came and he said, “No, I want you to read the charges”, you will not be able to escape the 134 readings that took five hours. So I think we should give the master the right to say, “This is voluminous and I will not be reading them. I will give you copies of them.” I think that is something you may want to consider as we go forward.

Let me just read clause 12 for greater effect. Where is my Bill? Thank you for your patience, Mr. President. It says:

- “12. (1) Where an accused is charged with an offence specified in Schedule 2 and the Director of Public Prosecutions informs the Master that the case is to be dealt with summarily, the Master shall forthwith transfer the matter to the Magistrates’ Court in the Magisterial District where the offence is alleged to have occurred.
- (2) A person summarily convicted of an indictable offence under this section is liable to a fine of fifty thousand dollars or imprisonment for ten years; but such person shall not be liable to any greater penalty than the maximum penalty to which he would be liable if he had been convicted on indictment.
- (3) Subsection (2) shall not apply in relation to the penalty for the offence of kidnapping.”

Now, upon construction of this, it seems to me that the matter must first come before the master, on complaint, and I would like to know, Minister, how will the DPP become aware of it if it is on a complaint to the master? How will the DPP become aware of the fact of its existence? How will he decide on whether it

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should be done on indictment or summarily before it comes to him? I think it is a bit tautologous. I do not know if I am getting it wrong, but it is something I would like you to apply your mind to and clarify that for me in your closing submissions.

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

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. E. George*]

Question put and agreed to.

Sen. F. Hinds: Thank you very much, Mr. President, and I thank my friend on the other side. He has made himself useful and I do appreciate it.

Insofar as witness statements are concerned, clause 19 deals with the sufficiency hearing, and clause 19(6), in particular, says:

“A witness is not required to attend a sufficiency hearing unless his presence is requested by the Master.”

Well, I alluded to that earlier. The question of witnesses is a very troubling one, as the Minister well knows, and clause 20 provides for the review of witness statements. Clause 21(1) and (2) sets down the conditions for the admission of witness statements. And, again, the Criminal Bar Association recommended that they use the same conditions as they gleaned from the indictable offences, the current legislation. Very elaborate, I must say, but in my view, not enough. I am not easily persuaded that we should totally disregard the opportunity for even limited cross-examination, but if that is the Government's policy, there is precious little that we can do with it.

Now, clause 21(6) deals with these statements in electronic form, and all it says, in essence, is that in addition to the manuscript statement and in addition to the typewritten version, you should have it on audio or on video, and that may be used. I am submitting to you that it should be used. Part of the reason for the delay in the court and cross-examination—and you would know as a former judge—under the existing Act there is an elaborate structure for allowing witness statements in, and that sort of thing, and the authentication process by a Justice of the Peace to a witness statement, you have sat—I appeared before you in matters already and we had *voir dire*s, trial within a trial, to test the authenticity of a confession statement.

The police are saying that a man delivered a confession; they have a statement, at the trial the man is now saying, “That was beaten out of me; they pull the hair out of me”. And especially now that you want to bring a DNA Bill to

allow them to take samples involuntarily, the police could just hold them and pull out a tusk of hair, so “Whoop”. Right? That is what you want to introduce, but we will come to that next week. But in any case—

Sen. Abdulah: Cut the locks.

12.45 p.m.

Sen. F. Hinds: Mr. President, I am being disturbed by Sen. Abdulah, who now sees the weakness of the Government that he is a part of. He was on TV this morning telling us that we should have a true working class party, suggesting that this is not. [*Desk thumping*] We do not want you here but you could go on the back—cross.

Sen. Abdulah: Not near the PNM.

Sen. F. Hinds: “An ah know,” You are in the loving arms—the trade unions have never been in more upheavals than they are now, under you and the labour Government. And they are watching you and the Hon. McLeod with suspicion. [*Desk thumping*] Anyway, I do want to be distracted.

So, I am submitting that the thing, Minister of Justice, should be as well in electronic form. Because part of the problem is that the police are—you know, we have the *voir dire*. We have had Justices of the Peace coming to court to give evidence before you, when you were a judge, or any judge, to say I was present, the statement was recorded; or I was called after it was taken, it was read to him, I read it to him, he signed it; but the man is still saying it was beaten out of him. And there are many cases where witness statements were thrown out, notwithstanding that authentication process by the Justice of the Peace, and all the elaborate processes that I have described.

And, therefore, it is demonstrably the case that that is not enough and I am submitting on that basis, that if you have the statement recorded in audio or video, then you have no such trouble and you will save time. What you lose on the bend, you will gain on the straight. [*Crosstalk*] So I want to suggest—no, in this legislation you should insist, particularly, as we move forward in a modern, technological experience, that they do it in addition to, and not leave it as optional. That is all, as I continue.

So, Mr. President, these are some of the issues. There is one other matter that I would like to raise here, and that is the question of these witness statements. There was a time in this country—and I said it this Parliament when I represented Laventille East/Morvant many years ago—when we had reports of unscrupulous

lawyers taking huge amounts of money from accused in matters, say \$500,000—I never saw it, but we had reports, some of which, I was tending hard to believe. Colleagues, \$350,000, for me and \$150,000, for the accused—state witness—and a plane ticket to Miami or New York, and like hell you cannot get the witness to come to court. The Minister made no mention of that and he is fully aware.

So when we saw what they were doing—they were killing witnesses in this country before the preliminary enquiry—John Jeremie, as Attorney General, came to the House, amended the Evidence Act to make sworn statements taken in the police station useable in the preliminary enquiry—block the route. Then they started killing them after the preliminary enquiry but before trial. And then they amended the legislation again to allow the depositions, because they used to be able to demonstrate these lawyers—these fancy lawyers—that the prosecution could not prove that they the witnesses, were out of the jurisdiction, the prosecution could not prove that they were too sick and unable to travel to the court, and because of the law and the way it was written, the prosecution could not prove that, then, they could not get the statements to be used in the absence of the witness. And they defeated the system, right.

So these are matters that are all very real and I am not surprised—anyway let me not say any more on that. So while I accept that there are some safeguards in the legislation, I think we should go a little further and get a little more done in that respect.

I am also looking, Minister, at clause 25 (1) and (2), which I do not have the time to quote but I am getting the impression from my reading that, the master has the power to override the decision of the DPP, in terms of preferring and filing an indictment. Take a look at it. I do not have the time to read it, but I am getting the impression from by reading of clause 25, (1) and (2), that the master—if the DPP sends the indictment, the master could say “hmm umm” and discharge the accused, unless of course, I am reading it very terribly badly.

One other matter, the accused wants to plead—well not plead—I do know if he can plead. When he appears before the master in the sufficiency hearing, he indicates that he wants to plead guilty, because he cannot then plead guilty. If you appear you are not called upon to plead. So he cannot plead guilty or not guilty, but if he indicates that he is willing to plead guilty then the master must now send this to the DPP, so an indictment could be filed in order to give him when the charge is read, the opportunity to plead guilty and then he would be sentenced. That is my understanding of it.

I am not so sure whether the legislation bears that out. But I am saying that if a man indicates that he wants to plead guilty before the master in a sufficiency hearing that is not a guilty plea; it cannot be, for obvious reasons. So the documents are then sent promptly to the DPP who must prefer and file an indictment, he now comes on indictment, he pleads guilty. So the process is a little long too, but, I think we need to look at that. I think in those circumstances the wording of the current Bill should be changed and we will come to it in committee—because it almost says he is pleading guilty; it should say he should indicate his intention to plead guilty. And then, you know, we will see how that goes.

So I want to ask a couple of questions as I conclude. I want the Minister to tell us clearly why he has opted for the more restrictive measures and the extreme position of denying cross-examination. I would like him to address that. There were several options available; we could have looked at all of these, but it is quite clear that the Government is determined to press on with repealing their old and existing Act, and to replace it with the Act that is in the form of a Bill now before us.

I want to remind the Minister, he had come to the other place with a proposal to fine media personnel or media houses, \$250,000. I saw an editorial that did not seem to get that clear. It was this Government who came to Parliament in the other place to fine media houses \$250,000 or two years in jail, if they published more than they should under law, about a juvenile in a sufficiency hearing. And we objected to that, the Member of Parliament for Diego Martin North/East and the Member of Parliament for Diego Martin West and Leader of Opposition and the Government agreed on that objection to put it to \$150,000. We are saying in this place today, we would like you to go even further, because we found that was rather draconian—not that the media deserve any special love and attention, because you know how some elements of the media behave and conduct their affairs, but we are not dealing with personalities or institutions, we are dealing with principle. And we think it is a little excessive and a little extreme and therefore, we would like you to give further consideration to reducing that.

So there is much more to be said, but I guess that my time would have run. My colleagues who will come behind me on this Bench—the Opposition Bench, and no doubt our senatorial colleagues on the Independent Bench would also have their say. I would like to conclude by saying to the Minister, you must focus on the larger and peripheral issues that will make this regime workable. Many of the problems that afflict the current system would be carried over to the new if they

are not addressed. And I identified a number of them to you in the spirit of goodwill. I must say again, in conclusion and to begin where I started, that your approach and your tone this morning was a lot less confrontational, and we appreciated that. And you seemed from your smile and your nod of acquiescence to have recognized that this is the better way. You need to convey that, of course, to your colleagues, and let them know that they are traumatizing the nation.

Treason is an indictable offence. The Prime Minister is accusing citizens of this country of treason. We do not know anything about who made the threats. What we know from our experience in national security and in government, threats are a normal part of the business of governance in any country, and we have no doubt that a threat may have been issued. What we maintain is that your response to it, to confine all the army, volunteers, fire, police, everything, is all hysteria and excessive. You are traumatizing the country and you are in that way engendering an atmosphere that is suited to crime and disorder. And having said those truths, with your kind leave, I thank you very warmly and look forward to the contributions of my friends. [*Desk thumping*]

Mr. President: Hon. Senators, Sen. Dr. Wheeler, before you start, I just want to indicate that in terms of today's proceedings, I propose that all things being equal, we will take the break at 1.30 p.m. and we will resume at 2.15 p.m. and we will take another break at 5.00 p.m.

Sen. Dr. Victor Wheeler: Thank you, Mr. President. First of all, I am quite shocked to be making a contribution so early on this topic, seeing that I am a gynaecologist, but nevertheless.

This Bill that we are debating today is an Act to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and to provide for a system of pre-trial proceedings relating to indictable offences and other related matters.

Now as the Minister—that is Minister Volney—said in his presentation, the aim of this is to have cases move quickly through the court system. And I do support the effort and aim of this Bill to achieve this. The aim is to encourage a more efficient, judicial system, and it hopes to do that, by reducing the backlog of cases in the Magistrates' Court, so that the magistrates would be able to concentrate on summary matters.

I would like to make my contribution by starting off on just commenting on what is the status of the courts' workload that now exists. I am referring to a document, "The Judiciary of the Republic of Trinidad and Tobago Annual Report

2010-2011”, where for criminal indictments filed in 2010/2011 you had 279, and for matters filed in the Magistrates’ Court 104, 155. Now, if you look at matters determined, in 2010/2011, you have 97 criminals indictments that were determined, and 95,071. Now, when you compare this to the previous year’s going back to 2005/2006, you will see that last year you had a total criminal indictment of 132 of which 29 were murders, whereas, this year of the 279, 47 were murders. When you look at 2005/2006 you will see that there was a high of 246 new criminal indictments of which 89 were murders, and this has been falling steadily over the years, until last year you had 132; for 2010/2011 you had 279.

Now, I must stress here that these figures that we are referring to only refer to those cases in which the murders, the crime were solved. And it is interesting to note that you had a decreasing number of murders being solved—2005/2006, from 89 down to 29 last year, up to 47 this year, but the national figures being given every year is a rise in murder rate.

So you can see already from what is being presented, when looking at the judicial process itself, not so much the rate but the actual process, the court system is only addressing a small potential of our crime problem. And it is important to stress that even if we make—let us say this Bill is passed tomorrow and it becomes effective the next day, it will only be addressing a small percentage of the country’s total crime problem.

Now, I am aware that the Government, through the police service, is making efforts to improve the solve rates, to improve their ability to catch the criminals. But also I know that some efforts are being made in the prevention of crime through the various social services, but this must be borne in mind when we consider what we are about today. Those figures that are presented will indicate that there is a serious backlog of cases in the court system right now.

1.00 p.m.

Let us look at the staffing of the court system. Do we have enough judges? I do not know. I have been told that there may be just two or three masters of the court. So if we are going to pass this Bill and have it implemented tomorrow, you will have to immediately increase the number of masters that will be required to administrate the paper committal that we are talking about.

You can see from the court figures, the new cases filed of 104,000 and even though you have 95,000 being determined, that still leaves a backlog of just about 9,000 cases just for 2010/2011; we need to have more magistrates. And certainly if you are going to make the transition from a person being charged to them reaching the High Court at a quicker stage, you will certainly need to have more judges to address this.

In addition to the judges, the magistrates and the masters, these cases would need to be administrated by attorneys, and we are already aware that the number of DPP attorneys currently is not up to establishment; we are currently short of DPP attorneys. I have been informed that even if all the vacancies that exist are filled currently, you will still be grossly understaffed, so this is one area that would need to be addressed to increase the number of DPP attorneys. Because what you may find is that the bottlenecks in the system which currently are at the Magistrates' Court and the High Court, you may just shift some of this bottleneck from the Magistrates' Court into the High Court.

Now, the Minister also mentioned that there is a plan to construct four new High Courts but I see that the completion date is targeted at 2015. So from what I am seeing now, again, if this Bill is to be passed today, and to become law in a week or two, without those new courts being built, it is very unlikely to have a positive impact on the administration of justice. And we certainly will not want something similar to what happened with the anti-gang legislation whereby the Bill is passed and those responsible for implementing the Bill are not properly prepared or trained to deal with it.

Now, I certainly do not intend to be long, I just came to address a couple of matters—some of the clauses in the Bill. The first one is, this Bill does not provide for cross-examination at the sufficiency hearing. So far, a bit has been said about the elimination of cross-examination at sufficiency hearing. From what I have read and from what I have understood, the main advantage to the ability to cross-examine really is to the defence because I am informed by the defence having the opportunity to hear the witness give evidence and to be able to cross-examine that witness at the preliminary stage, when it comes to the trial, they are better able in which to challenge the statements made by the witness [*Interruption*] and to raise their inconsistencies. [*Desk thumping*]

But the disadvantage with the ability to cross-examine though lies with the witness because it means the witness now has to come to court on two different occasions to give evidence. After the first time, if they had a pretty rough time from the defence attorney, they may not be inclined to return again. The other thing is that witness will have to remember exactly what was said the first time and be able to reproduce that evidence the second time, because if they say one thing slightly differently the first time, and at the High Court, it is said a little different, that will be an opening for the defence attorney to challenge them— [*Interruption*] Yes. And this is a problem.

Also, that witness may be coerced, threatened, as you had said, they may be even killed between the time when they give evidence in the preliminary stage before it comes to the court and depending on the length of time it takes for the trial to come about at the High Court, that witness may not be interested or not be

inclined to give evidence again. So, I have no particular difficulty with the elimination of the right to cross-examination because, as has been stated, this has been introduced in the United Kingdom for a number of years and it has been tested. So that is not, from what I have read and from what I have seen overall, a significant negative for me.

Now, the question of alibi—this is clause 13—where in the previous Bill, the accused person had 10 days to produce evidence of an alibi from the end of criminal proceedings, now he has only 48 hours. I do believe that this time is a little short and there would be instances where, for example, if the offence occurred a year or two years ago and the person is now being charged, for them to immediately remember where they might have been, that might take some time.

Sen. Al-Rawi: Good point!

Sen. Dr. V. Wheeler: So, I would have a difficulty with the 48-hour time frame. [*Interruption*] Well, I am a doctor so I will leave that to my legal colleagues to suggest, but I am not able to give or to say what will really be an adequate time frame.

The other thing that I want to comment on is on clause 34(1) where it says:

“Except in the case of matters listed in Schedule 6, where the proceedings are instituted on or after the coming into force of this Act and the Master is not, within twelve months after the proceedings are instituted in a position to order that the accused be put on trial, the Master may discharge the accused.”

I am not sure if this will be a loophole to some people for escaping coming to trial. Even though clause 34(2)(b) says: “where the accused has evaded the process of the Court and the trial on indictment has, for that reason, not commenced”, the experience I am sure with the court system now, I believe this might be an opportunity for some people to evade being brought to justice, and again, my legal colleagues, I am sure, will be commenting on that.

So, there was another area of concern, clause 21(5) and it says:

“Depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of this Act shall be admissible as evidence at a sufficiency hearing.”

This one seems to be quite—I am in favour of this because, at least, unlike the anti-gang legislation where evidence that was admitted, that was received before, could not be used, at least this demonstrates that you will be able to use; continue

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on cases that went on before, and whatever evidence that would have been taken before this Act comes into effect will be continued, so this is actually quite good for my part.

Clause 21(7), where it says:

“For the purposes of this Act, audio or video recorded statements and evidence referred to in subsection (6) shall be regarded as documentary evidence.”

Am I to assume from this that if the witness is killed or no longer able to give evidence that if it was recorded, they will be able to use this? [*Crosstalk*] Then this is something that I am also in favour of in this Bill.

Clause 31(1) which addresses the issue of the media being penalized for publishing matters outside of what they are allowed to hear, this certainly is a very strong statement, and it certainly would be a deterrent for, not only media houses now. I see you said “shall print or publish” but what about those radio talk show hosts that will be saying things on the electronic media, would that be included in this or just the print, Internet—[*Interruption*]

Sen. Al-Rawi: Anything in publishing, online if published—yes, anything that—

Sen. Dr. V. Wheeler: So radio talk show hosts will be able to say whatever they want and they will not come into this?

Sen. Al-Rawi: No, they will; that is under publishing.

Sen. Dr. V. Wheeler: Okay, all right. So, Mr. President, that was really what I wanted to say on my first turn at the crease on the Independent side.

Sen. Al-Rawi: Well done!

Sen. Dr. V. Wheeler: I did enjoy it briefly and I am sure my legal colleagues will address some of the legal aspects, but certainly overall, I will be happy to support this Bill. [*Desk thumping*]

Sen. David Abdulah: Thank you very much, Mr. President, for allowing me to contribute to this very important piece of legislation, “An Act to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and to provide for a system of pre-trial proceedings relating to indictable offences and other related matters.”

Mr. President, I think that it is very clear that the administration of justice is key, is crucial, to the functioning of any civilized society—a society that is

predicated upon the rule of law. It is not enough for a Parliament, whether it is this one or any other one because I speak in general terms, to effect, reform and to pass legislation. The critical thing having done so is for the enforcement or the effecting of that legislation.

The enforcing or effecting of legislation, of course, is not a simple thing; it is very much an interconnected responsibility of several institutions of state and various authorities that have particular responsibilities. Whether it is the police who have to prevent perhaps on the basis of law—prevent people from breaking that law or to detect crime when it has occurred to investigate and, of course, to prosecute.

We have the role of the Director of Public Prosecutions; we have the courts, and this is where this particular piece of legislation seeks to address the issue of the administration of justice. We have the courts that must determine the guilt or otherwise of persons who are brought before it and to determine the penalty in accordance with the law. And, of course, subsequent to that, we have the prisons which have to ensure that whatever penalty has been effected—if it is a custodial sentence and so on—that that penalty is carried out in a proper manner.

Mr. President, we will all agree, I think, that the criminal justice system has been in crisis for a very, very long time, and I want to emphasize “a very, very long time” because problems do not occur overnight—problems of the nature of which we have now do not occur overnight. One of the disturbing things about this society is that we often speak about the problems, pontificate about the problems and place responsibility on everybody else but ourselves when we have or are in a position of responsibility to deal with the issues and deal with the problems. [*Desk thumping*]

So, we engage, Mr. President, as a society, in a sense of denial at times and one of the facets of this culture of denial is that those who perhaps do not have to deal with the problem, do not have to smell the problem, so to speak, on a day-to-day basis, simply ignore it because it is not in their realm of everyday existence, and so continue to go on day after day pretending that all is well in the realm when, in fact, it is far from.

1.15 p.m.

The criminal justice system is one that has been in crisis for a long time and we must be honest about that. I think that the debate on this piece of legislation—quite apart from trying to ensure that we have good law and quite apart from trying to ensure that we find the right institutional mechanisms by way of

legislation, to ensure the improvement in the administration of justice—this Parliament, and the Senate in particular, has the opportunity to have an open public discussion about the problems that we have had and the fact that we have to confront those problems and change both the practice and the culture; the systemic as well as the cultural issues involved.

Mr. President, I think that we would all agree as well with the axiom that justice delayed is justice denied. Often, in making that statement, we think of it from one side or the other; either the side of the accused or the side of the victim. But, justice delayed is justice denied to both the accused and to the victim in so many respects. There was recently even a matter that came before the courts that was some 27 years old. A matter ought never to take 27 years before determination before the courts. That kind of long delay denies justice to all who are concerned.

The Minister informed us earlier about the average length of time it takes for matters to be processed through the Magistrates' Court, indictable matters, and so on, and what that really speaks to is a colossal waste of resources in a society and in a country that, while we have much more resources than other countries, it still is a country that is short on resources. We spend a whole lot of time and manpower in going before the magistrate, only to have matters adjourned, not once, not twice, sometimes 10, 15, or 20 times and on each of those occasions witnesses are to appear, police officers are to appear, attorneys-at-law are to appear, officers of court; their time is taken up, whether it be the magistrate or the clerical persons in the court and the prosecutor and so on. It would be fantastic, perhaps, if there was a research study by some young graduate student at the University of the West Indies who could quantify, over the last 25, 30, or 40 years, the amount of wasted time, in terms of people hours. We cannot speak not about man-hours, because it is not just men who are part of the process, people hours, the number of people hours that have been lost and wasted as a result of the present system that we have.

In addition to that, of course, and the cost of that, quantifying that in economic terms, there is also the cost of prison transport, which becomes a large charge on the exchequer and so many other factors, in terms of the economics of the problems of administration of justice in our country.

Other persons have already spoken about the issue, with respect to witnesses and the fact that the delays create huge problems, in terms of trying to ensure that witnesses are available and prepared, willing and able to give evidence.

The long period of detention for those who are accused, awaiting the outcome of the preliminary enquiry perhaps, only to be freed by the magistrate after three, four, five and seven years, delaying justice to that particular individual. Then, of course, the way in which preliminary enquiries have operated, in effect where there are two trials and, therefore, having to put persons through the trauma of two trials, particularly persons who have suffered from abuse of one kind or the other or physical trauma.

Of course, we have also seen where matters before the Magistrates' Court are subject to other kinds of judicial intervention by way of constitutional motions, further delaying the process and justice, sometimes, is never delivered and what then happens is that the society becomes highly cynical of the system. When the society becomes highly cynical of the system then, in fact, many people will not want to abide by the rules and the laws. They would want to operate outside of the rules, because their view is, and quite correctly in that regard, that the system is not working, that the system is not delivering justice, and if that happens, then the centre cannot hold. the society will fragment and break apart and implode.

This issue of the administration of justice and the discussion of the administration of justice is very, very important. It is not a new issue, in terms of its being examined. There have been a number of committees looking at the reform of the administration of justice, and those committees have made various reports. There have been any number of public fora and discussions on this particular matter, seminars, workshops. We seem to be a country that is very good at engaging in talk and discussion, but to move to action, seems to be a very, very difficult step for us to take.

I recall, firsthand, the commission of enquiry that was set up in May/June 2000, or thereabouts; the Commission of Enquiry into the Administration of Justice in Trinidad and Tobago, which commission of enquiry, incidentally, I actually appeared before, on behalf of the Oilfield Workers' Trade Union and other trade unions as we submitted a very detailed memorandum, to that commission, dealing with the issue of administration of justice in Trinidad and Tobago.

We were not concerned simply with the administration of justice, as it related to workers in the industrial relations environment. We were dealing with every single aspect, from the Civil Proceedings Rules, which at that time, were being hotly debated by practitioners in the court, by persons in the society, generally, and by Members of Parliament. It was a hotly debated issue. The then Chief Justice, who recently received an award for 50 years of distinguished service

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practising at the Bar, Mr. de la Bastide, established an Advisory Committee to the Rules Committee. I was asked to serve on that Advisory Committee to the Rules Committee as one of three lay members. There were three members of the Bench and three attorneys-at-law, one of whom now is actually a member of the bench as well.

I had to get a crash course in the Civil Proceedings Rules and rules of court and assisted in drafting a hybrid set of rules, which did not actually get accepted, and the original Greenslade Rules, as they were called, were implemented almost without change, although practitioners at the time were very upset about the Greenslade Rules, because it was going to change the way in which members of the legal profession had to function in civil matters before the High Court. Having said that, therefore, our memorandum; that is the union's memorandum, before that commission of enquiry in 2000, that memorandum dealt with matters pertaining to the Civil Proceedings Rules as well as to the issue of the nature and functioning of the Magistrates' Court.

Permit me, therefore, to quote one or two paragraphs of the submission we made at that time, which I think are relevant. One of the issues that we must confront as well is the culture of the Magistrates' Court—those of us who have gone in the Magistrates' Court, either appearing there as attorney, as perhaps, Sen. Hinds and others have done, those who are lawyers who go there representing persons who are brought before the courts; those who have gone as witnesses in some matter or the other, it could be a simple civil matter, a petty civil matter, or it could be a criminal matter; those of us who have actually been brought before the courts on charges, as I myself have been on two occasions, and found not guilty by the Magistrates' Court, incidentally, for peaceful picketing.

Incidentally, both of those incidents, when I was arrested, happened during the administration of a PNM Government. In 1986—for the record, Sen. Hinds, I am glad you are back, so you could take careful note—March, I was outside the Oval with a number of others who were part of the—*[Interruption]*

Sen. Hinds: I was there too.

Sen. D. Abdulah: I do not recall. You did not—maybe your locks were not as long. *[Interruption]*

Sen. Hinds: I was a police officer.

Sen. D. Abdulah: Oh, you were a police officer? So, you were engaged in brutalizing me. *[Interruption]*

Sen. Hinds: Looking at your bad behaviour.

Sen. D. Abdulah: Bad behaviour! We were defending, Mr. President, as Sen. Hinds sought to say that, the anti-apartheid movement in South Africa. [*Desk thumping*] That is what we were doing. We were picketing against Gooch, Emburey, Robin Jackman and others who, in our view, violated the Gleneagles Agreement and went to play cricket in South Africa and then were allowed to play cricket for the MCC and come down and represent the MCC against the West Indies. We were outside the Oval, in March of 1986, peacefully picketing and making the point that while we love cricket, we hated apartheid more. The police officers on that day—I am sorry I did not walk with the photographs I had them in my office last night—brutalized people, terrible brutality. People’s health—*[Interruption]*

Sen. Deyalsingh: Would the hon. Senator give way?

Sen. D. Abdulah: Yes, I would give way.

Sen. Deyalsingh: Am I correct in hearing, Sen. Abdulah, did the PNM administration detain you, or did the police detain you?

Sen. D. Abdulah: What I said was very clear. I said I was arrested. The police arrested me. In fact, the police did not arrest me on spot; they made the mistake of arresting others and then realized they did not arrest the organizers, so I actually was arrested at the court when I went there to—myself and Lyle Townsend—*[Interruption]*

Sen. Deyalsingh: You said under a PNM administration.

Sen. D. Abdulah: But, it was when the PNM was in government, and the PNM never sought, as we requested, an investigation into that travesty when citizens of this country were standing, peacefully, in defence of the people in South Africa. [*Desk thumping*]

Sen. Hinds: Graham Gooch did that?

Sen. D. Abdulah: Yes, and you were proud to be part of that whole process. The point I am making is that Sen. Hinds comes here and spouts out about being in support of black people and so on, and proud to wear locks. But, on that day who was in defence of black people in South Africa? *[Interruption]* You could go ahead, because I have a rebuttal for you.

Sen. Hinds: I want to, for the record, Mr. President, say while I am indeed quite proud of African or black people, I am indeed quite proud and respectful of all the citizens of Trinidad and Tobago and the world.

Sen. D. Abdulah: No one would quarrel with that. So say we all. The point is, on that day, the Vorsters and the Bothas of this world were laughing at Trinidad and Tobago when people of colour brutalized people of colour outside the Oval, and the then PNM Government, in spite of requests made by trade unions and other citizens, never sought to investigate that matter that went on the record as a horrendous day for the struggle against apartheid in a Caribbean country.

Let me move on, Mr. President. I was making the point, when Sen. Hinds put his foot in his mouth, so to speak, by saying he was outside the Oval on that day. *[Interruption]*

Sen. Hinds: Again, I was outside.

Sen. D. Abdulah: Fine! That is all right and you were proud of it. I am proud of where I was that day. I am proud of where I was.

Sen. Hinds: I was in the protest lines.

Sen. D. Abdulah: I am proud of where I was. I was making the point that those persons who have gone before the Magistrates' Courts, for whatever reason, as defender, advocate, attorney or whatever it is, as a person who is accused as a witness, will know that the culture of the Magistrates' Court is not in keeping—and the hon. Minister made the point—with the kind of decorum and environment in which justice can really be properly dispensed. To understand that—*[Interruption]*

Mr. President: Hon. Senators, the time is now 1.30 p.m. I propose to take a break for lunch and we will resume at 2.15 p.m. This Senate will now stand suspended until 2.15 p.m.

1.30 p.m.: *Sitting suspended.*

2.15 p.m.: *Sitting resumed.*

Mr. President: Hon. Senators, before we took the break, Sen. Abdulah was on his legs, and by my calculations he has another 26 minutes Sen. Abdulah. *[Desk thumping]*

Sen. D. Abdulah: Thank you very much, Mr. President. Mr. President, before we took the break I was beginning to move on to the issue of looking back at the genesis of our Magistrates' Courts. I think that one of the things which I try to do is to go back in history and identify some of the developments which have led to where we are today from a historical point of view.

So I want to just briefly quote from the memorandum which I indicated was submitted by the Oilfields' Workers Trade Union to the Commission of Enquiry into the Administration of Justice in Trinidad and Tobago in June of 2000. And I will just quote a few of the paragraphs, Mr. President, and I quote:

“A fundamental issue is that of the historical evolution of our justice system, which process established a particular set of biases. To cite but one example. The earliest form of courts was the Magistrates Court in the capital Port of Spain established in the period immediately following the abolition of slavery in 1834. This was accompanied by the creation of a system of Clerk of the Police, Justice of the Peace and the formation of a paid constabulary with all of 9 men.

The fact is that prior to abolition, the authorities saw no need for a judiciary since the slaves had no rights. Indeed, it was only with the coming of Emancipation in 1838 that the system became established island-wide”—and this was in Trinidad, Mr. President—“with the country being divided into 6 Police Districts, the police force increased to 68 men and a stipendary Justice, JP's and Clerks of Police assigned to each district. Each district had its own police station, cells and court.

It is abundantly clear that the system was designed to ensure that the planters' interests were not going to be threatened by the newly freed slaves, and if so that the ex-slaves would be appropriately punished. Thus the role of the police as stated in Order of Council of August 25th 1838”—just three weeks after Emancipation, Mr. President, (Emancipation Day was August 01)—“was to detect and apprehend...idle and disorderly persons...suppress and prevent riots, brawls, outrages and disorders against the peace.”

End of quote from that Order of Council, and I will end the quote of our memorandum at that point as well, Mr. President. The point being that inherent in the culture of the way in which our Magistrates' Courts were established was this approach to deal with the former slaves, ordinary persons, working men and women, and to view them as disorderly persons, vagabonds and idle persons.

Some of that culture persisted—and we are not now being critical of any individual or persons who have to administer the process—simply the systemic arrangements, many of the features of the old culture persisted and you see it when you go in the Magistrates' Courts; the courts are overcrowded, the facilities for those who have to function in the Magistrates' Courts are not conducive to

them being able to perform their responsibilities comfortably, effectively and efficiently. And it is in the way in which persons brought before the courts or who are witnesses are made to feel before the courts. So rather than seeing it as a location of justice, it is very much a location of penalty and of, in some cases, one which is not conducive and hostile to ordinary persons who are seeking justice before the courts.

I make that point therefore, Mr. President, to say that this particular piece of legislation which would abolish the need for indictable offences to go before the Magistrates' Court, would then remove into a different location in the High Court that filter which would establish a prima facie case before being heard by a judge and jury in the High Court. And, therefore, we can begin to change the culture of the administration of justice and it is very important that we do not only change the system, but we also seek to change the culture, and this legislation, I think is designed to do that.

Not all those persons in the system be they the lawyers and even the officials who have to bring matters before the courts are going to feel comfortable or happy with this new arrangement initially, because it is going to change the way business is done in the criminal justice system. The scheduling order, for example, Mr. President, which identifies very clearly the case management process is very, very important and certainly case management is to be welcomed throughout the administration of justice, the whole process; and it exists very clearly and in black and white in the civil court, in the Supreme Court and so on. In the Magistrates' Court case management is not established properly and with this process of case management where people have clear guidelines to meet, we are going to see less time being wasted, persons being efficient and effective and, therefore, justice will no longer be delayed in the ways in which it has been delayed over the years.

Those who may complain about not having enough time—I am not now speaking specifically to the issue of establishing alibi, but generally attorneys who would have been accustomed to going before the magistrate and postponing not once, but twice, but three and four times now have to get with it and conform to the case management process; prosecution as well would have to conform.

All those persons who might find difficulty, Mr. President, we have to say to them as legislators that we have to do something differently. We cannot continue to do the same thing all the time and expect to get a different result. [*Desk thumping*] The late Lloyd Best often posed the question: "How does a culture

escape from itself?” One way is by trying to change the system. The other way is to ensure that those who now have responsibility within that change system, in fact, adhere to the timelines and to the rules, and we do not slip back into the old practices and old culture. The case management arrangements set out a very clear framework which is in keeping with how justice ought to be administered in a civilized society.

No doubt there are many problems outside the framework, and Sen. Hinds was referring to a number of those other issues which lead to delays, which have to do with culture, which have to do with practice, which have to do with resources and other things like that. I was making the point, Mr. President, at the start of this short contribution today, that often we sit in wonder and do not take responsibility for what we have to do, or ought to have done. Sen. Hinds was very eloquent earlier today and identified a whole list of things which he suggested that the Minister of Justice needed to address if we are to ensure that there are no delays. Things which he said were not part of the legislation but which have to do with the systemic functioning of the judicial system. And my simple question to Sen. Hinds would be, what was done when he was in government to address all of those problems which he so eloquently and perhaps correctly identified as being issues and problems? [*Desk thumping*] What was done?

You cannot escape the fact—and the point I was making, Mr. President, when I began I did not seek to throw blame, the point I was making was that we all have to take responsibility and, therefore, those who were in government and had the opportunity and the responsibility to make the change and did not, really have to come and say, “We are sorry; we had the opportunity; we did not make the change but we are supporting the change now, today, which is being brought to this Senate.” [*Desk thumping*]

So we heard about the terms and conditions of employment of magistrates and I am sure that we all would like to see the terms and conditions of magistrates and all judicial officers improved, because every one of them has a very important role to play. Whether it is the clerk in the court or whether it is the officer who is presiding in the court. Again the question has to be asked, what was done between 2001 and May 2010 with respect to improving the terms and conditions of magistrates? And why was Sen. Hinds not as vocal then as he is now with respect to defending the concerns and the interests of the magistrates?

So we want to discount those comments in terms—not because they are not valid, but discount them coming from Sen. Hinds because really they ought to have been tackled a long time ago, and we are sure—[*Desk thumping*]*—*that the Minister of Justice and the hon. Attorney General would be addressing the issues of computer aided transcripts.

All of these matters incidentally, Mr. President, were also spoken to in our memorandum of 2000. The issue of computer aided transcripts in the Magistrates' Court and case management in the Magistrates' Court. The issue of the Family Court which is very—that was one positive development that family issues were generally removed from the realm of the Magistrates' Court and placed in the Family Court, and there is more to be done, I am sure, in that regard. But that was a step forward, where things like dispute resolution could take place rather than there being purely adversarial approaches to the resolution of disputes in terms of family matters. And one would like to see, in fact, other kinds of matters, quarrels between neighbours being dealt with by way of mediation rather than by way of adversarial litigation and that kind of thing; to remove much of the matters which ought not to be before a court per se, but determination in that regard, for really to be dealt with in terms of relations between people—

Sen. Maharaj: Like a panchayat.

Sen. D. Abdulah:—like a panchayat Sen. Maharaj is correct, like a panchayat, but which culture was not established because of the nature of the Magistrates' Court which I identified coming into being to address the issue of slaves being freed. And that is the genesis of our Magistrates' Court and part of the genesis of our justice system in Trinidad and Tobago.

The physical conditions of the court all of these are matters of concern, and one could only ask the question that if, say, the \$900 million—I am not sure what the latest figure is with respect to the construction of the Tarouba Stadium—was instead spent on ensuring that we had proper facilities for the magistrates, the magistracy and the Judiciary to function, how much better, and how much more efficient our judicial system would be today? And what better allocation of resources it would have been if the decision had been taken not to build Tarouba, but instead to provide for the proper and effective administration of justice in Trinidad and Tobago.

Mr. President, this issue of the administration of justice is a matter which is of concern in particular to ordinary persons, to the ordinary man and woman in society, because the vast majority of persons who today appear before the Magistrates' Courts are ordinary citizens, working persons, they are the vast majority. Therefore, anything which improves the administration of justice and, therefore, enables ordinary citizens, whether victim or accused, to obtain justice fairly, efficiently and in a short space of time is a measure which ought to be supported [*Desk thumping*] by all of us.

And so with those fairly short comments, Mr. President, I thank you for allowing me to contribute. [*Desk thumping*]

Sen. Faris Al-Rawi: Thank you, Mr. President. And if I may join my colleagues in welcoming you back to the Senate; we are pleased to see you here and I do join my colleague, Sen. Hinds in complimenting your most capable and able sister in the Senate, the hon. Lyndira Oudit on her tenure in the Chair. [*Desk thumping*]

Sen. George: “Doh worry with dat man, you know it have ah sting in de tail.”

Sen. F. Al-Rawi: There is no sting in the tail, my dear friend. Stings in the tail are deserved when something deserves to be stung, like the DNA Bill, but [*Desk thumping and laughter*] not this one.

2.30 p.m.

Mr. President, we are here to discuss the repealing of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and we are proposing legislation which will take us in step with legislation which exists elsewhere. We have heard contributions so far on the historical origins, in part delivered by my learned colleague, Sen. Abdulah, of the magistracy and of the change of culture that we as a national body need to consider in relation to the criminal justice system.

The first point is that the Bill itself is an element of a much larger structure and that structure, properly labelled, is in fact the criminal justice system. The Act to be repealed, Chap. 12:01, is one of a series of Acts which impacts, not only on the management of our laws, but indeed upon the concepts of justice, public order and safety.

Mr. President, our courts in Trinidad and Tobago, as you are aware, with respect to the Supreme Court, are founded under section 99 of the Constitution, which prescribes the establishment of a Supreme Court of two divisions, the High Court and the Court of Appeal. Our Magistrates’ Court and Petty Civil Court are established under the laws of Trinidad and Tobago, Chaps. 4:20 and 4:21. That will be the Summary Courts Act and the Petty Civil Courts Act.

These Acts and these courts are really the tools through which the criminal justice system operates. The criminal justice system, as is recognized by the Bill, is at the very least intersected by at least 12 entities, which include the Magistrates’ Court, the High Court, the Court of Appeal, the police, the Director of Public Prosecutions, the Minister of Justice, the Rules Committee of the Supreme Court, Justices of the Peace, the Masters of the High Court and the attorney on behalf of the state and on behalf of the accused.

Hon. Volney: The prisons.

Sen. F. Al-Rawi: The Prisons Authority. Thank you, hon. Minister of Justice. We are looking at 11 to 12 entities, Mr. President. So we are looking at 12 participants in the criminal justice system. [*Interruption*] Thank you, Sen. Hinds, 12 stakeholders, and it is important that we ground this Bill in the larger context of the operation of the criminal justice system.

I wish to compliment the hon. Minister of Justice on bringing this Bill today. It is a Bill that we, as the Opposition, intend to support because it represents good law. From the lawfulness and constitutionality points of view, I feel satisfied that the Bill proposes a level of proportionality with respect to the intrusion upon fundamental rights, that is sections 4 and 5 rights, which is acceptable under the rubric of section 13 of the Constitution. [*Desk thumping*] I thank the hon. Member for supporting me today.

The constitutionality of the Bill is an important factor to be had because the constitutionality of the Bill itself, with respect to the limitation on the right of publication for instance, as we see in the Bill; or with respect to the rights of self-incrimination; or with an often contemplated right of cross-examination, not being quite a fundamental right, is recognized in some jurisdictions as an important right. Indeed, it is littered in the dicta of many Court of Appeal and Privy Council judgments.

Those rights aside, as they relate to the strict terms of the Bill, there is a wider concept of reasonableness within the meaning of section 13 of the Constitution. I would remind Senators that section 13 of the Constitution provides that any Bill that proposes to derogate from sections 4 and 5 the fundamental rights prescribed in our Constitution must have two factors associated with it.

Firstly, there must be a three-fifths majority in both Houses of Parliament; and secondly, it must be reasonable in a society that has regard for due process and fundamental rights as we do. When you factor the reasonableness of the Bill, seeing that we ought to bifurcate the concept of reasonableness:

- (1) we should look at the reasonableness of the terms and conditions of the Bill, which I am satisfied are reasonable; and
- (2) we should look at the reasonableness of the operation of the Bill in a society such as ours.

I am proposing that we have regard to the fact that a good piece of legislation, well drafted, may not have the reasonable and well-intended effect that we would like it to have. That is the wider concept of reasonableness here, Mr. President.

If you would permit me to engage on that aspect, I think it important that we put on the *Hansard* record, as a Senate, our collective concerns, upon the invitation of my learned colleague, Sen. Abdulah, to have a public discourse in relation to the problems of our society. I compliment him for engaging and opening the debate in that way. We have a good law, potentially, in our hands, this Bill. Why is it good? It is good because it recognizes the progression and development that other jurisdictions have acknowledged in relation to preliminary enquiries.

Preliminary enquiries, as I am sure you are aware, Mr. President, would have started in 1555 under the Marian Committal Statutes. They would have evolved in the English law in the Prisoners Council Act, 1836 and the Indictable Offences Act, 1848 otherwise known as the Sir John Jervis Act. The point is that the preliminary enquiries that we are examining here today started some 456 years ago and in Trinidad and Tobago, in particular, we have had it as a feature on our books, whether amended or not, for the last 175 years.

When we look at that, we will see that our current legislation, like legislation in other jurisdictions, acknowledge the purpose of preliminary enquiries. It is a purpose which has evolved over the years. At first, they were inquisitorial—there were punitive aspects done. Justices of the Peace had the power to dismiss and deal with complaints brought before them. They then became more regulated and structured and the concept of the Grand Jury was removed. This resulted in what has been labelled by Lord Devlin, since 1960, as an ossified form of regulation, which many jurisdictions, not just Trinidad and Tobago, have laboured under.

The ossification of the law came about in a peculiar way because it sought to protect the rights of cross-examination in the scrutinization of a prosecution's case, such that the level of scrutiny could get rid of frivolous or vexatious bits of legislation. That is the real intent of a preliminary enquiry. It is to scrutinize the prosecution's case to ensure that frivolous or vexatious cases do not come to trial. That is the recognition of our fundamental rights to protection and to respect of the due process of law.

So we have this ossified piece of legislation being the Indictable Offences (Preliminary Enquiry) Act as it currently exists, Chap. 12:01 of the laws of Trinidad and Tobago, but the complaint has been made by Senators opposite and lastly by Sen. Abdulah; he has asked: "Well, you have made this complaint of ossification, why did you, as the People's National Movement, do nothing about it?" That, in a paraphrased way, was what Sen. Abdulah has echoed in these halls. In fact, the hon. Minister of Justice said, if you would permit me to slightly

paraphrase him, he spoke about the People's Partnership Government coming here. Basically, he said that in this jurisdiction, the legislation shamefully lagged behind and that the People's National Movement produced a poorly drafted Bill. He complained that there was no policy behind the Bill and that it was a cut and paste of the St. Lucia legislation. He said that his Government stayed the course and delivered a measure.

I have respect for my seniors and for my learned colleague, the Minister of Justice, but I wish to put on record, in answer to both Sen. Abdulah and to the hon. Minister, that recognizing that we have come 175 years of Trinidad and Tobago legislative history to today's date, it is uncharitable of the People's Partnership to pretend that in the last 18 months, this preliminary enquiries legislation materialized overnight by some edict and magic on the part of the People's Partnership. It is just not true.

Not only is it not true, but it is a slap in the face of all of the 12 users and stakeholders I have just mentioned. It is a slap in the face of the Judiciary of Trinidad and Tobago. It is a slap in the face of the protective elements. It is a slap in the face of the police service. It is a slap in the face of the defence force. It is a slap in the face of the Judicial and Legal Service Commission. It is a slap in the face of the Judicial Education Institute. It is a slap in the face of my learned friend, the Attorney General, because he holds the office of Attorney General. He is not an individual only. He sits as the successor in title in that office and his entire chamber would have been disappointed at the lack of respect shown them because they worked very hard. [*Desk thumping*]

If you were to have some form of inspection for the records that exist in Trinidad and Tobago, more than just 1975, with the greatest of respect to my learned colleague, Sen. Abdulah, or some time prior when I was but a babe; if you were to have any form of conscious inspection, anxious scrutiny of the records that exist everywhere, you will note that the Judiciary, in particular, the Ministry of the Attorney General, in particular, and institutions established by the People's National Movement, very proudly conducted analyses of the problems in the criminal justice system and very proudly made recommendations with respect to that system.

2.45 p.m.

I would like to refer to a few, Mr. President, because to say otherwise would be to deny that all of these judicial reports exist. The learned Chief Justice from year to year in producing his annual reports as a measure of accountability by the

Judiciary—they being under no obligation per se to do such—has, in 2006 to date, in every annual report spoken to active measures to the reform of the criminal justice system. [*Desk thumping*] Surely, my learned colleagues—[*Crosstalk*]

Sen. Hinds: Sen. Abdulah did not read that. Brother Abdulah.

Sen. F. Al-Rawi:—would be able to reflect upon the Report of the Judiciary appointed to the Remand Court Committee in 2003 to the Crown Prosecution Service visit to Trinidad and Tobago, that report produced by Patrick Stevens on September 12, 2007. Surely they would remember the Joint report of the Trinidad and Tobago delegation on a visit to London hosted by the Crown Prosecution Service Recommendations for Reform of the Criminal Justice System published in May 2008. Surely, my learned colleague, my learned senior, the hon. Minister of Justice would have read that report. Because his own brother on the bench when he sat there, Justice Mark Mohammed, he was the chairman of the Remand Court Committee. Mr. Geoffrey Henderson—now Mr. Justice Geoffrey Henderson—went and participated as the Director of Public Prosecutions. Mr. Gilbert Peterson SC, he participated as the director of the Legal Aid and Advisory Authority. Robin Riley, the project manager of the Ministry of the Attorney General participated. Roger Sealy, the IT Manager at the Ministry of the Attorney General produced and signed off on these reports. How could my learned colleague, the esteemed Attorney General of Trinidad and Tobago, come here today and try to trivialize in crosstalk—[*Crosstalk*]

Sen. Ramlogan: What did you all do with those reports?

Sen. F. Al-Rawi: — the work in relation to this? He has asked a very good question; what did you do in relation to the reports?

Sen. Ramlogan: “All yuh write a next report on the report.”

Sen. F. Al-Rawi: I will tell you what we did in relation to the reports. He is anxious my learned—I am calling you my Lord. I am tempted to slip into court. He is anxious, Mr. President. [*Crosstalk*]

Sen. Ramlogan: “Yuh getting confused.”

Sen. F. Al-Rawi: But the point is, he ought to be anxious because he is under heavy scrutiny. He ought to be anxious because the Attorney General of Trinidad and Tobago is now the drafter of charges in relation to offences in Trinidad and Tobago. I never knew that the Ministry of the Attorney General was responsible for considering the laying of charges as to crimes in Trinidad and Tobago. I think he is out of place to be intruding on those positions. [*Desk thumping*]

Sen. Ramlogan: Mr. President, on a point of order. My learned friend, the hon. Senator, is misleading the Senate. I do not know where he is getting his information from that I am drafting charges. If he wants to be charged because he feels that he has the heavy grounds let him look elsewhere. But the Attorney General has never drafted charges for anyone, certainly not during my tenure. I would like to state that for the record and ask that he withdraw that statement. It is misleading and wrong. [*Desk thumping*]

Mr. President: Sen. Al-Rawi, I am not pointing to the question of the veracity of what you said. But you are not permitted by Standing Order 35(6), to raise the conduct of another Senator on any Motion. I wish to point that to you and, therefore, I think you should withdraw the statement relative. [*Desk thumping*]

Sen. F. Al-Rawi: Mr. President, had my learned colleague, in fact, quoted Standing Order 35(6) I would have agreed with him instantly. Because I certainly do not want to convey that it is his conduct that I am complaining of. On that ground and in compliance to your ruling, I withdraw the comments if they are, at all, perceived as an attack on his conduct. I am, in fact, referring to the wide publicity in the newspapers of Trinidad and Tobago as to charges.

Mr. President, it is linked in fact to this very Bill. Because the laying of charges, which is something that is contemplated by the Bill leading to complaints laid as the Bill proposes—[*Crosstalk*]

Sen. Hinds: The initial hearing is sufficient—

Sen. F. Al-Rawi: Exactly. For an initial hearing and a sufficiency hearing, under clauses 11 and 19 of the Bill, they all contemplate the conjoined effect of the origination, the origin of charges. [*Desk thumping*] It is a fact. I am sure that you can take notice, that there is wide publicity in Trinidad and Tobago in relation to the detention of certain persons under the state of emergency.

Detentions are not, in fact, something which is not associated with this Bill either. Lest my learned friend is looking for Standing Orders to quote, Mr. President, they, in fact, arise because the lawfulness of arrests conducted prior to the laying of charges, for example, or detention orders fits into the construct of this Bill.

Mr. President, the point is that the wider operation and articulation of all of the elements of the criminal justice system must be factored. The Ministry of the Attorney Generals is but one of them. It is important to put on the record in

answer to my learned friend, the Attorney General, what was done in relation to the many reports that I cited, being only a few of the reports. I can tell you what was done because it affects this very debate. It affects the debate insofar as we must consider under the rubric, as I have suggested, of a wider reasonableness under section 13 of the Constitution to pass this Bill; we must consider the effective operationalization of the Bill.

When you look to the operationalization of the Bill, the terms of the Bill itself being palatable, the point by point position subject to what we say for tightening in the committee stage, the terms being palatable, the point is: how do you operationalize this system? Because if it cannot be operationalized, we are back to the wider point of whether it is reasonable to pass the measure as an intellectual and moral concern.

When we look at the operationalization, Mr. President, you will notice—and this is tied back to the answer now—what was done. I can tell my learned friend, the hon. Attorney General, that some of the answers are to be found in the reports of the learned Chief Justice ending in the annual report of 2011, service high performance professionalism, annual report 2010 and 2011 and they are also to be found in the special anti-crime unit report which looked into the Summary Report of the Special Anti-Crime Unit of Trinidad and Tobago achievement 2003-2010. Because you will notice, Mr. President, when you appreciate those reports together that the label—SAUTT—is to be found littered as a material contributor to every single initiative at the Judiciary, in relation to improvements of the criminal justice system.

Mr. President, that is to be factored, as well, when we look to the budget of the operationalization. Because the people of Trinidad and Tobago spent, in the national security budgetary allocations in the years 2003 - 2010, a total of \$1.578 billion. Of that \$1.578 billion, in 2003 - 2004, 1.73 per cent was allocated to SAUTT; 3.15 per cent to SAUTT in 2004 - 2005, 6, 7, 8, 9, 10, the figures go \$4.81 billion, \$8.19 billion, \$7.34 billion, \$8.26 billion and lastly, \$9.41 billion. Out of those measures, Mr. President, very importantly, there was the significant factor of training, both to the Judiciary and, the investigative arms of the police service; the establishment of proper forensics institutes in Trinidad and Tobago meeting certain standards, ISO standard markers, in fact, for the September 28, 2011—but that has been removed by this Government, of course, the establishment and interoperation of arms of the State's protective services working together.

Mr. President, that impact, that bring-in, that importation of best in-class training is to be found in all of the reports. So it did not happen by mistake. And

in direct answer to what the PNM was doing the answer is: it was preparing the system for reform. If you factor, as my learned colleague, Sen. Dr. Wheeler did, what we are dealing with in terms of existing mechanisms, you will notice that in Trinidad and Tobago we have the magistracy, we also have the High Court and Court of Appeal.

So what is the existing system? How do we deal with this? We have how many judges in our system, how many masters do we have in our system? Masters being contemplated here. In fact, at page 50 of the Annual Report of the Judiciary of the Republic of Trinidad and Tobago, you will note that there are 38 judges in Trinidad and Tobago, four of whom are assigned to the Family Court. You will note as well that there are 56 magistrates in Trinidad and Tobago, spread across 13 magisterial districts.

Mr. President, this Bill in fact says—accepted that it is to be put into effect upon proclamation, when it is proclaimed; what is the measure to get to proclamation? How do we take a system of the use of 56 magistrates and filter it all into four masters yet to be found? Because masters as you know are civil masters in the current system.

We are taking the workload, in respect of indictable offences, we are taking it away from 56 persons serving as magistrates in Trinidad and Tobago currently, and we are applying it on to four persons right now one of whom Master Paray-Durity is, in fact, on pre-retirement leave. So we have three Masters of the High Court right now. Albeit that time will provide the solution, the point is, how long must this good law wait when you factor that this Government has thrown away \$1.5 billion of investment of Trinidad and Tobago into the special anti-crime unit, as one example? They have thrown it out of the window. That unit which was training judicial officers—[*Interruption*]—officers of the Judiciary, which would include all members of the judicial services including attorneys-at-law, we being officers of the court. So, they we training judges, they were training attorneys-at-law, they were training prosecutors, they were training forensics experts. This Government, by announcement at the airport fired Brig. Joseph. This Government called the 31 SAUTT officers sent home, the English expatriates, “decrepit old men on canes”, during the budget. This Government said it was going to establish the national NIA, an institute to take over training and management. We have heard nothing about that. This Government said that it was going to improve security coordination of services. We have heard nothing of that. So I am asking, in the context of having thrown away the things which Trinidad and Tobago paid for, having thrown away \$1.5 billion as a mere example of training and investment,

how are you going to operationalize this system? What is going to happen by way of assurance in dealing with the issue of public confidence to the utterances now happening?

Let me give you an example. Operationalizing this system is very much like operationalizing the tribunal for the detention orders under the state of emergency. Let us take a small example, and let us take a large example. This Bill is the large example. This Bill says you have 104,000 cases in the Magistrates' Court, take your indictable offences, your offences triable either way, send them to a master, let them be filtered there on a paper committal basis and then send them to the Judiciary. That is what this system says. That is the large-scale system.

3.00 p.m.

Let us take an example of operationalization PP style. Let us use the example of operationalizing the tribunal established by the Chief Justice, pursuant to the Constitution for the tribunal for persons detained under the state of emergency. We have had the state of emergency short of one week for three months and 15 days, and a tribunal was established by the hon. Chief Justice under the Constitution and pursuant to State of Emergency Regulations, 2011. This happens now, and then what happens?

I can tell you that yesterday, by way of example, I sought to file a request for a review of a Detention Order. The Constitution says it should happen by a tribunal. The Chief Justice sets it up by way of example on operationalization, but do you know what I was met with, Mr. President? In protecting the civil rights and liberties of an accused—well a detainee, not even an accused—at the Hall of Justice, I was met with no number for the tribunal; no office for the tribunal; no fax number; no email address for the tribunal; no form of repeated publication—if one of the hon. Senators is going to stand and say, “Well, it was published months ago”—and no repetition or easy access to the knowledge.

Now, it is important that you file your request for a review of a Detention Order forthwith, because the time runs. The seven-day marker for review runs from the day of filing. We know by way of an example that the state of emergency is due to end on December 05, 2011, unless extended by the Government using its constitutional majority. So, we have a marker date, you want to test the lawfulness of someone's detention; you want to test the lawfulness of our detainment prior to the Detention Order, because one may pollute the other coming up the line; and you have kept people in custody for weeks now, and their constitutional rights are suspended, and the one

mechanism—one little tribunal comprising three eminent persons in the legal fraternity has been set up, but how do you operationalize it, Mr. President? No fax number; no office in the Hall of Justice; no email address; and you cannot get in the door to serve the order. So what happens? You get to the Hall of Justice steps and they tell you, “Well, you know, Assistant Registrar “X” is handling this matter, send it to her in the morning.” When you get to the Hall of Justice, Assistant Registrar “X” is on holiday for a week; no replacement, constitutional rights going on.

In this particular case, by way of example, I am dealing with a real life example of someone detained on a Monday, the Saturday the lawyers find out that the detention is an authorization under section 16(3) of the regulations and it was given to the detainee on Thursday night and, in the meanwhile, no access to lawyers. The lawyers approached the High Court for a writ of habeas corpus on a Saturday. The judge is available, because our rules of the court say, emergency judges are on standby and you have a system in place, but what is PP style, Mr. President?

Sen. Ramlogan: Mr. President, Mr. President—

Sen. F. Al-Rawi: Point of order, please.

Sen. Ramlogan: Standing Order 35(2).

Sen. F. Al-Rawi: And you can sit now.

Sen. Ramlogan: Could you please let me speak? You are not sitting in the Chair. [*Crosstalk*] My learned friend, as an attorney in private practice may well represent his clients but, perhaps, he is unaware of the fact that the tribunal in accordance with the Emergency Powers Regulations is set up by the hon. Chief Justice of the country, and the operationalization of that tribunal is a matter for the Chief Justice and the judicial arm of the State. If there are matters pending before that particular tribunal or matters concerning the operationalization of the tribunal, that is not PP style, that is a matter for the judicial arm of the State, and we have had nothing to do with it because, by law, it is a matter for the hon. Chief Justice.

And insofar as the Chief Justice has set up that tribunal, I would like my learned friend to keep his criticisms—insofar as he is advocating a case for his clients—confined to the court and before the tribunal, but it is improper for my learned friend to argue that case here now. I presume that those clients, their matters would still be before the tribunal, and are likely to come if it is not still there. It is Standing Order 35(2).

Mr. President: Thank you. Senator, the matter being referred to by the tribunal is certainly one that awaits judicial decision and, therefore, it is not a matter which should be subject of discourse here.

Sen. F. Al-Rawi: What judicial decision?

Mr. President: Well, it is a judicial decision. The tribunal has to make a decision on the matter and, therefore, it is not a matter to which you should make reference.

As to the question of where the responsibility lies regarding the preparatory matters that is not for me to decide, but to the extent that you want to refer to matters awaiting that decision, I think it is not a fit matter for discourse here in this debate. [*Desk thumping*]

Sen. F. Al-Rawi: Much obliged, Mr. President. I would be guided by your ruling. I am not referring to the subject matter of anything which is awaiting judicial determination. I am speaking to—with the greatest of respect to my learned colleague—the operationalization of exactly the type of provisions contemplated by this Bill, Mr. President.

So, Mr. President, this Bill proposes, with the greatest of respect to my learned colleague, in its poor attempt, to obfuscate the issues. This Bill refers to an operationalization by the Government of Trinidad and Tobago, which provides the resources by way of procurement and the budget from year to year. [*Desk thumping*]

Mr. President, the financial provisions set out in the hon. Chief Justice's Annual Report show the procurement, through now, the Minister of Justice, as of May 2001—when we came here to vest five provisions in my learned colleague—that the financing comes from the Government. So how do you operationalize something? My friend cannot escape so easily with a red herring to say that my words are an attack on the Judiciary. I leave that for the hon. Gary Griffith and other persons in that Government, not me. [*Desk thumping*] I am a respectful officer of the court, and I am not referring to the subject matter of anything. I am talking about a real life current example as to how you are going to operationalize something as this Bill proposes.

Mr. President: The question goes further to Standing Order 35(8). I do not know where the truth of this lies, but I have heard the Attorney General say that the matter relative to the preparatory work, before you can bring a matter before the tribunal, rests with the Chief Justice. Insofar as that may be the case then, in

fact, the line along which you are going, in terms of the debate, constitutes a question relative to the conduct of the Chief Justice in the administration of justice and, therefore, would breach the Standing Orders. As I say, I am not here to determine where that responsibility lies. I do wish on the other hand to warn you that to the extent that the preparatory work falls within the judicial system, then you are travelling along a line which would be in defiance of Standing Order 35(8). [*Desk thumping*]

Sen. F. Al-Rawi: I am guided, Mr. President. Insofar as the issue relates potentially by way of an interpretation, then I would be guided on that point. But I want to make it abundantly clear, Mr. President, my criticism is for those persons opposite me. [*Desk thumping*] They triggered a state of emergency, and they have given poor reasons and excuses. I am talking about operationalizing this Bill.

So, Mr. President, I think my point has been well accepted that the operationalization by way of funding; by way of resource allocation; and by way of inter-ministerial coordination, as the hon. Chief Justice reflects upon in his annual budget—which I compliment the hon. Minister of Justice for—all of these things start and end with the People’s Partnership/UNC-led coalition and if it did not, that is to belie every single comment of my learned colleague, Sen. Abdulah, and others in crosstalk, who said, “What did the PNM do?” So, if the PP did not do, how it is the PNM did that, Mr. President? [*Desk thumping*] They cannot approbate and reprobate the same point. It is frowned upon; it is tortuous logic; and it is disingenuous. That is what we get from this Government, with the greatest of respect. I am sure they do not mean it willingly. I think that there are honourable men across there.

Sen. Hinds: No!

Sen. F. Al-Rawi: But collectively, if you do not have a plan, you are going to end up in madness. Relative to a plan let me give you an example since it has been a while since I put this out. Where is my legislative agenda, Mr. President? [*Desk thumping*] We have a new Leader of Government Business sitting opposite me and happy to talk in crosstalk constantly. Put him on his legs to stand and I hear nothing. Mr. President, with the greatest of respect, where is my agenda?

In research for this Bill, I looked at the Jamaican parliamentary website and to my utter amazement—I know I cannot use props otherwise I would have printed them in big style and bold fashion and given them to my learned colleague. There was a legislative agenda. It says what is to be considered; when it is to be considered. There is stakeholder participation, and the Opposition of Trinidad and

Tobago is a stakeholder in the laws. It cannot be legislation by “vaps”. We must have a structure. They promised change, where is the structure of that change? [*Desk thumping*] Similarly, where is the structure in this Bill to move us from a well-drafted piece of legislation with a bona fide aim of improving the access to justice; improving the criminal justice system? How do we move from point “a” to point “b”? I cannot accept the constant crosstalk, “It soon coming.” That is what we hear! As big people in this Senate and as hon. Senators, we constantly hear, “It is coming; it is soon coming.” They are not telling you when, but it is coming.

So, Mr. President, where does the operationalization of this Bill materialize? Is it from the best of intentions which paved the way to hell or is it by demonstrable action published for all to see? That is the version I would like to see.

Mr. President, the recommendations for the improvement of the criminal justice system are very sincere recommendations. The one that caused me the greatest moment was that of the Joint Report of the Trinidad and Tobago delegation on a visit to London, the United Kingdom, hosted by the Crown Prosecution Service, May 12, 2008 signed off as a joint recommendation by the hon. Messrs. Justice Mark Mohammed, Mr. Geoffrey Henderson, Mr. Gary Kelly, Mr. Gilbert Peterson; Robin Riley and Roger Sealy. All the people that the hon. Attorney General and the hon. Minister wish us to forget, brought us in our 300-something year journey here or 175-year journey here—our journey from 1555 with the Marian Statutes forward. All of those people did not exist for this Government.

It is peculiar, because the recommendations are, in fact, alive and kicking. The videoconferencing into the remand yards; the amendments to the Evidence Act, brought by the hon. John Jeremie; the use of video recordings; the DNA debate that came from the UNC under Ramesh Lawrence Maharaj; and the PNM, by my learned colleague, Sen. Hinds, all of those inter-articulating elements of the criminal justice system—

Sen. Hinds: “Well, putted man, ohoooo!” [*Desk thumping*]

Sen. F. Al-Rawi: —existed on a path, and we must be honourable and courageous enough to recognize those who participated to bring them here. So, Mr. President, it is important for us to understand that we must have immediate attention to the level of services provided by the stakeholders, particularly, in the person of the Office of the Director of Public Prosecutions.

3.15 p.m.

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

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. F. Hinds*]

Question put and agreed to.

Sen. F. Al-Rawi: Thank you, Mr. President.

Sen. Hinds: So sweet! So sweet man!

Sen. F. Al-Rawi: Mr. President, the future of committal proceedings—

Sen. Ramnarine: You referring to a man like that?

Sen. F. Al-Rawi: He is not a homophobe, he is a loving man. He understands these things well, and there is nothing wrong with saying that you are sweet. Mr. President, the future of committal proceedings in this jurisdiction depends upon an immediate redress of certain core concepts. Mr. President, may I make an urgent plea to the hon. Senators opposite, that they take note of the Chief Justice's clarion call for better wages.

In the opening address of the learned Chief Justice this term, on September 16, 2011, he noted that the magistracy was visited with 104,155 new cases, and he also reflected on some 111 per cent increase in indictments which we are dealing with in this Bill. The hon. Chief Justice did something which I think he must have been hard-pressed to do, he made a call for better wages, as many people in this society who wish to enjoy their public right to demonstrate with respect to wages, for instance, would do, the hon. Chief Justice made the same call. It is important for us to take collective note of that. I am personally not interested in who did not do it before, the Government of Trinidad and Tobago is a collection of the People's Partnership and their associates, it is their obligation to do this, and I wish to make a plea to the Government to urgently consider revisiting the terms and conditions, salaries and emoluments and privileges for the judges of Trinidad and Tobago at all levels, puisne judges included. And that is because if we hope to attract masters to operationalize this Bill, to be the persons who will conduct the committal proceedings as we now contemplate, we have to be able to attract people with an incentive based on terms and conditions.

Secondly, I wish to extend that to the constant acknowledgement of the need to improve terms and conditions for the members of the Director of Public

Prosecutions' office, and that is an institute which I urge the Attorney General, in particular, not only to continue to respect in terms of their independence, in their ability to conduct their work on the drafting and laying of criminal charges in Trinidad and Tobago, but to understand that we need to take a leaf out of the English experience in the development and encouragement of the Crown Prosecution Services by creating a robust DPP's Department, such that there can be participation at the very earliest level of considering charges to be laid against persons. And therefore, complaints to arise under this Bill that we consider using a formula similar to the Crown Prosecution Services of England, where we will have direct attorney-at-law assistance, not only in the courts for the prosecution and management of complaints, but also at the stage prior, and that is in the laying of the charges, drafting of charges against persons who will fall into this net, to be filtered through this Bill when it becomes a law.

That is because one of the critical difficulties that we deal with in the criminal justice system is the fact of an inadequate resource base to manage the complexities of the law. So you are visited with senior counsel on one hand, and then you are visited with a police prosecutor ably intending to achieve a good result, but sometimes outclassed not by his own fault, but by the circumstances of his operation, and we have to balance the playing field.

Mr. President, this Bill also calls very importantly for the rules committee to sit and to draft criminal proceedings rules, and I wish to lay open in the public discourse that we have recommended by Sen. Abdullah, I wish to lay out some of the difficulties that we as civil practitioners face in the management of the civil proceedings rules. One of the main difficulties when the civil proceedings rules were laid and criminal proceedings rules will come to match, it was intended to be built upon a system that appreciated the attorneys' time, because attorneys do not actually not turn up because they are not interested in coming to the matter, but because they are elsewhere.

When we complained last week of the Senate being called on short notice at 10.00 a.m., we had to remind the Leader of Government Business to talk to us about that, because three of us were in court this morning, in fact, I should be in court now, but fortunately I have got someone to hold for me. So the point is the system must contemplate as the civil proceedings rules were intended to, where the attorneys are in the whole case management structure. We were promised in the civil proceedings rules, the use of a computer system which would track attorneys by bar number, so you would know that a date was inconvenient because you were in court number 1 or 2, but that has not materialized.

Another very important point is that this Bill proposes that rules be amended by negative resolution, and back to the sincerity of the need for a legislative agenda. We have a current problem with the civil proceedings rules as they are being amended. Mr. President, what is that problem? Rules are laid in the Lower House, on one side of the term, and then in the Upper House on the other side of the term, and you have no way of understanding how the time frames are to be calculated, or if they are to be calculated what the problems in relation to them are? So what happens is essentially, the rules get lost in the cracks, very large cracks under the PP Government, smaller cracks perhaps in terms of past positions, but the point is a legislative agenda will help.

The Government must do its part. A legislative agenda will help in understanding how we may want to move the negating of rules, as I can give you notice I wish to consider in respect of other things. But the point is, the wider criminal justice system has to be articulated by a statement by a proper plan—a published plan. It is not going to be too difficult for my learned colleague, the hon. Minister of Justice, to do that because, fortunately for him, a lot of work has been done prior by those whom he has succeeded. If he were to simply connect the dots in relation to the work which was in the pipeline, it would make for a material difference in the national scrutiny of the laws and regulations by which we intend to govern ourselves.

Mr. President, there is one smaller point I would like to mention as well, as my time runs quickly, and that is in the use of what the English refer to as the “viper system”. It is in fact a video recording position, referred to by my learned colleague, Sen. Hinds. The viper system really is the admissibility of video recorded evidence relative to identification, or witness statements or witness interviews. The system exists elsewhere; it has been recommended; it lies in the vaults of documents which the new Government has inherited, and I urge them to read the documentation, not only to stand quickly and beat the desk over statements of what was done, not understanding that you are insulting the very offices which you sit in, but to truly reflect upon the documentation and understand where we are headed.

The point is this Government is driving the nation; they are in charge right now. We are in a difficult climate. We are passing laws under a state of emergency; we are passing Bills—we are considering Bills most of which propose to derogate entrenched rights enshrined under sections 4 and 5 of our Constitution. We need to be careful that we do not slowly erode the very foundation upon which our democracy stands by slack attention to the interoperation of the laws which we are passing.

You see, I have great concern, for instance, in relation to the anti-terrorism laws. I stood and raised my concerns in relation to the constitutionality of that Bill. That Bill has come and may yet be utilized. The anti-gang legislation was a similar point, that is why we stood collectively on this side, thus far, to give very strong opposition to my learned colleague, the hon. Minister of Justice, in relation to the DNA Bill. And on that point, I wish to urge my learned senior, my learned colleague, the Minister of Justice, not to frown upon the judgments of the European court. It is accepted that they do not bind us, but most of the entrenched provisions that they consider resemble our laws, in particular, our supreme law, the Constitution, so he ought not to frown in the manner that he does upon the legitimate concerns raised as to proportionality.

So the point that I wish this Government to consider in relation to reasonableness, under section 13 of the Constitution, in particular, section 13 of the Constitution allowing this law to derogate sections 4 and 5 rights, is the reasonableness in the larger operation of the system which we intend to create by this Bill. The Bill in itself is good; there are many comments in relation to the Bill itself which we propose to raise in the committee stage. For instance, including the conflict between clauses 11 and 19, in relation to the appointment of legal aid, because clause 11 contemplates an automatic appointment, which I was happy to hear my learned colleague had referred to now in his opening address, but clause 19 does not, and we need to have parity and equality of systems. And very importantly, the concept of clearing the backlog, because clause 34 of the Bill has the potential to allow the backlog to fall through for want of prosecution, to use that phrase. We are going to have a hard decision as a national community to consider how we clear the backlog.

My recommendation, there being 10,000 cases per year left behind, there probably exists almost 100,000 cases to be dealt with—indictable matters. To go through the system we ought to consider and start a national discussion on an amnesty in relation to some of those offences. They may be very minor offences which are indictable, which we can use a three-strikes rule in respect of, have persons agree to take a count one first strike, record the offence and get them out of the system, but we need to have a system restart.

3.30 p.m.

In the operationalization of this Bill, it is impossible that our 34 judges could take the place of our 53 magistrates, when we are contemplating only four masters at present; so we have to do that. Their five-year term is soon up, faster than they could imagine, and we must be joint in our purpose in leaving the laws of Trinidad and Tobago in a better place than when we found them.

I thank you, Mr. President.

Sen. Elton Prescott SC: Mr. President, I am pleased to be given the opportunity to comment on the Bill to replace the Indictable Offences (Preliminary Enquiry) Act, the Administration of Justice (Indictable Proceedings) Bill.

As could be expected, I should prefer to limit my comments to matters legal, but invariably and because they are often intertwined, I may stray into areas which are not necessarily apt in the mouth of an Independent Senator, but I would endeavour to be as tactful as I can be in the circumstances.

Clearly this much demanded piece of legislation has behind it very good intentions. Clearly if it is operationalized effectively, it will see an enhancement of the criminal justice system. Regrettably I had not been present at the opening to hear the Minister commence this debate, so I am not aware of the extent to which there has been consultation leading up to this Bill being presented. If indeed there was consultation, or such as has been recorded in the *Hansard*, I venture to say that there may yet be need for a great deal more; because there are some areas which the Bill purports to address which need to be thought through a bit longer, a bit more deeply.

It is alarming to know, and I assume that Sen. Al-Rawi was correct, that there are 10,000-odd cases waiting to go through the pipeline. If they are to be treated by any number of masters up to infinity, it appears to me it would be quite some time before we would have mastered—if you would forgive me using the term again—the art of getting through the interest and sufficiency hearings and getting to a trial, not only for those already in the pipeline, but for those cases that are bound to come up again. There seems to be some need for the Minister, at the very least, to convince us that the “actuarial science” required to ensure that the mathematics work effectively, has to be addressed.

Mr. President, there are some aspects of the Bill that I feel I must express my alarm about, and I would wish to address them initially. It appears that the constitutional power of the Director of Public Prosecutions to institute criminal proceedings, to file indictments or to determine whether or not to indict, is under attack in this Bill. “Attack” might be a strong word, it may not have been intended to be so, but nonetheless it does appear so from my reading of it.

We all know that it is entirely within the preserve of the DPP to bring about indictable proceedings, to bring about prosecutions. I note that in the Bill, if I may begin at clause 6(2), which may be found at page 5, that power is acknowledged. It says that where he is of the opinion that a person should be put on trial, the DPP

may prefer and file an indictment against the person, and if he does so the master may issue a summons or compel the appearance of the person before him. But at clause 8 I commence to express the concern of which I speak. Clause 8 may be found on the following page, and speaks of the master being satisfied that a case has been made out. Clause 8(1) says:

“Notwithstanding section 6(1)(b), a Master may, if he is of opinion that a case for so doing is made out, issue a warrant for the apprehension of the accused, where the complaint is without oath.”

Clause 25 however appears to empower the master to order that the accused be put on trial.

If you look at clause 25 it deals with two situations; one where an indictment is not filed under section 6(2) and subsection (2) where it is filed under section 6(2). That is where the DPP has either taken or not taken action. It says that a master is empowered to order that the accused be put on trial, even in circumstances where the DPP has not himself acted to prefer an indictment. I am concerned, unless I have missed the point, that that is the beginning of the whittling away of the constitutional power of the Director of Public Prosecutions.

It is only when you look at clause 25(5), which may be found on the following page, you will note that there is a form in Schedule 5 which the master must follow in preparing his order. For whatever reason, I do not know the reason, it has not yet been explained to me, when you look at Schedule 5, which may be found on page 37, you see down at the very end that the Director of Public Prosecutions may decline to prefer an indictment. So the master, if I may just bring the point home, the master may order an accused person to be put on trial, where the DPP has not himself preferred an indictment, and he must comply with the form set out in Schedule 5, and it is there you see for the first time that the DPP may say to him, “I am not inclined to indict.”

When it is placed in a schedule, it permits the Minister, if I understand how these things work, to simply delete paragraph 2 of Schedule 5. So the DPP’s power to decline to prefer an indictment, could, by the stroke of a pen, be removed entirely from any contemplation by the master of what he must do, when he has determined that there is enough evidence to put someone on trial.

It may be that an ardent DPP may very early in the day challenge the Bill or the Act, if it becomes an Act, and show its inadequacy in the treatment of his constitutional power—I think I put that badly—show its failings in the attempt to reduce him to a mere pen pusher, for want of a better term, in the criminal justice

system in our country. If we are going to defang the DPP, we ought to be very, very cautious. [*Desk thumping*] We must make it clear that we acknowledge he has a constitutional power and it is not up for challenge. [*Desk thumping*] I trust that the Minister in his closing address will put me right on that, and cause me some relief.

Mr. President, may I move to the second point, if it pleases you. This has to do with clause 27 of the Bill, which may be found on page 23. Clause 27 speaks to the discretion of the DPP to prefer an indictment. The language is a bit heavy, but it says at subclause (2):

“Except in the case of any matter listed in Schedule 6, where the Director of Public Prosecutions does not prefer an indictment against the accused within twelve months of the making of an order to put the accused on trial, the accused may apply to a Judge for a discharge and the judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied that in all the circumstances of the case it would be just to do so.”

So there are some matters which are excluded from this, but where the DPP is called upon, by the master that is, to proceed with an indictment, if he chooses, and he does not prefer one, within 12 months of his failing to do so, the accused may seek, by an application to the judge, to have the matter discharged against him.

That is in itself an acknowledgement of his constitutional right to have a speedy trial, and that therefore is laudable. But when we look at Schedule 6 offences, the ones that have been excluded from the provision of clause 25, we find included offences under the Anti-Gang Act. We know that offences under the Anti-Gang Act, very much in recent memory, include some of the most—would petty do?—mild offences, but framed in the context of the Anti-Gang Act they have been made to appear very insidious. We voted for it, so I am not challenging that at all, by any means. But somebody who has been held in relation to an allegation of an offence under the Anti-Gang Act may well be guilty of trivia, or worse.

We have had the recent experiences of 400-odd persons being held under this Act, and then there is nothing really worthy of prosecuting them for. Such a person is not allowed, insofar as clause 27(2) is concerned, to seek to have his matter discharged within 12 months of the DPP being asked to prefer an indictment. So you are held under the Anti-Gang Act for collaborating with some

perceived gang leader, whether or not you have been engaged in it, and you are not permitted by clause 27 to seek to have that matter discharged against you.

The only person, from what I gather, who can cause you to be discharged might be the DPP, if he should withdraw the charges against you in the court. I think it is offensive to someone who has been held under the Anti-Gang Act, and not in relation to a substantially heinous crime, to find himself so trammled by this piece of legislation. [*Interruption*]

Hon. Volney: How do you suggest we take it up?

Sen. E. Prescott SC: It should be looked at again; it should be taken out; maybe that particular set of offences, if you would give some consideration to that; that should please me at least. Maybe I should have published a caveat from the beginning: I have not practised in the criminal court for 30-something years, so I do not know what—I ought not to know how much things have changed, but I can still remember some of the lessons that I was taught and in which I practised. So thank you, Minister, I would be happy if you would give some consideration to that.

Thirdly, admittedly criminal advocates are a threatened species; indeed, advocates anywhere, both in the civil and criminal courts. People in authority are responding in a certain way to attorneys who take their full time to defend their clients, be it in criminal law or civil law. So a preliminary enquiry is the source of the greatest discomfort to people who are in authority, because attorneys take forever; they cross-examine; they cannot go on all day, they have to go to another matter, and preliminary enquiries drag on and on and on, and the attorney is in a position of non-responsibility. I stress non-responsibility to distinguish it from irresponsibility. He is not responsible, (a), to put his client in the box to be tested or (b), to bring the preliminary enquiry to an end. He can dig and dig and dig until he finds something that he could use later on.

3.45 p.m.

So, if the Government, as it has set out to do, is inclined to remove the preliminary enquiries, solely for the purpose of reducing the time spent, I am not against that. I think that we have grown accustomed to the fact that advocates are going to be reduced from their former loquacious capacity to something less.

The fact of no preliminary enquiries ought not likely to mean that an accused should not have the opportunity to question the prosecution's case. I am gathering for a reading of the Bill, that an attorney may make a submission that it does not

contain a sufficiency of evidence, but I do not get the impression that he may test the quality of the evidence before the master. In that, too, if I am in error I expect that I would hear something to the contrary. But there must be a opportunity, if it is not here, to test the quality of the evidence that is before the master. And I say that to go into another point which is a point that Sen. Al-Rawi was making, that we are moving from the criminal sphere into the realm of people who practise in the civil law, the masters, this business of reading and understanding criminal proceedings, evidence, rules, and making a determination on whether there should be a trial of not.

Now granted, those who have come forward with this piece of legislation must be thinking that there are many attorneys out there who have practised in the criminal law, and who would be happy to be invited to sit as a master to do sufficiency hearings, I am of a different view. By the time you get to the point in your practice as an attorney, where you are going to attract the attention of the authorities to be put into judicial office, you do not want to work for that kind of money. You prefer to be better remunerated for your work.

So, the operationalization of this Bill in the hands of the new creature called the master appears to be heading into some troubling waters. We are not going to be able to get off the ground if we do not put into operation, now, a system of training that is expeditious, that is deep, that is sustainable, so that those persons who take on this task are as adept at the criminal justice system as those who practise in it at the Bar.

It is not an easy task, the Minister no doubt must have some formula that he plans to use, but I go back to saying, any little lawyer with five years of experience will tell you, "I am not too sure I want to work for that kind of money in those kinds of circumstances".

I overheard recently on radio an economist who spoke about China and he said that they spending a great deal of money on institutions and infrastructure but productivity levels are low, and therefore, the economic predictions are frightening, that they may not be as strong as we think. We need institutions that are pluperfect almost, so that we must spend money on the institutions. And in particular the justice system is an institution that we are bound to spend money on, we need to strengthen that foundation, but our productivity levels are shaky at best. The resources that we need for this kind of work are minimal at best. So that I really do trust that the authority, the Government, knows where it will find adequate numbers of expert attorneys who are prepared to give their time to the task of being master in what is intended. They have to come up to muster and they have to come up to muster very, very quickly, Mr. Minister. *[Interruption]* I offer you my, at least, empathy, empathy.

The next aspect of the operationalization that causes me some concern is, it is not apparent from the reading of the legislation that we are indeed introducing a system that reduces a hearing to one or two days. There is every reason to think that each matter is going to take some time to work its way through the initial hearing and the sufficiency hearing. Has the Minister told us how time is going to be saved? If you look at clause 11, the initial hearing, and go directly to 11(2)(h) commencing on page 10, where having had the initial hearing he is about to make the Scheduling Order, this is what the master is expected to do. He must specify the date on or before which “the accused shall, if applicable, retain an Attorney-at-Law.”

Everybody in Trinidad knows that the accused has the right to an attorney of his choice. Everybody in Trinidad also knows that the pool of well-equipped criminal attorneys is very shallow. So, if he is to exercise that right and to retain an attorney at law of his choice, the chances are that it is not going to happen overnight, it is going to take some time.

It goes on to say that the Scheduling Order—in making the Scheduling Order the master must specify the date before which “an order for legal aid shall, if applicable, be satisfied.”

I plead innocent here, I do not know how the legal aid system works but I have heard that this, too, can take some time. I have heard that the fees paid to legal aid lawyers are such that there is no mad rush by competent criminal lawyers to take up legal aid matters. So, an accused person who wishes to get legal aid may well find that this, too, takes a further period of days, if not weeks.

Then you go to (h)(iii). He shall specify the date on or before:

“the prosecutor shall file in the High Court and serve on the accused all witness statements and other documentary evidence that he intends to use at the sufficiency hearing, which date shall be no later than three months from the making of the Scheduling Order;”

So, without pulling any wool over my eyes, that is three months, it is not going to be less, because prosecutors are busy people. So we now add three months to the two or three weeks that (i) and (ii) require.

Next, he shall specify the date on or before:

“the accused shall file in the High Court and serve on the prosecutor any witness statements and other documentary evidence that he intends to use...”

Now, it is only fair to expect that an accused person, probably in custody, is going to find putting all this together not easy, in particular, if he has not yet been able to retain an attorney, either one of his choice or because he does not have the money to retain such a person.

So that in the 28 days provided for that in (iv), there is going to be some falling out. It is 28 days to be added to the period of three months and two weeks that I have already identified in (i), (ii), (iii) and, if my mathematics serves me right, we are now into the fifth month.

At the interest hearing stage, Mr. President, [*Interruption*]

Sen. Hinds: Initial hearing.

Sen. E. Prescott SC: I beg your pardon, what did I say? Interest hearing? Forgive me, the initial hearing. Thank you very much.

And if I might digress here to say, what if the accused person does not file these documents in time? Does he go into imprisonment? What is going to happen? Is he going to be denied the opportunity to speak at his trial? Is he going to be denied the opportunity to call witnesses? Is there any intention at all in clause 11(h)(iv) or 11(h) at all, to provide some penalty so that we know what the accused person is facing? I am not advocating penalties at all, but there must be something that says to him, if you do not file within the 28-day period, there will be some disadvantage to you. I trust that he would not be committed without a trial. I cannot imagine that is what the plan would be. [*Interruption*] Thank you very much. I will say as you say, I will not be distracted.

I now move to (v) of subclause (h). It says, the master must specify the date on or before his:

“...sufficiency hearing shall commence, which date shall be no later than twenty-eight days from the date on which witness statements and other documentary evidence are served...”

So that, Mr. President, we would have covered a period of six months between the commencement of the initial hearing—the appearance of the accused person before the master, and the master getting on with the initial hearing, and that is only the first step in this new way of doing things.

Therefore, there needs to be some justification given to the national public about why we are moving to this system. If it is intended to make things more expeditious, this does not seem to support the expeditious completion of criminal

matters. There is going to be a multitude of applications for extensions of time, and where as if they come from a prosecutor, a master may say, "Well, I am not going to allow you to go any further with this delay", if they are coming from an accused person there is a burden, an obligation really on the master to be very cautious about how he treats with the accused, especially if he is not represented.

What I am saying is that there may well be within the minds of those who are framing this legislation a point at which the master's discretion must have a cut-off point, and the accused is going to suffer a loss and there must be some way of addressing that loss. In the way the legislation is framed, I do not have an answer for it, but I am observing the difficulty. If there is going to be a penalty for failure, caution is urged.

I now move to another point which I think that I have touched on. What is the magic of making these High Court proceedings? Why are we not cultivating a cadre of administrative professionals, if you like, who will read the documents, and once they appear to be sufficient on the surface, send them forward to the High Court? The assizes has a judge of experience, a jury, it is the least, if you like, unworthy of the proceedings that we have in the criminal justice system, but you will get a hearing. You will get a hearing before a judge and a jury much faster, if what indeed we had was a group of administrative professionals whose business it is to read the documentation provided by the police or the DPP, and say in relation to it, I think there is a quality of evidence here that placed before a jury, will or will not, result in a fair trial.

Our aim should be a fair trial, done expeditiously; it benefits the accused person, it benefits the prosecutor, it benefits the family of the accused person, it benefits the victims; everybody, it appears, will be satisfied that our systems are working. If we can increase the confidence in our judicial system 100 per cent over the next two or three years or however long the Minister has in mind for this to work, we would have achieved a great deal in this society. If the confidence levels remain as they are, we are going to suffer an explosion at some time, and that goes without saying.

May I move to the next point? Mr. President, I would like the Minister to tell us whether the power of the DPP to issue a fiat to someone to proceed by way of private indictment has been addressed at all, or is it no longer going to be contemplated within the judicial system? At the moment someone may bring private indictable proceedings and have his own attorney prosecute. The power to permit it lies in the hands of the DPP, if I remember correctly.

In preparing this piece of legislation, in pushing forward this piece of legislation, we may be overlooking that power that the DPP has. It is valuable to the citizen because there are some citizens who are not satisfied that the State or authority is the best person to prosecute his case, and he may well have access to a competent attorney, who for good or evil, may bring forward issues that the accused person or the complainant, pardon me, the complainant wishes to have aired. The outcome of the trial remains in the hands of the judge and jury, and in particular in the hands of the jury, but he has had his day in court and it is not something that is guided by a state power.

People have all kinds of reasons for skepticism in this society and they can become very cynical about state authorities. So, I am inviting the Minister to look again and ensure that that power of the DPP to issue a fiat to a private person to conduct private indictable proceedings has been preserved and can mesh within the system that is being put forward.

4.00 p.m.

I move to the next point. It has been said here before and I feel it is my duty to make the observation, in the Act which we are now seeking to have repealed, the Indictable Offences (Preliminary Enquiry) Act, it was available to an accused person to prepare and present to the court, after his committal proceedings, some 10 days thereafter, according to the Act, his alibi, witnesses, what he is going to say, et cetera. An empathetic government preparing this legislation would know that 48 hours just cannot be enough for that. [*Desk thumping*] The citizen presumed to be innocent is bound to be traumatized by the fact of arrest, by the fact of the charge being told to him for the first time and the chances are that he is unlikely to be able to sit quietly and to reflect on where he was or what he was doing five months ago, six months ago, whatever, because as you know there are no limitation periods in indictment. [*Desk thumping*]

If I was asked what I was doing on December 25, 2002, I could probably guess that I was home taking a drink, but the chances are that I was not, I might have been next door. Everybody should know where he or she was Christmas Day except those who do not celebrate it. [*Laughter*] So, within 48 hours of my getting over the fact that I have been brought to the indignity of being arrested, charged, fingerprinted and my DNA swab, or whatever taken, by the time I get over that, to sit back and say, but really, where was I in December 2002? Where was I on Christmas Day 2002? Forty eight hours would have passed, Minister.

Hon. Volney: The DNA would tell you where you were not. [*Laughter*]

Sen. E. Prescott SC: The likelihood is that you pick any random day in the year, even a birthday, and one of us is going to find some difficulty in recalling what he was doing. [*Desk thumping*]

So, we ought to reconsider this. We ought to consider that a certain amount of empathy is required. Whatever has motivated it, and it is probably just the need for expeditious handling of the matters, one has to go back to it and prescribe a time. [*Desk thumping*] It appears that the existing regime is workable so we do not have to invent the wheel all over, all we need to do is to pull it up and say let it remain as it is, and I trust the Minister has heard me on that.

May I just take the time to do something that I had been told I should leave for committee, but I do not wish to do on this occasion? At clause 8(8) on page 7, this is the clause that deals with warrants for the apprehension of accused persons being issued, there is this provision:

“Where there is a delay in bringing an accused before a Master or Magistrate, the police shall provide reasons for the delay.”

My drafting mind tells me that if you do not determine what the appropriate time within which to bring the accused before a master or magistrate is, then a delay could be as wide as it could be broad. Any police officer can find any number of reasons why he has delayed. Could we not consider that there ought to be a fixed time, if it indeed is not here already or established in the laws, I do not know, by which a police officer shall bring an accused before a master or magistrate? If it could be done, I would be happy to see it included in this legislation. While I am on that permit me one other piece of drafting: the Minister would find scattered throughout this Bill and in particular at clause 8(3), (4) and (5) the use of the term “warrant for the apprehension of the accused”.

Now, I have a ready appreciation of what a “warrant for the apprehension of the accused” ought to be, but there is a reference in clause 9(1) to “a warrant...for the arrest of an accused”, and I need to know, how are they distinguishable? What, if at all, is the difference between a clause 8 warrant and a clause 9, warrant, one for his apprehension and the other for his arrest? Now, apprehension has many different meanings but in the context of criminal law I thought it meant, at the very least, putting your hand on the accused and bringing him before some judicial authority. It may be an oversight, it may be overenthusiasm, but I am sure it can be addressed and clarified for all to understand. If we are introducing a new thing called warrants for apprehension—and I know I am stepping into areas that I know very little about—then please clear it up for us.

I now want to address the sufficiency hearings, and I think what I have said could very easily have been captured under—what is it called?—“initial hearings”. By the way, the idea of a bifurcated system of two sets of hearings just does not seem to tally with the haste with which we want to get on with matters. I am really opting for, and articulating a preference for one shot at it. Put it in the hands of some official, I say an administrative professional, legally trained, who reads it, determines the quality, are all the dots lined up, and sends it forward. The sufficiency hearing, Mr. President, appears to introduce a certain degree of ambivalence and it has to do with the standard or quality of evidence which must satisfy the master before he sends the matter forward, if I may use that term.

The confusion to me comes in the use of the following terms. In clause 19 we say:

“A sufficiency hearing shall be held by a Master to determine”—and this is it—“whether there is sufficient evidence to put the accused on trial...”

That is the current test, standard, that is used in the Indictable Offences (Preliminary Enquiry) Act; “sufficient evidence to put the accused on trial.” In the—and I never found out what this really is—notes to the Bill, I think that is what it is called—Explanatory Note it says at paragraph 2:

“The Master would then conduct a sufficiency hearing to determine whether a *prima facie* case has been made out against an accused. If a *prima facie* case is made out, the Master would order that the accused be put on trial...”

So, presumably it is the same test; is there sufficient evidence or evidence of such sufficiency that this person ought to be tried by a judge and jury?

May I now invite your attention to clause 23? Once again I am sure that this, by a wave of a pen, the Minister would run back to his office and change it. It says by way of introducing a new standard:

“For the purposes of a sufficiency hearing, a *prima facie* case against an accused is made out where a Master finds that the evidence, taken at its highest, is such that a jury, properly directed, could properly return a verdict of guilty.”

To those of us who are in the business, this is a matter of concern that the master has to ask himself; of this evidence that is before me, if I put it at its highest, will this person be found guilty? Not whether he should have a trial; a trial is a matter entirely not within his gift. [*Interruption*] The outcome rather; the outcome of a

trial is not within the gift of a master, or the DPP, or a prosecutor, or the policeman; it is the jurors. And one only has to say, does this evidence satisfy the simplest prima facie test, should this person be placed on trial? Not whether he should be found guilty. I have read cases in this country where I saw—I remember a case of a lady who killed her husband; I swear she should have been found guilty and people here would remember it, and the jury said “No”, and we were not happy. Well, I certainly was not. [*Interruption*] I have known cases where I have felt the other way and the cases have gone a certain way. Whether or not the evidence has the quality to bring about a finding of guilt ought not to be within the preserve of the master, or the magistrate, or whomsoever is doing that preliminary enquiry into these matters.

So, Mr. President, through you, I would urge the Minister to, once again, look at this; it might have been somebody’s overenthusiasm, it might have been taken from some case that somebody had read but it has slipped into clause 23 and has created two different standards for determining on the quality of evidence, and we can avoid that confusion if someone were to reconsider it and I would invite the Minister to let us know how he proposes to deal with that.

I take the time here to look at clause 19(5) because that too is of concern to me. Clause 19(5)—it may be found on page 16—provides as follows:

“A sufficiency hearing may proceed in the absence of the accused,”—alarm bells always go up when you want to proceed in the absence of the accused—“except where the accused proves to the Master—

(a) that he is ill...”

Now I pause. The accused is going to be either: in custody; or incommunicado, or both; and probably is ill. A sufficiency hearing can proceed in his absence unless—or rather let me read the exact words—“except where he proves to the Master—(a) that he is ill...”

Mr. President, can you conceive of what I am conceiving? That the truly ill accused person who cannot even be brought from the prison, from the Remand Yard or wherever they keep these people, is going to prove that he is ill from where he is? Is it by way of what; a medical certificate; a telephone call so that he coughs sufficiently strongly, so that the master can be persuaded? I put it lightly, but really, is this not encouraging police officers who are malicious to keep this person away from his trial? Let me read it again:

“A sufficiency hearing may proceed in the absence of the accused,”—he is not going to get an opportunity to speak to it—“except where the accused proves to the Master—

- (a) that he is ill or injured and that the nature of the illness or injury is such as to make him unable to attend.”

Even in the polite circumstances of a civil trial I have had experiences where you have produced a medical certificate and attorneys question it; they want to know who this doctor is that could say that if you have asthma you cannot come to court. Do you think a policeman is going to believe an accused person who tells him that his asthma is preventing him from going to court? Maybe I should just leave it there. I am quite certain that the Minister would look at it and will endeavour to remove that canker on this piece of legislation which allows a sufficiency hearing to proceed in the absence of an accused who is indisposed and thus clearly unable to take any step in his own regard to allow him to be heard by the master. I do not think I need to be clearer than that and if I do the Minister can probably grill me outside of these Chambers.

There are two or three other matters, if you would permit me, Mr. President? Clause 20: it is not clear to me in clause 20 that provision is made for the master to provide to the accused person the witness statements and other documentary evidence that are filed by the prosecutor. There is a provision in clause 20(3) which says that:

“Where an accused is not represented by an Attorney-at-law...the Master may, in the interest of justice, cause all witness statements and other documentary evidence filed by the prosecutor to be read aloud in the presence and hearing of the accused.”

Now, in the environment of a court setting, if you read a charge of fraud to an attorney far less an accused person, or even far less one who is not represented by an attorney, the chances are that they are not going to grasp the nuances of the charge. So that reading aloud all the witness statements and the other documentary evidence in the presence and hearing of the accused—

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

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

Question put and agreed to.

4.15 p.m.

Sen. E. Prescott SC: Thank you, Mr. President, and thank you to my colleagues. Mr. President, I was going on quite a bit, regrettably, about the absence of a provision that ensures that the accused person has in his hand the documentary evidence and exhibits, and so I am urging that they should have it. You know recently there was a report in a newspaper of a magistrate having to set aside a day to read some charges to some persons who were involved in—some public servants and others who were involved in some fraud in one of the revenue authorities. A day to read the charges! I do not remember the number. Can you imagine this accused person sitting down there? He probably got up early in the morning and was dragged out of the prison cell and rushed down to court and spent the entire day listening:

- (a) to the charges being read;
- (b) to the witness statement being read; and
- (c) the documentary evidence being read.

He is not going to remember anything. He is not going to be able to say that I have had a fair hearing in the court and nothing more needs to be said about that. I will now go forward to something else if you would permit me.

Clause 31 should cause many people to be concerned. I know one of those who preceded me did speak about it. It is the one that provides for a restriction on publication of reports of a sufficiency hearing and it imposes a fine of \$150,000 and imprisonment for two years on anyone who shall print or publish or cause or procure to be printed or published in relation to any sufficiency hearing, particulars other than the name, image, address and occupation of the accused person—and there is an exception—and a concise statement of the charge.

Now, firstly, I am a bit concerned that the fine does appear to be out of all proportion to the myriad kinds of breaches that you are likely to find. I am also concerned that in today's plethora of call-in programmes where everybody has access to democracy and can talk about everything under the sun, somebody is going to start a conversation about an offence that has come up for sufficiency hearing. This does not prevent him from doing so. What it prevents him from doing is giving, in the case of a person who is not yet 18 and has been charged with a sexual offence, the name, image, address and occupation of the person.

But if you remember—and I must admit and I do look at the programme sometimes—there is a popular programme on evenings where it is alleged that a

young child of 13 or thereabout, had been raped by a number of men in her area. And any discussion by any number of persons in that area about that was likely to make it very clear to members of the immediate community who we were talking about. Is that going to be a breach of clause 31; and a breach by whom?—the anonymous caller, the programme host, the chap with the red tie or counsel who tends to appear there? One of them appeared last night to my surprise. He was not there physically and it may well not have been his voice, but I have grown so accustomed to it that I am quite certain that a senatorial colleague spoke. I saw the ten o'clock version of the thing and it may have been that they were using some earlier statement, he might have since relented.

Chances are that clause 31 can prove to be much too odious to be found in this legislation. Chances are that a reflection on what it said and how it has said it, could lead to something that is less capable of bringing some innocent, some clumsy oaf who thinks he is wise and tries to use tactful language and ends up disclosing something before a magistrate. Because when you get on radio to talk and on TV, Senator, you start to get a little pompous in your language “and thing,—[*Laughter*] And you feel you talking good and thing”. Sorry, your language may take on a different complexion and in your efforts to appear tactful or diplomatic or bright, you could fall afoul of clause 31, and you do not want that. I trust I am making myself clear to the Minister.

Finally, in the current circumstances, Mr. President, every citizen who is brought before the court on a criminal charge may exercise his constitutional rights to bring an action under the Constitution to say that delay has caused him to be unfairly tried or it is likely to lead to an unfair trial—[*Interruption*]

Hon. Volney: To prejudice him.

Sen. E. Prescott, SC: To prejudice him. Thank you very much. Clause 34 of the Bill which deals with discharging a matter on the grounds of delay needs to be looked at. I will read it quickly and then make my comments quickly and hopefully within time. It said:

“Except in the case of the matters listed in Schedule 6,…”

And there is a long list.

“where the proceedings are instituted on or after the coming into force of this Act and the Master is not, within twelve months after the proceedings are instituted, in a position to order that the accused be put on trial, the Master may discharge the accused.”

The master has before him something—twelve months have passed and he has not been put in a position to order that the accused be put on trial, he may discharge the accused. Not an unusual case. Amazing how twelve months can fly. When I was a child it took a long time to come around to Christmas, but these days it comes in six months.

Clause 34(2)—and 34(2) is where the bane of the thing is:

“On an application by the accused person, a Judge shall discharge an accused if the proceedings were instituted prior to the coming into force of this Act and the trial has not commenced within ten years after the proceedings were instituted...”

If you have been brought to court and 10 years have passed since the proceedings have been instituted, a judge is bound to discharge the accused.

Mr. President, if you are charged in this country with fraud, with currency infringement, with bidrigging and you have enough money to take the matter to the Privy Council at each stage, 10 years later you are bound to find—you may well find, that you are still at the initial hearing or the sufficiency hearing.

In short, current events tell us that it may take 10 years to get out of the masters' court in a sufficiency hearing. And then all you have to do when you cross the 10 years deadline, go before the judge and say dismiss this case; discharge me here. I do not know, because there used to be a doubt in my mind whether discharge means that there are not going to be any further criminal proceedings, but it would certainly lead to further constitutional proceedings if you try to charge him again.

And so, Mr. President, those are the observations that I wish to make. I have, through you, sought to attract the attention of the Minister of Justice whose experience in matters criminal way exceeds mine, and therefore he may well, in short shrift, dismiss all that I have said, but I trust that he will at least give it some thought. Thank you very much.

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you very much, Mr. President. As I watched the last test match between India and West Indies, like so many others anticipating that great battle between Sachin Tendulkar and the bowlers from the West Indies, I noted that the “little master” as he is fondly referred to, lost his wicket to Ravi Rampaul on 94. And at the time I was looking through the papers in preparation for today's debate and it dawned on me that 94 was a significant number for this debate, because preliminary enquiries

have been with us for exactly 94 years in this country. And that is why this Bill is such a revolutionary step in the right direction because it has been almost a century and we have heard from the rather illuminating contributions from those that preceded me, about the history of preliminary enquiries, the inquisitorial nature of it, and how it developed and progressed during the course of the decades that went.

Mr. President, this is part of a powerful package of legislation from the People's Partnership administration in less than two years aimed at revolutionizing the criminal justice system consistent with our pledge to the people of this country to deliver more cost-effective justice in a more expeditious time frame. Permit me to quote from the manifesto which stated, and I quote:

“We...”—aim “to transform the society to create a just and fair environment. We recognize that lawlessness and disorder contribute to the atmosphere in which criminal activity thrives and we will address this challenge head on. But we will also focus on addressing social issues which nurture an environment where crime tends to flourish. We will rethink the prison system, reorganize the justice system and make interventions of a proactive and preventative nature.”

Mr. President, when I wore a different cap as a columnist in one of the newspapers in June of 2009, I wrote a column entitled, “Towards swift justice”. And I pondered in that column: “Why is it that the abolition of preliminary enquiries in Trinidad and Tobago was taking so long?”

I listened to my learned friend, Sen. Al-Rawi speak about all of the papers that have been done and he tried to explain away the inaction on the part of the previous administration. And whilst it is true, governments come and go and regardless of who will occupy the seat of government, there is a powerful infrastructure beneath them that churns out a lot of project papers, a lot of draft Bills, and they do good work, and I therefore pay tribute to the hard-working public servants who constantly work and put their shoulders to the wheels and are seldom seen or heard—[*Desk thumping*]—it is perhaps one of the worst feelings to work and labour and to see that it goes to nought because of the lack of political will by those who occupied the reins and seat of power to actually take it to the finish line. [*Desk thumping*] That is the reality.

It is said that when Gandhi said “do your duty with love or do not do it at all”, when he said that, Stephen Covey, management guru, came years later to say that, if you want to illustrate that statement, give a man \$10,000 and give him

something to do and make use of it. But give another man \$10 million, give him the same thing to do and give him the cheque for \$10 million but shred it in front of him. It breaks his spirit. And that is what this legislation is about. All of the technocrats, all of the stakeholders to which my learned friend, Sen. Al-Rawi referred, it is true that they drafted a Bill; it is true that they worked hard and it is true that we on this side pay tribute to their endeavours, but the way to pay tribute is to demonstrate the political strength and character and wisdom to take it past the finish line by bringing the Bill before the country's Parliament. That is how you do it. [*Desk thumping*]

4.30 p.m.

You know, sometimes when we listen, we think that they occupied the seat of government as though it was a "10-days work", or it was some little three-month thing. The last administration was in power for eight years and every time we bring path-breaking legislation, they have the unmitigated gall and temerity to say, "Well, we coulda do it; we was going to do it; we shoulda do it, but is just we did not do it, but we must take all the credit for it."

The reality is that the People's National Movement has ruled Trinidad and Tobago since we obtained and attained independent self-government for almost half a century and that is why I started out by pointing out that we have been with this problem for 94 years. Of those 94 years, for half a century they were in power, and what they did not do in half a century, we are doing in less than two years and they come to criticize that. [*Desk thumping*]

Sen. Hinds: Rubbish! Rubbish!

Sen. The Hon. A. Ramlogan: And it is not just a matter of ordinary criticism; it is boldface. You see, this has been an Achilles heel in the judicial system for quite some time. It has been a pressure point that has been known to cause distress in the criminal justice system. And when one practises and one uses that system, the system itself is in need of major overhaul. The criminal justice system is simply not user-friendly.

My own personal philosophy has also been that all that we do to reform justice in this country must be to meet the end-user. The court is there to serve the people, not the people there to serve the court. We are but the servants of the people. The judge is a servant of the people and the court system and process must be more user-friendly so that the ordinary citizens whom we are meant to protect and serve in the dispensation of justice can, in fact, access it and use it in a way that is beneficial to them. That is why Sen. Hinds—my learned friend has

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gotten his voice—wants to cut off people’s dreadlocks and says that in the nation’s Parliament. Why? Because a Rastafarian, with some sense, kisses the palm of the Prime Minister’s hand as a mark of respect and a mark of tribute to her beauty.

Sen. Hinds: You kissed her?

Sen. The Hon. A. Ramlogan: He says he wants to cut off the Rastafarian’s dreadlocks.

Sen. Hinds: Did you kiss it?

Sen. The Hon. A. Ramlogan: Then he goes today in the media and says, “Oh, the Government is trying to put Muslims against Hindus. It go ha racial war in the country!”

Hon. Senator: He said that?

Sen. The Hon. A. Ramlogan: He said that today. So on the one hand he wants to hold down somebody, cut off their dreadlocks—Mr. President, whilst he sits here and conveniently preaches glib rhetoric, all the glib rhetoric that comes from him, I fought the case—the only case—for the Rastafarian movement in this country, *Damian Belafonte v the Attorney General*. [*Desk thumping*] I fought it, and that was the case that established the constitutional rights for the Rastafarians in the country. [*Desk thumping*] And he wants to now rise to pay tribute to me. I do not want his tribute; I want him to pay tribute to the young man who kissed the palm of the Prime Minister’s hand as a mark of respect, if he expresses it that way. [*Desk thumping*] Do not promote discord and disharmony. Do not inject race and religion in matters of sensitive national security. Do not inject that! [*Desk thumping*]

Sen. Hinds: Mr. President, I take strong objection. The Attorney General is imputing improper motives. I have never suggested any racial issue as he has just suggested, and I ask you kindly—

Hon. Senator: What did he suggest?

Sen. Hinds: He has accused me of promoting racial disharmony and I call upon you, Mr. President, to ask him to withdraw those words. It is a very serious thing.

Mr. President: I believe, Attorney General, that you have drawn conclusions about statements made by Sen. Hinds. You are at liberty to refer to statements made by him but not to ascribe to them certain connotations, as it were. [*Desk thumping*]

Sen. The Hon. A. Ramlogan: You see, Mr. President—

Sen. Hinds: I want it withdrawn.

Sen. The Hon. A. Ramlogan:—the position of the Opposition as outlined to the media today was that the Government is causing racial war and religious war. That is the position of the Opposition, and I must say, for the record, to mischievously inject arguments along racial and religious lines in matters of sensitive, national security, that cannot be right.

I stand here; I am a proud citizen of Trinidad and Tobago. I went to Reform Presbyterian School. I am a Hindu. I then passed Common Entrance and went to ASJA Boys' College, a Muslim school, for five years. I could say the Muslim prayers; I went to mosque; I eat "sirni"; and after that I went to Pleasantville Senior Comprehensive School, and I am married to a Christian. Last week I was in a Mosque in Princes Town, attending the wedding of my niece who is a Muslim. So when they speak like that, without understanding the underpinning and the social fabric of our society, they must understand what they are attacking.

You see, the reform of criminal justice in the country, is not—to put it in context, what they are upset about is the fact that we have been bringing the kind of legislation that has been lacking in the country for a long time. Imagine the Minister of Justice, in the short space of time that we have been here, we have abolition of preliminary enquiries; the DNA Bill; electronic monitoring and, of course, new prison rules to come. Four pieces of legislation—and you will hear the same speech. You could cut and paste Sen. Al Rawi's contribution for all those debates. Prison rules: "Well, you know, we were working on it and we had it there, and it was there, and we were developing it and, you know, all 'dem come' and do now is they take it and they say, look it here."

Sen. Al Rawi: Cut and paste the DNA one now.

Sen. The Hon. A. Ramlogan: Eight years! DNA, "ah glad you raise it." They passed a DNA law and the DNA law was so impractical and unworkable, we had to come and do it over, and we are working on it; we are receptive. We are not saying we have all the answers. We listen. My learned friend, Sen. Prescott SC, for example—Independent Senator—made some very good points when he spoke. The point he made, for example, about the alibi and the 48 hours' advance notice, these are points we anticipated and we debated them. But where does one strike the balance?

What you are trying to prevent—and the reason you put 48 hours is because it has been our experience in the criminal justice system that when you give too much time, it is easier to fabricate and concoct the alibi. So "fellas does get

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gyulfriend overnight to say dat, ‘I was with she’, and she swear to God, ‘he was with me so he was not at the scene of the murder.’”

So that the idea was that no matter—I heard Sen. Prescott SC, you know, say they might be traumatized and so on, but I have to say in response—and I am willing to consider it; I have raised it with the hon. Minister of Justice already. But I have to say, no matter how traumatized you could be, if the police tells you, “You murdered a man two days ago”, you must know where “yuh was.” Forty-eight hours is too long for “yuh to remember dat”? To jog your memory, maybe we might consider giving it a little longer, Minister. I do not know how much you have in mind, but we will chat. But the idea is to prevent the manipulation, misuse and abuse of the criminal justice system. There is a view that it is weighted too far; the pendulum is stuck in one corner.

So very soon the new prison rules will come and electronic monitoring will come and that will also have a significant impact on the criminal justice system. Permit me to highlight the extent of the problem from the speech of the honourable Chief Justice at the opening of the 2011/2012 Law Term on September 16, 2011. Recognizing the frustration that confronted them, he said and I quote:

“...it takes 5½ years on average, for an indictable matter to move from the stage of the laying of the information to the filing of the indictment in the High Court.”

So what we are about to do in the journey for criminal justice, is to just take out that five and a half years. That is the impact of what we are doing. They were in power for eight years and they could not do it.

St. Lucia has done this, a small country like St. Lucia. In my column from the *Guardian* I cited the St. Lucia example and pondered aloud as to how a small country like St. Lucia could do this and we are still languishing in the past, and could not do it. Now, there have been attempts on a piecemeal basis over time, but when they attempted to make amendments, the amendments did not work. You see, in 1994, for example, the committal of accused persons on the basis of written statements submitted by the prosecution to the magistrate was one medium that was tried, but the problem there was that the magistrate had to take the evidence of the accused person if he desired to give evidence *viva voce*; had to allow cross-examination, if necessary, and written statements were only admissible if there was no objection by counsel. It rendered the whole thing impractical. It was like the DNA law they passed.

You see, at the moment, the dimension of the problem we are dealing with, at the last count from the annual handbook of the Judiciary, for the period

August 01, 2010—July 31, 2011, it is close to 125,000. It is 123,000-something. But close to 125,000 matters would be affected by this Bill. Could you imagine how suffocated the system is, creaking beneath the sheer volume and the weight of these cases? Overburdened! Not to mention, of course, the effect it has on the staff. The magistrates are suffering from burnout; the staff that has to take all the notes and go through all the files to have the matters adjourned. I mean, it is a well-worn cliché to say: “justice delayed is justice denied”, but it really is applicable in this particular instance.

This is a matter that will bring immense relief to many, and it is not just limited to the magistrates and the accused. You see, the police prosecutors, we have to spare a thought for them. They, too, form an important link in the administration of the criminal justice system in the magistracy; the aggrieved victims and their families, and, indeed, the defendants and their families as well.

I practised in the courts and the worst thing you could experience as an attorney is having to calm a witness who has to relive the trauma, the anxiety and distress in their mind, of the crime that was committed against them, and each and every time that matter comes up in the Magistrates’ Court, the night before they cannot sleep. In some cases the week before, they cannot sleep. They have to sit, wide awake, reliving that experience, and the system does it to them time and again because they come to court knowing—everybody knows—the matter cannot start; they already have another trial to go on; it is part heard, but everybody has to come to court. What the system does, it frustrates and wears them out and eventually they lose interest in the matter and you cannot find them, and the casualty is justice.

In highly complex and technical matters, in particular, in relation to financial crimes, fraud matters, this abolition of preliminary enquiries will serve us well because we have known that matters have taken a meandering, endless path through the labyrinth of our criminal justice system for quite some time now, with no end in sight. The endemic backlog that presently exists, this will hopefully dynamite the log-jam and it is going to free up the system and have knock-on benefits down the road.

In terms of consultation, I want to pay tribute to the hon. Minister of Justice. [*Desk thumping*] This Bill is the product and the end-result of a lot of stakeholder consultation, and I am very proud because the stakeholders included the Judiciary, the DPP, the Law Association, the Legal Aid and Advisory Board, the Forensic Science Centre, to name a few. Every single stakeholder connected with the criminal justice system was consulted in this matter.

4.45 p.m.

That is why some of the concerns raised by Members on the Independent and Opposition Benches, we in fact had raised them during the course of our stakeholder consultation. And this is the by-product that we came up with, in terms of what everyone thought was a compromised solution to the concerns raised and the issues that were raised. But that does not mean of course that we are impervious to good ideas. We remain receptive and open to suasion and good ideas as happens from time to time.

Now, in terms of the constitutional issue raised. There is no right to a speedy trial in Trinidad and Tobago. In fact, the last case I did was the case of *Seeromani Naraynsingh* in the Privy Council, and I was an advocate for the fact that our Constitution should be liberally interpreted to give citizens a right to a speedy trial within a reasonable time. I thought it was part and parcel of the fundamental right to a fair trial because part of the concept of fairness is that it imports and carries with it some degree of expedition. But the Privy Council said no, and they have said so in other cases as well, that our Constitution does not provide for a right to a speedy trial, it provides for a right to a fair trial. And that is why in many cases that have gone before the judicial committee of the Privy Council they have rejected that argument. In section 5(2)(f)(ii) of our Constitution the right is:

“to a fair and public hearing by an independent and impartial tribunal;”

In fact, one of the other criticisms, from a legal standpoint, that have been made, is that, since we have had preliminary enquiry for such a long time it may be an entrenched part of our law that predated the Constitution and since it predated the Constitution, it may be saved law and the accused person may now have a vested constitutional right to a preliminary enquiry because this has been with us for such a long time. That argument was in fact raised in a case from Antigua and Barbuda in the Privy Council, a case of *Hilroy Humphreys vs the Attorney General of Antigua and Barbuda*. Privy Council No. 8 of 2008. And this is what the judicial committee said in its reasoned judgment, they rejected the argument that the abolition of preliminary enquiry would deprive an accused person of a right of a fair trial. The concern that this was somehow going to affect the fairness of the trial was raised frontally and squarely in that Privy Council in that case. And, I pointed this out because the Constitution gives you a right to a fair trial—that is your right. Not, to a quick trial but a right to a fair trial, and this is what they say; I quote from paragraph 9:

“In the Board’s opinion it is a mistake to argue that because the old system provided a fair hearing, the change or abolition of some element of that system results in the new system being unfair. Systems of criminal procedure may deffer widely without being unfair.”

So the fact that when we had preliminary enquiries for 94 years, it was felt that this was a fair system of criminal justice and a fair trial, if you were going to remove it now, then *ipso facto* it becomes unfair. That was the argument. And the Privy Council said no, systems differ worldwide, the fact that you remove one element of it does not make it unfair. Your constitutional right to a fair trial remains very much intact. In fact, in response to the argument the old system which predated the Constitution incorporated the gold standard for criminal justice and a fair trial, the board describes that as a rather and I quote

“...extravagant proposition.”

And in paragraph 10 they said:

“By the same token, virtually any feature of criminal procedure (a requirement of unanimity in jury verdicts, for example) would become constitutionally protected. It is unlikely that the framers of the Constitution intended to introduce such rigidity into the law.”

So Mr. President, the right to a fair trial remains intact. What we are doing is amending the criminal procedure. It is the process by which you get to trial. The trial takes place before a judge and jury; all of this is before that. And what we are doing is truncating and curtailing that long process before you actually have your day in court to prove your innocence or for the prosecution to prove its case against you before a judge and jury. That is all it is. It is a procedural change, and that is what it is.

Now on that procedural change, permit me to say that when Sen. Al-Rawi, spoke earlier and he made mention of the shortcomings of the tribunal setup—I want to put this on record—the fact that this tribunal has been appointed in accordance with the Constitution, section 11(1) of the Constitution, and the tribunal published full-page newspaper advertisements—full page—advising the population at large of the fact of their appointment, how to go about challenging a detention order, what to do, what not to do. In fact, procedural guidelines were issued since September 2, 2011. I have asked that a copy be sent to Sen. Al-Rawi, I do not want portion of his fees for assisting in for the proper and effective representation of his client—

Sen. Al-Rawi: I will buy you a roti.

Sen. The Hon. A. Ramlogan:—but the point is that this has been with us since September 2, 2011. It is therefore totally incorrect to suggest that there are no guidelines and no procedures in place by the tribunal. The honourable Chief Justice, who is responsible for establishing and appointing that tribunal, did so

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promptly in accordance with the constitutional requirements of the day. The tribunal having been appointed, they also acted promptly to in fact publish the procedures. And that has been around with us, in fact, review tribunal ready to try detainee cases. I google searched it on my Blackberry and I printed it in five seconds, and there is a lawyer who is representing detainees and cannot find that in five days.

Sen. Al-Rawi: Do you have the regulations? You googled online and found the regulations?

Sen. The Hon. A. Ramlogan: And comes to criticize them. You see the regulations are quoted in the newspaper article. And I will forward it to my learned friend.

Sen. Al-Rawi: Hogwash!

Sen. The Hon. A. Ramlogan: You cannot come here and try to mask your own incompetence or lack of knowledge about relevant criminal procedure by blaming it on the lack of administration by the Chief Justice's Tribunal, that is wrong. [*Desk thumping*].

Sen. Al-Rawi: It does not deserve a response.

Sen. Hinds: Give him a roti.

Sen. Al-Rawi: I will give him a roti instead of a response, good Lord.

Sen. The Hon. A. Ramlogan: I will take the roti, I will take the doubles, I will take the corn soup, I am a Trinidadian. You all need to start eating some good curry and roti on that side too. [*Desk thumping*]

Sen. Al-Rawi: We have no problem with that.

Sen. The Hon. A. Ramlogan: You see their problem is this, they cannot face up to the facts, because while they were dilly-dallying and dancing ballet with the technocrats with the report ready in their hand, they could not bring it to the Parliament. You know they were saying—they are analyzing. It is like the PNM suffered from “analysis paralysis”. Everything you asked them why they did not do it, “Well, we were operationalizing, we were analyzing, we were preparing.” They do everything, but they were never doing. Analyzing, preparing, but doing, they could not do. That is the reality.

While they were doing that—what Sen. Al-Rawi, does not tell this honourable Chamber is that while they were doing that for the eight years they were in power 3,500 people lost their lives. That is the murder statistic: 3,500 citizens murdered,

slain like stray dogs and cats in the streets. Blood flowing like water, and this measure to impact on the criminal justice system, which is a most important weapon in the fight against crime, could not happen.

You see when positive suggestions are made, we are open to them. I myself in consultation with the Minister of Justice, having listened to Sen. Prescott SC and Sen. Dr. Wheeler, there was a point that came to mind. With respect to *inter partes* hearing when you are exercising the power of re-arrests, and I mentioned to the hon. Minister, perhaps we need to take a look at it, because if you serve notice on someone that you are going to have to an *inter partes* hearing to decide whether they should be re-arrested, well, by the time you serve that notice there may not be an *inter partes* hearing, because they may board a boat in Cedros and head up to Venezuela. If you are already freed—once you have served notice that you are going to have a contested *inter partes* hearing to determine whether or not you could re-arrest them, they are not sticking around for that, they will abscond. So that is one of the things we will probably look at as well.

It is the political hypocrisy that comes with the submissions and the representations and contributions that really one finds somewhat—to borrow to a phrase from, Sen. Al-Rawi—disingenuous. Now this does not mean—I heard a lot about what else needs to be done. What we have inherited is an old, creaky, leaking, oil tanker going in the wrong direction.

Hon. Volney: Full of diesel.

Sen. The Hon. A. Ramlogan: We cannot change it overnight. [Laughter] What is that?

Hon. Volney: Full with diesel. [Laughter] Yes, full of diesel and DNA.

Sen. The Hon. A. Ramlogan: Even that too they never even discovered that, illegal bunkering of diesel; you are right. So that tanker, going in the wrong direction, full with diesel too. But the reality is we know—yes, we know, the Forensic Science Centre we have to beef it up. The hon. Minister of Justice is looking into that. In fact, a note was brought to Cabinet, recently; we appointed some more analysts and we are beefing up that. We know that the magistrates—we have to appoint some more magistrates; the terms and conditions. We know that. We know—for instance in the legal profession, I do not know where all the graduates from Hugh Wooding Law School are going, but if you advertise for lawyers it is very difficult to get responses. I know certainly from State's perspective. But there are unemployed lawyers as well.

The reality is that one of the things that we have to do in this country, and I am proud to announce today to the Senate, one of the things that is going to happen in the near future is that, for those citizens who studied hard and for those who are studying hard, like Sen. Deyalsingh, in the ambitious quest to attain a Bachelor of Laws degree to substantiate all those wonderful contributions he makes here, those citizens who pursue their LLB part time, those are the citizens who are single parents, those are citizens who work and do it parttime in the evening. They are mostly mature students and they are studying on weekends while holding down a full-time job and most of the time in the case of women, taking care of their family. And having graduated with the LLB to realize their dream of becoming a lawyer, they have to go to England and do the Legal Professional Course (LPC) and they do not have the money, with the pound sterling, with the fees, and the accommodation and so on. And when finished there they come back here and do the six-month conversion course, and that is how they qualify. What about those from the lower rungs of the socio-economic ladder? What about that single mothers and all those who are have studied to get that LLB, who are not of means, who cannot afford to go to London?

Mr. President, what we are doing; I have received correspondence from those very Universities in London, that have been receiving Trinidad and Tobago LLB graduates, and the correspondence is to the effect that they may be interested in coming to Trinidad to offer the same Legal Professional Course (LPC) in Trinidad. The Government of the Trinidad and Tobago, we have no reason to object to that. It would be that same Legal Professional Course (LPC) you are graduating with, it would be the same six-month programme you are doing. But we are going to give opportunity to those single parents and those who did their LLB part time, so they can realize their dream of being a lawyer, without going to England. [*Desk thumping*]

Mr. President: It is now five o' clock. I propose to take the tea break at this point. We will resume at 8.30 p.m.

5.00 p.m.: *Sitting suspended.*

5.30 p.m.: *Sitting resumed.*

Mr. President: Hon. Senators, before we took the break, the Attorney General was on his legs and by my calculations; he has another 19 minutes of original contribution left.

Sen. The Hon. A. Ramlogan: Thank you very much, Mr. President. Mr. President, permit me to highlight some of the benefits and the advantages that will

come out of this change in the law. This new procedure proposed by this Bill will replace what was a protracted, cumbersome preliminary enquiry procedure, and introduce a more concise, a more methodological and streamlined process by virtue of what is now called the sufficiency hearing.

The sufficiency hearing will allow for the transfer of indictable matters to a High Court judge within weeks of the first appearance. This, of course, will reduce the pretrial waiting time, and hopefully, it will crystalize those pretrial issues that will allow for the early resolution of those issues and that will move the case along.

Mr. President, this country has really witnessed a small revolution in its own right on the civil side with the introduction of the civil proceedings rules of court. Lawyers who kick a fuss about it, we have all fallen in line as it were, and we are doing witness statements; we are going to case management hearings and we have sanctions being imposed as a matter of routine course. The fact of the matter is, whether we like it or not, when one looks at the statistics, it has really allowed for a more efficient run in the administration of justice. And that is something that was mentioned, I believe, by one or two colleagues who mentioned the need for further procedural reform in terms of case management in the criminal justice system.

I want to say that I support that fully and I believe that the hon. Minister of Justice is, in fact, working on bringing legislation to have some procedural reform in the criminal justice system. Because it cannot be that the system is one that is conducive to the kind of easy manipulation that we see taking place in some instances. Mr. President,—

Mr. President: Attorney General, if I may? I may have misled you—it was nine minutes I meant to say that you have in finishing your contribution.

Sen. The Hon. A. Ramlogan: It is a good thing I was only prepared to speak for a further five. [*Laughter*] Mr. President, the treatment of witnesses will now vastly improve because once you have cases that are being called and adjourned, what happens is that you expose the witnesses involved in the matter to further opportunity for harm to come to them, for them to be eliminated, intimidated, harassed and so forth. We saw that in the Dole Chadee trial and we have seen it in other trials. So it is my hope that this Bill, when it becomes law, we will see the kind of efficient administration of justice that we have all hoped for on the criminal side for a long time.

In terms of case management, the case-flow management is such that we had extended on a previous occasion, the period of remand so that prisoners can now be remanded for a longer period than before. That means less transportation to

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and from court when your case is not about to be heard. The idea really must be that you really must come to court with your witnesses when you know the trial is going to start.

There is not much point asking someone to come to court repeatedly with all your witnesses in the full knowledge that the trial is not going to start, and to have magistrates barking out and police officers shouting out names in the corridors, as if you are really the accused, or as if you really did something wrong when you are really there to support the administration of justice. That is why we say the system must be user-friendly and the philosophical underpinning for the criminal justice system must be that the courts are there to serve the interest of the people and the people themselves rather than the people being there to serve the courts.

I had clients, and it is a very very cold and intimidating experience to appear in a Magistrates' Court. You are herded together like cattle, sheep, goats, fowl—everybody in one—and then they call your name, and there is a police officer by the door calling your name and the man—and they are going down the road; it is a relay; they are echoing it, and your name calling throughout that courthouse and poor you—and God forbid that you happen to go to use the washroom at that point in time, well, you know, “crapaud smoke yuh pipe”. [Laughter] But that is the reality. And bandit and thief mixing with victims and witnesses.

Sen. Beckles: And lawyers.

Sen. The Hon. A. Ramlogan: And lawyers. Well, I included some of them in the bandit category. [Desk thumping and laughter] [Crosstalk] The commingling—everyone is there.

Sen. Beckles: Do not think that is a joke, you know.

Sen. The Hon. A. Ramlogan: Everyone is there and it cannot work because what you have is the same bandit that robbed you, staring you in “yuh” eye and eye-balling “yuh”; measuring “yuh from yuh head to yuh toe, from yuh *chhaanhee* to yuh lil’ big toe”, up and down. [Crosstalk] Right here, “yuh *chhaanhee*”—right up here. If my learned friend, Sen. Hinds were here, he would have pointed that out to you in a second. [Crosstalk and laughter] But, these are our realities, and yes, a great deal of work needs to be done but we are working assiduously on trying to eliminate some of these problems.

Another point—foreign-based witnesses—how many cases we have and the State has to bear the cost of bringing in these foreign experts? These foreign experts, they have to come in and you have to fly them in, and when they come to Trinidad, they want to be put up in the Hyatt, and they want to come two days

before to settle down and let the jet lag wear off—whether it is two hours they fly or five hours, or ten—and they make a “lil” vacation out of it and “dem” glad when the case come and postpone every time because that is a “lil” free trip for them every time. This will now, hopefully, eliminate that; the expert witnesses and so on can come and testify on the day of the trial itself.

Pretrial publicity: the longer a case is in the system being called and adjourned and that is at the preliminary enquiry stage, then the greater the potential for adverse pretrial publicity or wrongful reporting and so on. Now, in a more focused manner, we will have a streamlining of the criminal process that will redound to the benefit of justice in this country.

Now, I hasten to add, it is not just about the victim, it is also about the accused. Mr. President, let us remember, for example, the case of Seeromani Naraynsingh. The magistrate freed Prof. Vijay Naraynsingh and said that although he was committing Seeromani Naraynsingh to stand trial for murder, he said that the evidence was tenuous. Because murder was a non-bailable offence, she had to wait in custody and eventually, the evidence that was led before the court was that the “trigger” man said, “Look, I accepted this money and the arrangement took place on the fourth floor of a building in San Fernando.” And what happened? When the records came, that building “bun” down five years before, so he was up in the air, suspended in mid-air having that conversation and the case fell apart. The point is, therefore that the less time that you have to wait, if you are innocent, you will also benefit because you will be freed, and you will be given an earlier opportunity to prove your innocence.

In this new system, one of the problems that have worked against those accused of committing crimes is the protracted disclosure problem that we have. The prosecution—disclosure takes place often on a piecemeal basis and defence lawyers are always quick to complain about it. In this new system, that disclosure—full and frank disclosure—takes place upfront, and it will benefit the defence because they will have more time to prepare. It will also benefit the accused because he will know whether he should throw in the towel early o’clock rather than to waste the court’s time, because we all know that in sentencing, the court takes into account someone who does not waste the court’s time; but when you see early o’clock what the prosecution have against you, you may look at plea bargaining or something and you might shorten the time.

Now, Mr. President, the delivery of justice on time—efficiency, transparency and accountability—those are the watchwords. The knock-on benefits are numerous to mention. You know what is the problem in the magistracy? Right

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now, when you appeal—which is your constitutional right—the appeal cannot be listed to be heard because the notes of the trial have to be transcribed.

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

Motion made. That the hon. Senator’s speaking time be extended by 15 minutes. [*Sen. F. Al-Rawi*]

Question put and agreed to.

Sen. The Hon. A. Ramlogan: I am very grateful to my learned friend, Sen. Al-Rawi. Mr. President, under the Constitution, your right to a fair trial includes your right to access an appellate tribunal. In our country, when you want to appeal a decision against you in a criminal matter, before that matter could be listed for hearing, the Court of Appeal requires the notes of evidence from the court below.

Although, we have moved to digital recording in most courts in the magistracy, we still have some where they do it by longhand, so you have to say—[*Interruption*] Still, most of them do it by longhand; you are right. So you have to tell the witness, “slow down”, “talk less”. I have seen the poor and uneducated who cannot regulate the flow of thoughts in a manner that is consistent with the note taker’s speed and they get confused, and they become easy prey for skilful cross-examination. The people are telling the truth but it is just that they may not be educated or they may be intimidated by the coldness of the courtroom environment.

Sen. Beckles: Like the Parliament. [*Laughter*]

Sen. The Hon. A. Ramlogan: I agree, the Parliament is too cold. Thankfully, we have people like Sen. Beckles, Sen. Baptiste-Mc Knight and Sen. Drayton to warm it up.

Sen. Deyalsingh: Feminist.

Sen. The Hon. A. Ramlogan: And I meant that in a very beautiful way.

Sen. George: Yes indeed!

Sen. The Hon. A. Ramlogan: But the point is that we still have that, to tell the witness to slow down and so on, and then the magistrates are overburdened and at some point in time—they are humans too—they might become irritable and you might say, “Well, look, I tell you slow down already,” or something. It really dislocates the witness, and sometimes I always say, a court is not necessarily about truth or justice; it is about law being applied to admissible evidence. And

law being applied to admissible evidence may sometimes produce the truth and justice but there are many times, perhaps, it may not. Who knows?

But the point is, insofar as the evidence that the law must be applied to insofar as that evidence forms the substratum and the template for the journey for justice, then we must make it easier to get that evidence. Let the witness be able to speak freely; let the witness be able to concentrate on the question that is posed and formulate the answer in their mind rather than have to worry about the hostile atmosphere and environment that they feel that they are in; and this Bill will also help that. We are trying to change how we do things.

But, when we eliminate the preliminary enquiries, one of the great hidden benefits from a practical standpoint is that there will be less notes of evidence to type. And because there will be less notes of evidence to type, those people who actually do the transcriptionist work—and today, I want to pay tribute and salute those heroes—like our own Hansard reporters in the Parliament [*Desk thumping*—our computer-aided transcriptionists in the courts and those who generally transcribe all those notes, they are unsung heroes; they are pillars in the administration of justice. They will now be able to focus their energy and time on typing up the notes for matters where there is an appeal pending, because you cannot do two at the same time—your trial going on today and you have an appeal filed since last year.

Furthermore, magistrates have to give reasons for their decisions. So sometimes, you find a case, if you are lucky, you get the notes of evidence sent up to the Court of Appeal, and the Court of Appeal is ready to list the matter but then they discover that the magistrate has not provided his or her reasons for the decision. Why is that? The magistrates themselves, they have many matters, they are overworked; they are hearing cases and so on. If we cut out the preliminary enquiry, magistrates will now also have more time to actually write those reasons so that the right of appeal can be exercised in a much more efficient and effective manner.

Police prosecutors form an integral part in the criminal justice system in the magistracy.

5.45 p.m.

I remember I served as junior counsel in the Lord Mackay Commission of Enquiry into the Administration of Justice. When we conducted that commission of enquiry, a discussion was taking place about whether we should replace police prosecutors with lawyers in the Magistrates' Court. I remember Lord Mackay of

Clashfern, who was Chairman of that Commission of Enquiry, said what his experience was and—they had conducted site visits in our courts—he sat and he observed and he found that the police prosecutors were of the highest quality in our courts. He said that some of the police prosecutors were better than the defence lawyers. I want to echo those sentiments. Some of our police prosecutors are better than some of the defence lawyers in court and it is just that the police prosecutors, we have not given them their due recognition and the level of esteem that they deserve.

I am hoping—right now we have a Member from the other House, Miss Donna Cox. We have the Chairman of the Law Reform Commission and representatives from the relevant stakeholders reviewing reform in the police service. One of the plugs I intend to make is for police prosecutors who perform yeoman service to the administration of justice time and again, because many of them are not—they stay awake all night preparing to come up against serious lawyers and there is no inequality in the clash of arms in that court and we must recognize and pay tribute to them. But, they will have more time now to properly train and equip themselves and also train others, because we will be building more courts.

The hon. Minister of Justice has brought to Cabinet and we have already approved—and the end-user, the judicial arm of the State—a design and the hon. Minister of Justice is going to build more courts. We recognize we need that as well. That is going to take place.

The written witness statements that are going to be required now is a huge step in the right direction. It is a Herculean task for magistrates to constantly have to try and ferret out evidence and put the case together as though it is a jigsaw puzzle. While the case is going on, you can see them trying to grasp one in different directions to piece the case together as well. But, this new procedure that would allow for written witness statements instead of giving viva voce evidence is bound to assist, because they will have—they will be able to take a panoramic overview of the case while it is in its infancy, so it can be properly case-managed, so that we can save time and precious resources.

It is said that the magistrates at the preliminary enquiry stage have been expressing frustration about their conditions in having to go through all of this. Some of the cases are still with us. Some are very high-profile matters and they have been with us for far too long. We are very, very pleased—the People's Partnership administration—to be associated with and to have the honour for political posterity for the benefit of the country, to bring this Bill before the

country's Parliament. This People's Partnership is committed to good governance, and we recognize that in the fight against crime in this country, the administration of criminal justice, the criminal justice system, is an important and effective tool in the fight against crime.

Detection and investigation, yes, we are concentrating on that. There is training of police officers, locally and foreign. We have the Forensic Science Centre and all of the ancillary services; all of the tributaries that flow into the reservoir that constitute the administration of justice in this country. We are freeing up those tributaries. We are dredging that reservoir and we are putting new infrastructure in place, because we recognize that there is a lot of work to be done. We have all rolled up our sleeves. We have put our shoulders to the wheels and we are working night and day for the benefit of the people of this country.

Mr. President, I want to pay tribute to my colleagues on this side and in particular, the hon. Minister of National Security, Sen. The Hon. Brig. John Sandy—[*Desk thumping*] who, at this critical moment in our nation's history, has stood tall and firm for the State of Trinidad and Tobago and protected the integrity and security of the State of Trinidad and Tobago. We would continue to stand beside him and we will join hands and we will protect and defend the interest of Trinidad and Tobago, because Trinidad and Tobago—we have had the horror and the blemish on our proud and cherished democratic rights and freedoms of July 1990 insurrection. We know if we do not learn from our past mistakes, if we give in to the laissez-faire mentality that Trinidadians are sometimes known for, or not so known for, we know that mistakes, if they are not corrected, are bound to repeat themselves. That is why we are very fortunate in this Government to have a man who comes from the belly of the beast, who lived through the 1990 experience, not as a civilian or a mere bystander, but someone who was in the military at the time and has that institutional memory and experience to guide us through these choppy waters at this time in our nation's history.

Those who wish to pour scorn and those who wish to snicker about it, we say we know we are doing the right thing, because we are standing up for the interest and defending and protecting Trinidad and Tobago and the rights of all citizens, because the right of a democratically elected government stands as the fulcrum beneath the rule of law in our society. Law and order depends on it.

Mr. President, in improving the criminal justice system and in operationalizing the changes that we have made, it will take some time, but these pieces of legislation we have brought to this Senate, they are ballistic missiles that strike at the very heart of the problem, and we know it is not a small step but a big step in the right direction.

The hon. Minister of Justice—the design brief for the new courts that has gone out. The courts are designed with the breadth and scope of his experience as a criminal judge, as a prosecutor, as a defence lawyer, all rolled into one, and we know when we come out with these architectural solutions, not only will they be aesthetically pleasing, but they will also be functional and utilitarian in how they are set out.

It took us a long time. As I said, I commenced my contribution by saying it was almost a century that we have had preliminary enquiries; 94 years to be exact. After 94 years, history will record that it was the People's Partnership Government that brought this legislation to this Senate to abolish preliminary enquiries. We thank you. We urge those on the other side to give us their support and I thank you very much, Mr. President.

Sen. Terrence Deyalsingh: Thank you, Mr. President. Before I make my substantive contribution to the Bill, I would like to thank the hon. Attorney General for inadvertently telling us there was a Cabinet reshuffle yesterday and that his new portfolio is Minister of Science, Technology and Tertiary Education. I commend you on the announcement about the LPC programme being brought to Trinidad and Tobago. I do not know what new portfolio my friend, Sen. The Hon. Fazal Karim has, but, all fun and joke aside, it is a good move and I cannot thank you enough.

Mr. President, I rise on this Bill to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and to provide for a system of pretrial proceedings relating to indictable offences and other related matters.

Before I go into the heart of my debate, I want to make some opening comments which are anchored in the words of Sen. Abdullah, in his contribution today. I would introduce my comments by saying that, like Sen. The Hon. Ramlogan, I am a child of originally rural Trinidad. I have had the whole multi-religious, multicultural experience. Like you, I cherish the harmony that we have, and this country was not called a rainbow country for nothing. That term was developed under the last administration, under PNM Governments, UNC Governments in the past and an NAR Government. We have learnt to live harmoniously with each other. The only time unfortunately, when issues that divide us come up, tend to be at election time. That is to be expected. But, never in my 55 years of existence, have I seen issues which we abhor at election time being so much in the front burner as it is since May 25, 2010. It seems that many government spokespersons cannot make a contribution without relating to matters that divide us, rather than unite us, and all it takes is for one idiot of any political

persuasion to throw a match on that tinderbox and blow this whole place to smithereens. I would like to suggest that all of us —and I say all of us—in our utterances, really examine the long-term damage we do and whether it is worth it for the short-term political gain.

Since this Government has been in power, many utterances have been disguised in the form of what percentage of this group was hired, what percentage of this group you will hire now, “who get scholarship, who ent get scholarship”, and then today—I am quoting from the unrevised *Hansard* of Sen. Abdulah. I quote—[*Interruption*] today, November 29.

“The point, is on that day,…”

And he was referring to a day when he was arrested outside the Queen’s Park Oval.

“the Vorsters and the Bothas of this world were laughing at Trinidad and Tobago when people of colour…”

I suppose he meant the police service, “people of colour”

“brutalized people of colour outside the Oval…”

What this sends to the population is that, it is bad for a coloured police force to brutalize people of colour. People, the idiots among us, can take this statement and turn it over to mean, we should bring in other people of other colours to brutalize people of colour. It is open to all sorts of interpretations. I am just saying let us step back from this road and desist from seeing everything in terms of colour.

Mr. President, I get on to my substantive contribution. [*Interruption*] They could trivialize it all they want—[*Interruption*]

Sen. Abdulah: That is your defence for what PNM did?

Sen. T. Deyalsingh:—but the fact of the matter is that since this Government has been in power, they see issues in a particular light, which will destroy the harmonious fabric that we have woven since 1962. That is all I am saying.

Sen. Hinds: Reckless!

Sen. T. Deyalsingh: This Act is about the removal of preliminary enquiries. We are in favour of it, I think, but my contribution is more about a holistic approach and I am going to deal with four issues of comment and four issues of recommendation.

The first issue has to do with the removal of PIs and the decrease in burden on the Magistrates' Court, which will then leave the Magistrates' Court with more time to deal with summary matters, less serious matters, like traffic offences.

6.00 p.m.

If we are to recommend, I would like to start in my prescriptive mode. The Magistrate's Courts are currently clogged, we admit it, but let us look at some of the reasons for this congestion in the Magistrates' Courts. Take traffic offences; if I am caught speeding on the Solomon Hochoy Highway, I have to pay that fine in the Chaguanas Magistrate's Court.

Many times persons clog the Magistrates' Court because they miss that time frame, because they may have to travel, or because they do not live in the area in which they were charged. So for instance, I go to visit Sen. Terance Baynes in Tobago and we go down by Miss Jean for some crab and callaloo and I get charged speeding on the Claude Noel Highway, and I have a plane to catch in two hours, I cannot do that. I have to go back into Scarborough to pay the fine.

The time has come to look at the paying of fines for these offences anywhere, simple common-sense approach to decreasing the backlog in the magistrate's court. The time has come to review the Exchequer and Audit Act so that those fines can be paid online. Former Minister of Public Administration, Kennedy Swaratsingh, had started that initiative with iGovTT and the eConnect. I am hoping that this Minister of Public Administration is continuing with that programme.

Mr. President, as we seek to eliminate PIs we have to look at some of the reasons for backlogs again, and I concur with Sen. Ramlogan that some of the police prosecutors do a good job. But on the other hand—and I have been to the Magistrates' Courts, and have spoken to magistrates, I have spoken to practitioners—not all of the police prosecutors are up to that level. And very often you have police prosecutors who have to defer and seek legal advice from the office of DPP, and cause a delay again.

What I am suggesting is that in order to eliminate that type of delay where the particular police prosecutor may not be up to scratch is that we need to look at two things: either strengthen the office of the DPP to provide more professional prosecutors, and let the police do their work which is gathering evidence, building a case and so on.

I refer to the report tabled in the House of Commons, by Lord Justice Robin Auld, the Auld Report, which called for their Crown Prosecution Service to deliver on a mandate for a strong and independent prosecutorial section and that

is something I think we need here. The office of the DPP needs to be strengthened so that they could do the bulk of the prosecution, however, that does not mean that we cannot take a cadre of good police officers, give them a sabbatical and let them do the LLB programme. What that does, it significantly increases the intelligence quotient of the police service. You will now have policemen who are lawyers and this dovetails with what Prof. Warner was talking about last week when we were debating the strengths and deficiencies of the police service. He was talking—[*Interruption*]

Hon. Senator: Prof. Bernard.

Sen. T. Deyalsingh:—Prof. Bernard sorry, about the issue of training. We can be innovative and take that cadre of police officers who we feel can go through the rigours of LLB training, and have them as professional prosecutors. I think it is an idea which is worth serious consideration and that way you decrease some of the delays and adjournments when some of the police officers who were not trained in the finer points of law are seeking legal advice.

This brings me to the office of the DPP. The office of the DPP has not been treated well since this Government has come into power, and I think the point was raised again today in this Bill before us. There are certain clauses which seek to take away the authority of the DPP. The office of the DPP is enshrined in our Constitution, it is supposed to be an independent body, and many Bills coming before this Parliament seek to decrease the powers and the independence of the DPP, and it is a pattern of behaviour which I think must be stopped.

What are some of the advantages of having a stronger DPP and police trained as lawyers? You will have better determination on the issues of law before going to trial. You will have better determination of the initial charge. Is the initial charge the correct charge? You will have better case control management. You will have more effective prosecution and a lower chance of conviction of the innocent.

The reason I say these last two points: higher rates of effective prosecution and a lower chance of conviction of the innocent, research globally—and before I get into that let me say upfront all professions consist of people, and people are imperfect. Whether you are a doctor, doctor's profession, teachers, plumbers, whatever; no profession is perfect, because we as human beings are imperfect. So when I make my comment now it is not an attack on police, it is merely an observation of the flaws which developed in a system in a profession over time, which can possibly lead to miscarriages of justice.

Mr. President, global research shows that many law enforcement agencies around the world, when they start to investigate a crime and start to gather evidence there is a tendency to focus on the first person they suspect of a crime; and then the build a case around that person whilst ignoring other evidence, or because other evidence may be more difficult to unearth. That has led to increasing rates of conviction of innocent persons.

Research also shows that police tend to pay insufficient attention to the quality of evidence which might be useful as a lead, but which may not stand the test of judicial scrutiny. And we have had the recent experience of the anti-gang legislation, where persons were arrested, taken to court and the evidence could not stand judicial scrutiny.

So we have had the experience here. That experience has been shared worldwide, it is not unique to our law enforcement agencies. So very often that evidence is found wanting at the trial stage. So that is why I am recommending one of two things, or two things: strengthening of the DPPs office, and the possible training of police as prosecutorial persons, lawyers in their own right, especially in the elements of criminal law.

Mr. President, my second theme, my second area of recommendation has to do with a central coroner's court. This idea mentioned in Sen. Tewarie's *Medium-term Policy Framework* at page 33, received Cabinet approval in 2009 by the then Patrick Manning administration.

Sen. Dr. Tewarie: That was government's policy.

Sen. Deyalsingh: Government's policy, not your policy. I apologize, Sir. It received Cabinet's approval in 2009 and I am glad to see that proposal being transferred, because government is a continuum; not everything which was done then is bad—[*Desk thumping*]*—*it needs to be continued. So I congratulate the powers that be on that side for seeing the wisdom in it.

A site in Chaguanas was identified and I want to deepen the debate about the central coroner's court. What is the present system? The present system is that the Magistrates' Court would sit as a coroner's court on certain days to hear matters into unlawful death, unnatural death, suspicious death and so on. So each magistrate under the Coroners' Act is automatically a coroner, persons like the Harbour Master. So if a ship comes in with a dead sailor, under the Coroners' Act, the Harbour Master, I think, is automatically a coroner.

But there are delays in that system and that is why the idea was noted for a central coroner's court. What would be the advantages of a central coroner's court, whether it is in Chaguanas or wherever we put it? It leads to specialization

in that facet of the law, it leads to continual sittings every day of the week, so matters are disposed of quickly. It leads to the development of procedural expertise which would help with case management. It leads importantly to less strain on the families of the deceased, who can have their matters listened to and determined quickly; because the strain on families waiting for an inquest is tremendous. And again it leads to better case management.

If we are to go that way and I think hon. Minister when he was piloting the Bill was asking us, he said he thought about something off the top whether, I think—Minister you could correct me if I am wrong—videotaped evidence could be admissible in a coroner's court? You asked us to consider that? Am I correct?

Hon. Volney: No.

Sen. T. Deyalsingh: No, it was not that.

Hon. Volney: Whether the evidence in the coroner's court could be used as statements.

Sen. T. Deyalsingh: Oh, whether the evidence in the coroners court—right okay, good. Well, I cannot answer that; I will really have to look at it. But what I can say in preparing for this debate today, I did look at the Coroners' Act, Chap. 6:04, Act 15 of 1919, which was last amended in 1996 by the then Attorney General Ramesh Lawrence Maharaj. In reading the Coroners' Act it seems to me as a lay person reading the Act, it seems outdated, outmoded and if this falls under your ambit in the Ministry of Justice, I hope you can take a look at it some time in the future. I recommend that to you, Sir.

Mr. President, following from one of my last points I mentioned the term case management twice. I now turn to case management as a focal point of my contribution today. Case management is an old issue which has bedevilled many legal systems throughout the world. Seeing that we have the common law system based on the English system, we would have followed with great eagerness the case management rules, Civil Procedure Rules which came out of the Woolf reforms in England from Lord Woolf.

Now, we have to look at doing this with criminal procedures. So what is case management? We hear about it. It is not rocket science but it takes much political will to get it done, because it encompasses all the strategies used by the police, law enforcement and the courts. And what is happening with case management now, all these agencies are now able to exploit and use information in ways which they were never able to exploit and use information before; and to manage a case through the justice system, you have things like process mapping where you make

sure you eliminate bottlenecks, you identify where the potential bottlenecks are with process mapping and put strategies in place to deal with it. It is a management tool, process mapping, as Sen. Kevin Ramnarine would know.

If we start to introduce process mapping as part of our newly developed Criminal Procedure Rules, it would help to deliver justice in a more timely fashion, in a more cost-effective fashion. It will help you maximize all your resources from judges to note takers, to everyone. But the bases of good case management for legal purposes have to do with information management and work-flow management, as I alluded to.

What is our current system of case management? And I think some of the outlines are to be found in our Summary Courts Act, Chap. 4:20, Act 9 of 1918, last amended in 1987 and updated up to December 31, 2009. Part III of the Act speaks about the institution of proceedings, how to make a complaint.

Part IV of the Act—hearing and order, hearing of complaint, and so on. And again hon. Minister as a lay person reading through that Act you can see where this Act needs to be looked at. So I am putting it to you that today we are debating a Bill to increase efficiency, but you will also need to look at this Act.

6.15 p.m.

I also looked at the Summary Offences Act, Chap. 11:02, Act 31 of 1921, last amended in 1963. You laugh, but it is true. It is an old Act. I bring up this Act for a particular pet project that I have so, Mr. President, I crave your indulgence and that of the national community for my pet project, which I will come to shortly.

Part I of this Act talks about killing and wounding pigeons, stealing rum, cocoa, sugar, et cetera. It talks about rogues and vagabonds. It talks about incorrigible rogues. It talks about bathing in the Maraval River—bathing in the Maraval River is mentioned in an Act—and it also talks about fireworks in towns and outside towns. This is where I come to my pet project.

Mr. Vice-President—Mr. President, sorry; welcome again.

Hon. Senator: Rogues and vagabonds.

Sen. T. Deyalsingh: Rogues and vagabonds; and you cannot bathe in the Maraval River. Mr. President, it is often quoted that we live in a lawless society, and I agree, but when we speak about living in a lawless society, what we tend to do as exemplars is point the finger at those below us. I was making the point, in my last contribution, that the rights of one person should not trump the rights of somebody else. I dealt with it with the state of emergency and so on. I am not going back there.

How many of us in this Chamber are lawless when it comes to fireworks? That is my pet peeve. Your right to enjoy yourself Old Year's night and Divali cannot trump my right to a peaceful night's sleep. The use of fireworks in a domestic setting is something I abhor and we as a country will not wake up to this menace until one day a container of cheap fireworks is brought from a country that has no regard for standards; we sell it and it blows up in everybody's face, maims and kills about 1,000 persons and then we will get active on the issue. We are lawless, but where does the lawlessness start? So I leave that.

What is our current case management tool, Mr. President? Our current case management tool tends to be manual in nature, labour intensive, which leads to a lot of police fatigue and transposing errors. These are the inputs, and if the inputs are bad to begin with, as Sen. The Hon. Ramnarine will know, the output is also going to be bad.

What is the output of this case management system, which is heavily manual? You will get poor decisions, bad judgments and conviction of the innocent or low conviction rates, which can lead to miscarriages of justice. When we speak about miscarriages of justice and ineffective policing, the name Akiel Chambers always comes up. We have that, but there is also a case of international infamy which matches or beats the Akiel Chambers case. I throw Senators' memories back several years to a case in the United States. You may remember the case.

PROCEDURAL MOTION

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Mr. President, I beg to move that this Senate do sit until the conclusion of this debate.

Question put and agreed to.

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) BILL, 2011

Sen. T. Deyalsingh: Thank you. [*Desk thumping*] Mr. President, we must be all concerned about police inefficiency. We mentioned the Akiel Chambers case and I was going on to the case of international infamy. It is relevant at this time, Christmas time, because this happened on Christmas Day. Senators may remember the case of JonBenet Ramsey of the United States, a six-year-old girl, a child beauty queen, found dead in the basement of her house. The police totally bungled that investigation. They allowed the father to move the body. They allowed people to trample on the crime scene and so on. If we are talking about administration of justice, it is not only the court system, but, as I said, we have to look at the inputs and where the police can make a difference.

Other issues of this manual case management system that the police use will be poor archiving, storage; less than optimal data retrieval and, key in this modern age, the inability to cross-reference evidence, cross-reference cases and look for patterns.

As Sen. The Hon. Brig. John Sandy and the Hon. Minister of Justice would know, career criminals do not commit one crime and they, very often, have a pattern, a modus operandi. If we do not have the capability to cross-reference evidence from case to case, very often we miss patterns and these criminals go free. So when we talk about case management, I would like to see the police focus on enhanced policing and stronger evidence gathering to build a strong, airtight case. I mentioned the issue of training. We mentioned the issue of computerization. Let them build a case and pass it on to a strong, independent prosecutors' arm. That arm would be up to date with the criminal procedure rules, rules of evidence and so on.

Mr. President, as I move on, as we seek to speed up justice and delivery of justice, we are going to have cases reaching the appellate court at a faster rate in Trinidad and Tobago. It means that we now have to beef up the High Courts to which the bottleneck would be transferred.

I am sorry Sen. The Hon. Anand Ramlogan is not here. We are not objecting to the Bill. The points that Sen. Al-Rawi made were not objecting to the Bill. We simply asked pertinent questions as to the readiness of the High Courts to accept the increased workload from the Magistrates' Courts. So when Sen. Hinds spoke about the new courts, it is not to be obstructionist, but to raise the issue: are we ready for operational issues? I always have trouble with that word; I do not know why. It is beyond me. Also, I always say Al-Wari and not Al-Rawi.

When we contribute to this Bill, I urge the Government to see our contributions not as opposition, but as fair comment as to the readiness of the system to accept the increased burden that this Bill will put on it. Please. That is all we are saying because it is admitted that these new courts will not be ready until 2014/2015.

If and when the Bill is passed tonight, assented to, proclaimed and these thousands of cases transferred to the High Courts, what is going to happen? That is the comment we are making. That is not an objection. As I said, more cases will reach the Appellate Court in faster time. This leads me to ask the question: what is the status of our final Court of Appeal and what is this Government's position on the Caribbean Court of Justice? Last week, in my contribution, I said that it seems

to me that this Government has ditched the idea of a Caribbean Court of Justice. Hon. Minister Volney, at that time, said no. Is that still true? Is the Caribbean Court of Justice still on? Is it still an issue?

Sen. Beckles: He is told not to answer.

Sen. T. Deyalsingh: He is told not to answer. The Caribbean Court of Justice, Mr. President, has a very checkered and sad history in Trinidad and Tobago, but what is the Caribbean Court of Justice? What is it?

In researching for the Caribbean Court of Justice, I was taken aback by one thing in particular. If you permit me, the mission of the Caribbean Court of Justice:

“The Caribbean Court of Justice shall perform to the highest standards as the supreme judicial organ in the Caribbean Community. In its original jurisdiction it ensures uniform interpretation and application of the Revised Treaty of Chaguaramas, thereby underpinning and advancing the CARICOM Single Market and Economy.”

Mr. President, I do not think many people in the population understand that part; that the Caribbean Court of Justice has a serious role to play in the further integration of Caricom. I did not know that until I read this. We want to know why Caricom and CSME are dead. One of the reasons is that Trinidad and Tobago does not subscribe to the Caribbean Court of Justice.

“As the final court of appeal for member states of the Caribbean Community it fosters the development of an indigenous Caribbean jurisprudence.”

Mr. President, Trinidadians have served with distinction at the Caribbean Court of Justice. I think Mr. Rolston Nelson has been there since 2005. I think he still serves. The first president of the Caribbean Court of Justice, Mr. Michael de la Bastide, served from 2004—2011. The Caribbean Court of Justice—this is not a debate about the pros and cons of the Privy Council over the Caribbean Court of Justice. That debate was had under the Basdeo Panday administration when they agreed to it, helped finance it and agreed to have it in Trinidad. It was debated under the Patrick Manning administration, where we asked them to support us because it was their baby. Just because they were out of office, the position changed.

For the Caribbean Court of Justice, it is not a matter of if the Privy Council does not want us, because there are some good arguments for keeping the Privy

Council. Many learned judges' counsels have good reasons for keeping the Privy Council as our final Court of Appeal. The issue is not if we should keep it. The issue is: when is the Privy Council going to tell us to go our own way? That is the issue.

“Stop loitering at the doorsteps of colonialism” are the words of Sir Shridath Ramphal. I quote from Sir Shridath's speech given on Thursday, September 29, 2011:

“...that Trinidad and Tobago would withdraw its proposal for locating the Court here if the country did not fulfill its obligations to confer on the Court both original and appellate jurisdiction.”

If we are not going to have the Caribbean Court of Justice—and this Government keeps vacillating on the issue; you get mixed signals. Today it is on; tomorrow it is not on. One administration wants it; one administration does not want it.

“‘It was on the strength of that assurance that the location decision was taken,’ he said, adding, ‘I say no more. I would like to believe that Trinidad and Tobago with its long-standing fidelity to legal process will fulfill its treaty obligations and that issues of location will not arise.’”

We have not fulfilled our treaty obligations. Treaties are solemn pacts between sovereign nations. Your Government sought it; your Government killed it.

“He recalled that more than a year ago, five distinguished Caribbean nationals had warned of the ‘threat being posed’ to the CCJ, which also had the potential to ‘bring down the structures for advancing the interest of the people of CARICOM’.”

So the CCJ is a CARICOM issue. It is a CARICOM issue. It is meant to further integrate CARICOM.

6.30 p.m.

Mr. President, as I said the issue is not if the Privy Council tells us to go, it is a matter of when they tell us to get out. And to bolster my argument, I turn to an article in *BBC Caribbean*, September 24, 2009:

“The future of the Privy Council as the final Court of Appeal for most CARICOM member states has been placed into doubt after comments by Britain's top judge. Lord Nicholas Phillips, has said that the law Lords on the Privy Council, were spending a ‘disproportionate’ amount of time on cases from former colonies, mostly in the Caribbean.”

When I look at this waffling of this Government between the CCJ and the Privy Council, it has to be put into the context that under the Constitutional Reform Act 2005 in England, that Act for the first time enshrined into law and gave life to a UK Supreme Court. The UK has their own Supreme Court. The Privy Council has even been further downgraded. And Lord Phillips became the first President of that Supreme Court. We know what the attitude of the British are towards us.

“In an interview in the UK’s Financial Times newspaper, he”—that is Lord Phillips—“stated that ‘in an ideal world’ Commonwealth countries—including those in the Caribbean—would stop using the Privy Council and set up their own final courts of appeal instead.”

It goes on.

“Recently, a former Caribbean prime minister, in defending the relationship with the Privy Council, said one of the reasons for keeping it was that it was free to the region.”

What is this Government’s reason for clinging on to the “coat-tails of colonialism”? I would love an answer. So it is not about the pros and cons of the Privy Council.

To further give ammunition to my argument for the Caribbean Court of Justice, Mr. President, if you will permit me, I have here a text: Telford Georges, *A Legal Odyssey*. A name I think we will all be familiar with. If you permit me, I turn to page 107 of that text. I am quoting from a speech that Telford Georges gave to the bar association in 1991. He said:

“A decision to abolish appeals to the Judicial Committee of the Privy Council is undoubtedly a grave decision. Although grave, it should not be unduly difficult. It would seem to be very much part of the process of achieving independence.”

We are achieving our 50th Independence next year.

“It would be unthinkable to suggest that the resolution of any issues relating to political, social or even ecclesiastical affairs in any of the Caribbean territories should be referred to an external body. It is not enough to invoke the historical argument for, in each of these areas it was formerly the case that the final decision should be made overseas.”

Sen. George: Point of order, 35 (1). The Senator is being irrelevant.

Mr. President: Senator, I was wondering when you would bring us back to the debate. Perhaps you could show us the connection between the Caribbean Court of Justice which seems to be a matter for a different venue, or a different debate.

Sen. T. Deyalsingh: I thank you, Mr. President. It is legitimately linked to the debate because as we eliminate preliminary enquiries, cases will go before the High Court at a faster rate, the Appeal Court will have cases reaching them faster and the process will take you to the Privy Council. [*Crosstalk*]

Sen. Al-Rawi: Privy Council.

Sen. George: It takes it there anyway.

Sen. Cudjoe: At a faster rate.

Sen. T. Deyalsingh: We are asking if it is we are concerned about justice, are we to wait until the Privy Council tells us to go then you have a backlog of cases waiting for appeal? [*Crosstalk*]

Sen. Al-Rawi: That is right.

Sen. T. Deyalsingh: That is the point.

Mr. President: I find it very difficult to make the connection.

Sen. T. Deyalsingh: Thank you. [*Desk thumping*] But the vacillation over this issue will place us in hot water.

Mr. President, I now turn to some of Sen. Ramlogan's contributions. He spoke about a powerful package of legislation. This Government has the habit of saying: we did this, tick; we did that, tick. Anti-gang legislation; tick. Did it work? No. Data Protection, tick; done, may possibly be unconstitutional. FIU, done, tick, has not been brought back to the Senate even though the hon. Attorney General said he would bring it back for committee stage. We gave them that Bill way back in April, I believe; solemn promise to bring it back; it has not yet come back. The point I am making is that this Government is intent on ticking off boxes for Acts of Parliament. But are these Acts valid? Are they going to work?

DNA Bill; praise the Lord it was not ticked, because that DNA Bill was the most chauvinistic, hubristic Bill I have ever seen in my life. Chauvinistic hubris, and coming from a Government where the Prime Minister said in the budget, every Ministry will be gender sensitive. What do we have to show with all these Bills? Ticks!

The hon. Attorney General said the PNM did nothing in eight years. Nothing in eight years! In one and a half years we have an economy that is stalled; our international image has been damaged.

Sen. Al-Rawi: Tick.

Sen. T. Deyalsingh: Civil liberties curtailed.

Sen. Al-Rawi: Tick.

Sen. T. Deyalsingh: Collective bargaining gone.

Sen. Al-Rawi: Tick.

Sen. T. Deyalsingh: Tick, tick, tick! Race relations not as good as it should be, tick. And you have threats of violence in a primary school. Tick; done, done. That is what this Government has done in one and a half years. Mr. President, as I promised I was not going to be long.

Hon. Senator: “Keep your promise nah.” [*Laughter and Desk thumping*]

Hon. Senator: You educate them, brother; you educate them!

Sen. T. Deyalsingh: To recap some of the suggestions, we are saying to strengthen the DPP’s office, so you could have more prosecutors. If it is you want to have the police involved in prosecutions, train a cadre of police officers. Do that. Let us employ proper case management, let us look at the central coroner’s court; and let us make a decision once and for all on what is our final court of appeal because when these cases reach the Appeal Court because that is the linkage—what is the next step? A final court of appeal. Thank you, Mr. President.

The Minister of Energy and Energy Affairs (Sen. The Hon. Kevin Ramnarine): Thank you very much, Mr. President and good evening to all the Senators of the Senate. I will start off with a disclaimer, I am not a lawyer but of course we have had some excellent contributions in this debate from persons who are not attorneys-at-law and I refer, of course, to our distinguished Independent Senator friend, Sen. Dr. Victor Wheeler. [*Desk thumping*] Of course, we have had a contribution from a gentleman who is aspiring to be a lawyer; the pharmacist/lawyer in waiting, Sen. Terrence Deyalsingh.

Sen. Deyalsingh: “Leave me alone nah man”.

Sen. K. Ramnarine: Tick. [*Laughter*] He always walks with all of his textbooks. I see he walked with the book written by distinguished Caribbean jurist, Telford Georges; tick. Mr. President, after listening to all the contributions there is very little left for me to say. [*Desk thumping*] Tick. But to interpret this, really very quickly, I first of all want to say that we are very proud of the work being done by our very distinguished Minister of Justice. [*Desk thumping*] I happened to be his neighbour in Tower C. He is a couple of floors below me and I could tell you, I have known Minister Herbert Volney—he has so many caps—for

the last 18 months and he is a man who is very passionate about his work, he is passionate about being Minister of Justice, and he is very passionate—I am familiar with the work that he is doing in the St. Joseph constituency and he applies equal passion to his constituency, St Joseph. I want to congratulate him for that.

Mr. President, the role of administration of justice in a modern democratic society is very critical to the functioning of that society. We see what happens in countries where people feel that they have no access to justice, that justice is denied them; they seek to get that justice in other ways.

Recently, I was refreshing myself looking at the movie *The Godfather*. I am sure that many of you would have seen *The Godfather* movies many times and the first episode of *The Godfather* starts with a man who has gone to see Don Corleone because his daughter has been raped and he has not gotten justice; the people who raped his daughter, they have gotten away. And he goes to Don Corleone seeking justice from him and trying to get the Godfather to extract justice on his behalf. This is what happens when people feel that they cannot get justice from the State, or the courts or whatever it might be. So the role of an effective system of administering justice in a society is to uphold civil and political rights, to uphold human rights and ensuring equality of treatment for all citizens.

The matter, Mr. President, of the efficiency of our justice system is a matter that relates to the efficiency of our economy in Trinidad and Tobago. I heard my friend Sen. Deyalsingh speak to the confidence that people may or may not have, in his opinion, in the economy of Trinidad and Tobago. I spent a large part of the last four weeks travelling to Australia, the United Kingdom and Qatar and I could tell you that confidence in this country has never been higher than it is right now. [*Desk thumping*] In fact, based on the data that we have collected—and you could laugh how much you want but the numbers do not lie—there are plans to drill 11 exploration wells next year in Trinidad and Tobago which—[*Crosstalk*]—and there are plans to spend in excess of US \$3 billion in capital expenditure in the energy sector next year.

So confidence in the economy is there and that confidence has a lot to do with people's confidence that they could get redress before the courts, that contracts would be honoured, that the sanctity of contracts is something that the State respects. And Trinidad and Tobago has developed a reputation as a country that respects the sanctity of contracts.

I always use the example of Atlantic LNG. We decided that we would go into the LNG business in 1994. The first train came into production in 1999 and the fourth train came into production in 2005. In that period, 1994 to 2005—I think the government changed on two occasions, 1995 and it changed again in 2002 and we had three or four general elections that project was delivered on time and within budget. It speaks volumes about Trinidad and Tobago and our respect for law and the sanctity of contracts.

6.45 p.m.

So, Mr. President, the Bill before us seeks to make our justice system more efficient and more effective. As the Minister of Justice pointed out, it would shave approximately five and a half years off the entire timeline that is required to go from when one is arrested to when one is finally before the courts. Mention was made about process-free mapping and so on, and in modern managerial technique that is what you do; you look at the process and you try to cut out and eliminate any wastage and fat.

Mr. President, a number of jurisdictions have already gone this way, and the example of St. Lucia was cited. In doing my research for this Bill, I came across the work of one Minister Chuck, who is the Minister of Justice in Jamaica. At this point in time, almost at the exact point in time in Jamaica, they are also moving a similar Bill through their legislature in Jamaica. So Jamaica is also going in that direction. We were told that the United Kingdom has also gone in that direction.

For a number of years, we have been talking in Trinidad and Tobago about the backlog of cases and the length of time it takes for matters to go through our legal system. The Attorney General spoke about the impact that could have, not only on people who are guilty, but people who are also innocent. In doing the research for this Bill, I remember a tremendous amount of work had taken place in this country. As far back as 1972, there was a report done by Carl de la Bastide into the whole system of administering justice in Trinidad and Tobago. We come down to the year 1992, and I have here a copy of the report of the Commission of Enquiry to Enquire into and Report and Make Recommendations on the Machinery for the Administration of Justice in Trinidad and Tobago, and this was in the year 2000. This is more commonly called the Mackay Commission. It was chaired by Lord Mackay of Clashfern. The other persons who were commissioners, at that time, included Justice Austin Amisah, who as I recall may be from an African Commonwealth jurisdiction and also Dr. L. M. Singhvi who would have been from India.

There is a very interesting quotation in this report, and it comes from a former Attorney General of Trinidad and Tobago. Mr. President, if you permit me, I would just read what it says and I would quote from the report.

Over the years there have been a great number of investigations into the court system of Trinidad and Tobago, the most recent of these followed from a statement in Parliament by the hon. Attorney General on May 15, 1992...

Of course, the Attorney General, at that point of time, would have been the late hon. Keith Sobion.

“wherein he expressed deep concerns, inter alia, as to the slow pace of the legal process: the backlog of cases awaiting trial in both the civil and criminal jurisdictions, the adverse resulting effects caused by delays, and the need for an urgent action plan to activate a team charged with the responsibility to provide ‘solutions for immediate implementation to deal with the delay of problems’.”

So, these are words of the late Keith Sobion. The Cabinet at that time went on to appoint one Mr. Dennis Gurley to come up with recommendations to deal with the whole issue of backlogs in the system of justice in Trinidad and Tobago.

Then, of course, in 1995 the government changed and we had a new government in Trinidad and Tobago. I could tell you a number of the recommendations from Mr. Dennis Gurley—one of those recommendations which was to increase the number of puisne judges in the High Courts—were implemented by the UNC administration of 1995—2001.

So, Mr. President, the point is that for a very long time, we have been talking about the length of time matters take before the courts and the backlog, and the burden that is being placed on the courts in Trinidad and Tobago.

Mr. President, in his speech, as acting Chief Justice of the Republic of Trinidad and Tobago in 2007, the then acting Chief Justice—maybe a relative of yours—Mr. Roger Hamel-Smith, also pointed out the need for the elimination or abolition of the preliminary enquiry. So there has been quite a lot of discussion in Trinidad and Tobago about this matter. I understand that the former government had also contemplated doing this, and we are in the Parliament now in 2011, and we are very proud to be the Government at this historic time after 94 years to be actually making this landmark piece of legislation a reality. [*Desk thumping*]

So, Mr. President, I think the Minister deserves a round of applause. He has been working very hard in Tower C. It is a very cold building; it is as cold as this

building. So probably by working hard he is generating some heat in that building, and we are feeling it upstairs in the Ministry of Energy and Energy Affairs.

The advantages to be derived from such a Bill are pretty obvious, and one would be the reduction in the delay before the courts and another would be the whole issue of witnesses which was raised during this debate. Many witnesses bear the burden of having to attend preliminary enquiries repeatedly. In addition, when the case is committed to trial, Mr. President, witnesses must repeat what they said at the preliminary enquiry. So it is as though it is a trial within a trial. If preliminary enquiries are abolished witnesses would not appear in person or be cross-examined, instead their witness statements would be submitted to a master for consideration.

There is the whole issue of witness protection, and we have had an unfortunate history in this country of persons who are witnesses being killed and murdered and so on. As I was researching for this Bill, I remembered one gentleman, Mr. Clint Huggins, who was murdered sometime, I believe, in the mid-1990s and that was in relation to the Dole Chadee trial and so on. Mr. President, I just want to say for the record, Mr. Clint Huggins was somebody I knew. I actually went to primary school with him in Guaico in Sangre Grande, and we grew up together. I believe he went on to become a policeman, and then his life ended in that rather unfortunate way. This Bill before us would eliminate a lot of that threat which is posed to persons who are witnesses.

Being a former economist and being a person who is very religious about cutting cost, I would say one of the advantages of this Bill is the amount of money it would save in terms of judicial time; in terms of the fees that are paid to lawyers—it may not necessarily be a good thing for lawyers or aspiring lawyers like my friend, Sen. Deyalsingh—and it will reduce the burden on our overwhelmed judicial system and make our country's allocation of resources a lot more efficient.

Mr. President, as I said, there is not much to add to some of the very illuminating contributions that were made before. I would simply end by saying that I support the Bill. The Bill is part of a wider strategy. I believe that the whole issue of crime in Trinidad and Tobago has to be treated in a holistic way.

I commend my colleague, the Minister of National Security, for the approach that he is taking to dealing with crime. He is not only dealing with crime at the back end, but he is dealing with crime at the level of interventions in communities

among young people through his mentoring programme, and that has been a tremendous success thus far, and we compliment him for that. [*Desk thumping*]

We are very fortunate, at this point in time. If you really pause and think about it, we have with us here in the person of Minister Sandy, a person who has come from the armed services of Trinidad and Tobago and a true patriot of this country, at this very critical time in our history. We also have a gentleman in the person of Minister Volney who has come from the Judiciary and has brought that experience.

Mr. President, I am a humble part of this Government. I do not want any accolades myself. I believe I must prove myself as a Minister, but I am very pleased and fortunate to be part of a Government with people who have come from such rich careers, and have come to contribute to the Republic of Trinidad and Tobago.

I believe that crime must be dealt with holistically, and it must take into consideration the Forensic Science Centre and how effective and efficient that is. It must take into consideration the whole effectiveness and efficiency of the police service. We must also look at the courts and the prison system which is something this Government is also looking at. At the end of the day, Mr. President, if one were to compare the statistics to the equal point in time last year 2010, I believe that there is a significant reduction—I think the number is over 110 murders less than at the same point in 2010. [*Desk thumping*]

Mr. President, with respect to my own Ministry, there is a tremendous amount of illegal activity taking place in and around the energy sector, and that relates to the whole issue of the illegal bunkering of diesel which is apparently endemic and widespread in Trinidad and Tobago. I would say that the more we find is the more we find. As we detect incidents of this happening, we find more and more of it happening. The subsidy is, of course, \$4.1 to \$4.2 billion for 2011, and as a country we cannot continue with that. Again, I want to thank the Ministry of National Security, the coast guard, the Customs and Excise Division and all the agencies that have been working together in a coordinated fashion to bring this problem to an end.

Mr. President, again, in my Ministry, we have the whole issue of quarrying. The quarry sector comes directly under the Minister of Energy and Energy Affairs. I want to tell the Senate that a few months ago with the Director of Minerals, I went to an area in Matura and we saw what was once pristine land totally devastated. It looked as though a meteor had dropped and exploded. It was

denuded of trees; it was denuded of any life; and it was a barren landscape, and that area was State land. There was no record of anybody having any sort of licence to mine in that area, and we are talking about hundreds of acres of land; as far as the eye could see forest was ripped up. Of course, illegal quarrying is something that we are treating with very seriously at the Ministry of Energy and Energy Affairs. We have a young dynamic team in the Minerals Division that is currently looking at that. We are looking at the whole issue of the collection of royalty from the quarry sector in Trinidad and Tobago.

So, Mr. President, I would not be much longer, and I would just say that I support the Bill and I congratulate the Minister on bringing this very forward-looking piece of legislation to the Parliament of Trinidad and Tobago. Thank you very much. [*Desk thumping*]

Sen. Shamfa Cudjoe: Thank you, Mr. President for the opportunity to make a short contribution to this debate on the Bill to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. This legislation provides for a system of pretrial proceedings for indictable offences. For the record, Mr. President, I am not a lawyer; I am not a legal student or anything of that sort, but I am just going to try to make my contribution from my observation and from conversations that I would have had with a couple of lawyers in Tobago.

Now, Mr. President, we are all aware that our criminal justice system has been crippled by the backlog of cases, and as the Minister said in his presentation, the system is bursting at its seams. As law-abiding citizens, we are often very upset with the length of time that cases take to be solved and brought before the courts. We feel like justice has not been served in a timely fashion, and sometimes it is difficult to see suspects and people who have been prosecuted walking around eight and nine years later and still waiting for a trial, and that gives them chance to repeat the same offences, to commit more crimes and to even commit worse offences. So, the bottleneck in the system frustrates us as the public and it frustrates our expectations of our judicial system. I think it also interferes with our confidence in the judicial system and achieving swift justice and the rule of law and so on.

So, I agree that this process of preliminary enquiry has been very bothersome, cumbersome, lengthy and expensive for us here as a jurisdiction. I think that something should be done about it. I want to congratulate the previous administration for initiating this process, and I want to congratulate this current administration for following through. [*Desk thumping and laughter*] [*Crosstalk*]

This new procedure to abolish the lengthy PI procedure and the judicial process is something that we welcome. In order for this new paradigm shift, this revolutionary measure to create the impact that we intend and we desire, the necessary infrastructure has to be in place and the necessary resources have to be in place in order to ensure that we could really bring this legislation to life.

7.00 p.m.

It is one thing to come here—and you probably would see a pattern in all my contributions, I am asking; how are we going to bring this thing to life? How are we going to make this work? Mr. President, it is one thing to say we have passed 20/30 pieces of legislation over the past 18/16 months, or however long, and then in the end the crime is still spiralling on the street, and we are unable to put criminals behind bars and so forth. We have to ensure that we have the necessary measures and the strategies and the procedures in place to ensure that we bring this thing to life. It is not just about the legislation, this legislation could be perfect, the best that it has ever been in the Caribbean, the best that it has been in the world, but what good is the legislation if it is just that—the legislation?

Mr. President, I think that even with abolishing the preliminary enquiry system and introducing this new groundbreaking measure that is supposed to bring swift justice and so forth, we may not be able to achieve swift justice simply by just introducing this new measure, because there are some other issues that have been ably pointed out by different Senators here today, especially those from the legal profession, and even our gynaecologist/lawyer, Sen. Dr. Wheeler. There are some serious issues in the judicial system that we need to treat with. I would not go into details as to what these issues are because they have already been highlighted by previous Senators.

My concern really is about our capacity to bring swift justice, because as Sen. Deyalsingh said, we are moving cases from the Magistrates' Court to the High Court, and also to the appellate, Court of Appeal. So we have to find a way that we do not shift the bottleneck from one area to another area, there will still be a backup, there will still be a backlog in the system. I noticed that the Senators of the Government side and some of the Senators that would have presented earlier today, both spoke glowingly about—well the other countries are doing it, the United Kingdom has done it, Jamaica is now deliberating this matter, St. Lucia has done it, and little-bitty Antigua and Barbuda has abolished preliminary enquiries and introduced a different system of pretrial.

I think it is important to note that for countries like—I think it is Australia; they had been deliberating this issue of abolishing preliminary enquiries for over 100 years. So the race is really not for the swiftest, it is really about who gets to

the finish line, and gets to the finish line in one piece. We really have to try to get this thing right, and while we talk about St. Lucia, Antigua and Barbuda, when you examine their system they have a good number of judges and the human resources, and facilities in order that their processes will be expedited and that things would run effectively and efficiently. For instance, St. Lucia has its book of rules to treat with the matter of abolishing preliminary enquiry and the different steps that are supposed to be taken, if somebody feels that they have been wronged by a decision that was made by somebody in the judicial system; same thing for the United Kingdom. And one thing I observed here this afternoon, is that I did not hear the Minister or any of the other contributors speak about the rules that we are going to be operating by when we introduce this new system of pretrial procedure.

We usually do something here that I do not like, we go ahead and we support legislation and pass legislation, and the Minister would tell us: “Well, we would create the rules and regulations later”. That is like selling me “cat in bag”, that is like giving me “cat in bag”. I do not know what I am buying. I do not know what I am getting into. I am here voting for this piece of legislation and then in the end you go and do your own thing. Sen. Prescott SC would have mentioned before about the matter of the DPP being on a schedule that could be easily changed by the Minister, so I think we need to get into the practice of trying to bring all the issues to the fore so that we can all deliberate and see whether or not this makes sense for all of us in passing and supporting these pieces of legislation. It is not enough to say, “trust me, trust me, I know what I am doing”, because from your actions, you do not know what you are doing.

Mr. President, Sen. Ramnarine would have mentioned earlier that Jamaica is now considering this kind of legislation, and I want to put on record that in September—I think it was September 09, 2011—this legislation to abolish preliminary enquiries was introduced in Jamaica and the Opposition did not support it. They did not get the support of the Opposition. It was shut down because the members of the Opposition were concerned about not having the capacity and the capability to really expedite the judicial process and to ease up the bottlenecks in the system, and so forth. The Government failed to have that legislation passed because they could not prove to the Opposition, they could not present a proper case to the Opposition as to, really, how is this going to expedite the process and not take the bottleneck from one court up to another court. This is serious business.

I am happy that the Minister gave his word and he promised that this Bill would not be implemented until all the procedures and all the necessary infrastructure and the resources are in place, so I want to really hold the Minister

to his word on that one. He would have mentioned the need to improve services at the DPP's office, the appointment for masters and different improvements that need to be carried out in the forensic centres, et cetera. So I am really holding the Minister to his word on that.

I recognize that the Minister spoke glowingly about having wide consultation with the Judiciary, but I think that he forgot to tell us—and I hope that the Judiciary did caution him about the different problems within the system that need to be addressed before this legislation is implemented, for instance, having a proper witness protection programme. [*Crosstalk*] He said he came from the Judiciary; he knows.

Mr. President, I am going to continue. Issues that need to be addressed like witness protection, this whole matter of not just appointing masters, but training people for these positions. He spoke about just grading up the current magistrates, but we are moving from 53 magistrates in the Magistrates' Court system to about four masters to deal with all these issues. And I just want to ensure that we have enough masters and that they are properly trained, ready and willing and able to take care of these issues and that they are properly compensated so they feel motivated to do this work.

Mr. President, there is a shortage of High Court judges in Trinidad and Tobago, and some High Court judges are calling for better compensation. Now, Mr. President, I came across some information in the newspaper and also in the contributions from the Lower House, that there are over 10,000 court cases brought to the Magistrates' Court per year, and we need to do whatever is necessary to ease this up, but I will come to that later on in my contribution.

These shortcomings that are seen on the national landscape are a bit more critical, a bit more crucial in Tobago. After having conversations with a couple of lawyers from Tobago, we are having problems with—we do not have enough magistrates. We have only three magistrates in Tobago, and one was recently promoted to a position in Trinidad where she is in Trinidad more often, so we are now grappling with having only two magistrates, and that is creating a backlog in our system that we did not have before. I think that that needs to be addressed, whether it is the appointment of another magistrate or some sort of facility, some procedure to help to treat with the shortage of magistrates in Tobago.

I am just raising the issues that relate to the administration of justice in Tobago. At the end of the day the professionals will tell me exactly whose jurisdiction it falls under, I am no lawyer, but I can just bring the issues of my

people to the fore, so let me do my thing. Mr. President, the shortage of a Forensic Science Centre or services in Tobago, we do not have a Forensic Science Centre and practically everything we have to do we have to go to Trinidad. So everything has to be sent to Trinidad if there are cases involving the use of guns, knives, swabs from rape victims, and so forth, blood stains, you name it—we have to bring that to Trinidad. Then there is a problem with the length of time it takes to get the results back. In addition to that, for these samples—whatever you call it—what you are dealing with—the guns and the knives and the swabs and so forth to come to Trinidad, they are sent by police officers, and these are the same police officers that you really need to free up to be in the street fighting crime, and so forth. We are tying up the system simply by not having a Forensic Science Centre, or probably a sub-centre in Tobago to treat with that. Even at it relates to handling the material that you are bringing to Trinidad, police officers need to be trained better in handling the knives and the guns, and the different things that they would have collected from the crime scene to take to Trinidad, to make the administration of justice and the whole law enforcement process easier for us.

I was really wondering if the Law Association and the other stakeholders that the Minister and his Ministry would have consulted would have really taken a look at the issues that Tobago faces in the administration of justice, especially as it relates to indictable offences. The services from the office of the DPP; the DPP staff comes to Tobago every now and then, there is no office in Tobago and there is no resident officer from the DPP's office in Tobago, so I think that there is a need to have a resident officer there because sometimes when the officers come to Tobago to handle our matters they have to hurry to get back to the airport, or sometimes different problems that you would have on the air bridge can result in officers not coming this week or this month, or however often they make their trips. So this could have a significant impact on the administration of justice in Tobago.

7.15 p.m.

Mr. President, just the simple fact that we are separated like that and we rely so heavily on the air and sea bridge, causes a problem for Tobago. For example, today I had to come to Parliament. I had a nine o'clock flight that did not leave Tobago until an hour and a half later. Sometimes that could discourage you, if you are already at the airport, you are coming from Trinidad to handle matters in Tobago for a certain time and you get to the airport and they tell you, "Well, the flight has been delayed." They do not even tell you why it has been delayed, but you might get discouraged and say, "You know what, due to the time, I am not going to go to Tobago." [*Interruption*]

Hon. Volney: We should move to Tobago. [*Laughter*]

Sen. S. Cudjoe: Mr. President, having the proper services from the office of the DPP is critical. This problem of inadequate services related to the DPP's office causes additional problems as it relates to bail. On the issue of bail, I wish to draw to your attention that in order to—everybody knows that bail really depends on having a good deed. That is a serious issue in Tobago, because many of us as Tobagonians do not have titles for the land that we own. Land would have been passed down by family members telling you—your grandmother or great grandmother saying, “Your piece is from the breadfruit tree to the guava tree; your sister’s piece is from the guava tree to the mango tree,” and so forth, and then you pass it down again, another time and another time. That is a real problem when it comes time for you to bail your son or daughter whenever a crime is committed.

Somebody is going to get up and tell me, “Well the Ministry of Justice, in collaboration with the Ministry of Tobago Development would have set up this committee to deal with land titles and so forth in Tobago”; and that is all the Minister of Tobago Development talks about. But since the establishment of this committee, we do not know about their progress. We have not heard any recommendations coming from this committee, and we are really wondering exactly what this board is doing, and what is happening. We are no better off than we were 18 months ago at the establishment of this board, of this committee.

We want to know what is going on with this committee, what is the progress, what are the problems they are having and how soon can we really expect something coming out of this committee. High level experts and professionals in the legal system and from different professions were appointed to this board. We were really expecting great things from this committee to treat with land titles in Tobago, so we are still holding our breath. Please do not let us hold our breath while we continue to watch PP style of prattling and posing. We really want to see some results out of this.

In some cases there is no will, there is no deed, just generational inheritance and no proper boundaries. In the Ramesh Lawrence Maharaj SC days, legislation was introduced, or some regulation was introduced to abolish the use of what you call a professional bailor. This was very instrumental for Tobagonians, because we already do not have proper land deeds, so we would use the professional bailor. At this point we cannot use the professional bailor, so it is critical to get this issue sorted out.

As I mentioned before, there is a shortage of High Court judges nationwide. In Tobago we do not have any High Court judges, but we rely heavily on that video conferencing system to have access to High Court judges in Trinidad. Not every time technology is on your side, and we sometimes have technical difficulties with the video conferencing system, but I guess that is nationwide. I want to say thanks to the PNM for the wonderful idea of that videoconferencing, and bringing the legislation so that we could even have that kind of facility in Tobago. Thanks also to this Government for following through and actually bringing it to life in Tobago.

Much work needs to be done to treat with improving access to legal aid in Tobago, better pay for legal aid, and we are also awaiting legislation to improve the effectiveness of the legal aid system. We need to introduce measures to make this whole legal aid thing more attractive to lawyers. I understand there is a committee or a board set up to treat with improving the legal aid system, and I humbly await legislation on that.

Mr. President, it takes more than talking about introducing these revolutionary measures, this paradigm shift and all these wonderful things that we spoke about. This system has to work, not just in Trinidad. The judicial system has to work expeditiously, efficiently and seamlessly. You must just feel free, happy, motivated and confident in the judicial system, not just in Trinidad, but also in Tobago. So whatever institutions, infrastructure and resources are available to Trinidad, we would like to see that kind of interest being placed in Tobago also.

We heard about this national project to have these four state-of-the-art court facilities introduced throughout the nation. Is that really throughout the nation, because the four venues are all in Trinidad? Many times I hear Ministers and even courts and these other people get in the media and say, "This is nationwide," but really it is Trinidad-wide. [*Interruption*] If you know anything about the judicial system, and to correct Sen. George, this does not fall under the purview of the Tobago House of Assembly. That is a central Government responsibility that falls under the Sixth Schedule of the Tobago House of Assembly Act. Get it right. [*Desk thumping*]

Hon. Senator: Tell him! Tell him!

Sen. S. Cudjoe: Mr. President, we in Tobago want to feel proud of the icons in the judicial system. It is true that our Chief Justice is from Tobago, but very rarely do I see High Court judges from Tobago. I do not know of many senior counsels from Tobago. I do not know if there is something in the process or

something that is preventing the authorities from looking to Tobago for this kind of service. I would like to hear about some more Tobagonians being High Court judges. I do not know of any one High Court judge in Tobago. I do not know of any senior counsels resident in Tobago. It seems to get that kind of recognition for your services from the authorities, to even be considered for silk, to be considered to be a senior counsel, you have to uproot yourself from being resident in Tobago and come to live in Trinidad, and you have been working and labouring hard in the vineyard in Tobago, working for your country.

We have some legal stalwarts in Tobago; I am talking about people like Christo Gift, Lennox Phillip, and Mrs. Deborah Moore Miggins. I would like to hear senior counsel Deborah Moore Miggins or senior counsel Christo Gift, senior counsel Lennox Phillip. I do not know if there is something in the system or something that I do not know. Maybe the Minister could help me out. We need to take a closer look at this. I really think that the Judiciary and the Bench should reflect a twin-island state, not just looking at racial and religious background, but legal experts from Trinidad and from Tobago also, and that we would not have to uproot ourselves from Tobago to come to Trinidad to get recognition.

As I mentioned facilities and building four new court facilities in Trinidad, we need to consider improving the court facilities in Tobago. The Magistrates' Court for instance, we have three Magistrates' Courts, pretty much in the same venue, using the same one small parking lot. There is not even a refreshment area, so if, God forbid you have a headache or you need something to drink—I have been out there before, and when you have to get something to drink, you have to go all the way out to downtown to get to the central business area. By the time you come back, your case was already called. Little improvement to the current facilities would be very beneficial, not just to the people who go up there to use the service, the clients, but also the lawyers and magistrates and people to feel comfortable in their work space.

I want to draw to your attention that the Family Court, the Industrial Court and the environment court are not accessible to Tobagonians. For most of these issues, we have to come to Trinidad. The Magistrates' Court in Tobago sometimes is tied up treating with Family Court matters. I think if we are really supposed to ease the bottleneck in the system, we ought to ease the Magistrates' Court from some of the responsibilities that really do not belong there. Tobago should have a Family Court, rather than dealing with juvenile issues in the Magistrates' Court and family issues in the Magistrates' Court.

I also understand that it takes a longer time to get a divorce in Tobago than to get one in Trinidad in the judicial system. It takes about three months in Trinidad, and in Tobago it is longer, because I understand we use the older Family Court system. If we are really serious about improving the judicial system for Trinidad and Tobago also, these are some of the issues that we must consider.

Going back to the issue of easing up the Magistrates' Court of some of its responsibility, I really think that the Magistrates' Court deals with some issues that do not belong there. About three quarters or so of the magistrate's time in Tobago is taken up by treating with liquor licences. That really does not belong there. I do not think that deliberating over liquor licences belong in the Magistrates' Court. I do not think that traffic offences belong in the Magistrates' Court. I do not think that traffic tickets, liquor licences and small offences like obscene language and so forth belong in the Magistrates' Court. The legal heads would be able to tell me better of some of the other offences that do not belong, so we can ease up these 10,000-plus cases that come to the Magistrates' Court.

Mr. President, that is pretty much it. I know somebody is going to get up after me and say, "You were in Government for some 10 odd years, why did you not"—sometimes they say 10 and they go to 50, all crazy numbers. Whatever number they feel to call, they call. They get up and tell us that we had been in government for these umpteen years, and they act like we never did anything for the time that we were there, but I will tell you any day, that performance beats "ol' talk". Sometimes they do not even believe the things that come out of their own mouths. They cannot trust the things that come out of their own mouths, "I worse, Mr. President".

7.30 p.m.

So, Mr. President, development is a continuous thing, it is a continuum. So, one government might start it, one government might come up with the idea, one government lay the legislation and the other government might bring it to life; set up the building or whatever, introduce the procedure, and the government after that, the administration after that, may improve it.

Development is a continuous thing, you cannot come into government today and say, scrap everything that happened before, I am going to start everything new, just to say that I have done it, and I have brought it to Parliament, I have brought something new. It is a waste of resources, it is a waste of time, it is a waste of money, it is just simply a waste.

So with that said I say again, I hold the Minister to his word that we implement the things that need to be implemented, and really have a foundation

set on a solid rock so that we can implement this legislation and that it will work effectively and at the end of the day as a country, as Trinidad and Tobago, we could say, “Okay, this thing has worked for us”. Mr. President, I thank you.

The Minister of National Security (Sen. The Hon. Brig. John Sandy): Thank you, Mr. President, for allowing me to participate in the Administration of Justice (Indictable Proceedings) Bill, 2011.

First of all, Mr. President, I want to especially congratulate my colleague for bringing this Bill to the Senate at this time; it is most timely. And I would like to tell my colleague, Sen. Cudjoe, that I will not stand here and say that, “you did not do anything for the past eight years or whatever”; you said it a while ago, I will not have to say it again. [*Laughter and desk thumping*]

Sen. Cudjoe: When you should talk, you “eh” talking.

Sen. The Hon. Brig. J. Sandy: Mr. President, we appreciate that the current method for committals was well intentioned and that it initially served several functions, for instance, it aided in eliminating weak cases, guilty pleas entered would be fast-tracked, the procedure and prosecution’s case was made clearer and things like that. But we have found over the years that because of the time wasted—first of all let me say, Mr. President, that when you are coming at this time in the batting order, a number of things had already been said, so, I will be brief, and my brevity is not as Sen. Cudjoe’s, I will be brief. [*Laughter*]

Mr. President, we spoke of the man-hours—somebody referred to it as people hours—we are talking here about the Judiciary, the staff, the legal fraternity, police officers, as was said earlier on, they come to court, they know that the matter will not be called but they have to be there. This takes time. This takes away our officers from other duties that are so much more important than coming and standing there an hour or two, and not being called.

What we have found within the past few years, a couple of decades, because of the escalation in criminal activity, of course, there are more cases in the courts and as such there is requirement for more personnel to deal with that. And as a result of that here is where the backlog comes in and you are finding that, as was said earlier on, vehicles leave the prisons with inmates to attend court matters, and they know they are going down they are going to be postponed, it is going to be adjourned to some other time, it is a waste of time, waste of energy.

So what we are looking for here is a win-win situation, so even the victim themselves, the perpetrators—we are not talking so much about a criminal facing court, we are talking about someone who got involved in some domestic matter

and probably, you wounded a neighbour or something like that, unintentionally—but you have got to go to court, and it goes on, and on and on. And the trauma that is experienced by the perpetrator, as well as the victim, because the victim has to go to court as well, and you are going on and on. This is why sometimes some people they would see things happen and they would not report them because it means that will be going to court and wasting time, coming off their jobs. Some employers probably will not pay them for the hours that they are not on duty and things like that.

So you find all these things contribute to the cost factor, and the trauma lends itself readily to those who are not accustomed to things like that. There are some people, well okay, “they are always in court, they have court clothes”, so to speak, they are accustomed. But there are others who—and I will give you an example of what I am speaking about, Mr. President.

It had been about 12 years ago, I was Defence Attaché in Washington and my second daughter, she was given a ticket for probably parking on the wrong side or something like that, I cannot remember exactly what it was. But what was posted originally home, we did not receive it. So the second document came as a summons for court, and that child the night before she just could not sleep, she was shaking, and just the mere idea that she had to appear in court to answer for parking on the wrong side. We had to go and let them know—well, I went along with her—that we did not get the initial parking ticket that is why we could not pay it.

But the mere fact that we had to go to court—and this was in a short period—we are talking about a matter of months. And there are some people now who go through this every time they have to go to court. It may be a minor offence but because you are not accustomed to that type of thing, the fear, the trauma, even the victim, and you keep going and going, going eventually, probably, sometime later down the road, the case is called.

I remember in this honourable House I was speaking about an experience I had with the honour guard; I had charged a police constable for sleeping. I was making the point, well, in the military it is immediate justice. He reports to his commanding officer the following day. But in the police system about two or three years after, they called me to the orderly room to come and state on that matter, and I told them, well, there is no way I could do that, I could not even remember what the police officer looked like.

So, when you take into consideration situations like that, where things are postponed and postponed, both the victim and perpetrator themselves go through that kind of thing.

As result of that you would find that the protective services, the police officers, even in the prisons—for instance, today there are 11,017 inmates in remand, some of the offences are notailable, some of those offences areailable but they just do not have the capability or the wherewithal to get someone to stand bail for them.

So those remanded inmates they are there at a cost to the State—so we talking cost again—and eventually after being taken to court on a number of occasions, we are talking about transportation to get them there, we are talking about escort; we are talking about personnel which could be utilized in so many other areas.

This is why as I have said before, some people will see crimes being committed and they will not report them because it means therefore, they get involved, they have got to go to court, they have got to be wasting time. Because every time they go the case would be remanded for another date and they have to go again. And sometimes if they do not appear, they themselves now are summoned and threatened with contempt of court and all these sorts of things.

So, the fact of the matter remains, were we to institute this new legislation you would find that it would ease—and I take the point made earlier on, that we need to put things in place to ensure that there is a smooth transition. That being said, we must take cognizance of the fact that, were we not to do it, were we to wait and not do it, we would find that time will go and these things would perpetuate themselves and we would end up in situation where we are more sorry than pleased at not having done it.

We look at situations with the witness protection programme as well, and I know on some occasions, the witness protection programme is stretched. I am talking from personal experience, being one of those who administered it at one time, and then coming back to the Ministry—before it went to the Ministry of Justice, it was in the Ministry of National Security, so I had some dealing with it.

So I understand the situation. It means that it is a longer period you have got to keep these witnesses and things happen. Someone mentioned the Clint Huggins case that I was integrally involved in, when Clint was killed. So I understand that system more than most.

So, Mr. President, I simply want to indicate that the Ministry of National Security, we support this Bill and I thank Senators on the other side for supporting us as well. I am almost certain that having regard to the fact and the confidence that this Bill will be passed tonight, and I am sure that we will get the support from our colleagues on the other side, in so doing I want to say again, thanks to

the Minister of Justice for bringing this Bill at this time. As I have said, it is timely, and it can only augur well for justice in Trinidad and Tobago. Mr. President, I thank you.

Sen. Penelope Beckles: Thank you kindly, Mr. President. I join this debate on this Act to repeal and replace the Indictable Offences Act, Chap. 12:01 and to provide for a system of pre-trial proceedings related to indictable offences and other related matters.

Mr. President, we supported this Bill in the Lower House, and we intend to support this Bill as well in the Senate. But notwithstanding having made those opening comments, there are very important issues that I would like to address. I know from having recognized the fact that the hon. Minister of Justice has had a very wide experience working in the DPP's department—very senior in the DPP's department—if I can recall I think he did reach up to being Assistant DPP, and as well as a judge for a very long time. I know that he brings to bear in the Senate some years of practical experience with which I think we are all very happy, and we expect that that experience will go a long way in improving the administration of justice.

That having been said, you know I listened to some of the responses when my colleague, Sen. Cudjoe, was speaking and sometimes the debate, some debates can be very exciting, some can be very flat, some can be all different kinds of things that people might lose interest. So that ideally, as I think Sen. The Hon. Brig. Sandy was saying, sometimes when you are bringing up the rear you can attract the wrath of some of your colleagues because they would ideally prefer that you do not speak or that you curtail your contribution so that everybody could go home quickly and they are probably hoping—I am hearing my—

Sen. Al-Rawi: Esteemed senior in the back.

Sen. P. Beckles: I am hearing my senatorial colleague behind me saying, yea, yea. So I suspect they are probably saying “I hope Penny is only speaking for 10 minutes”, right? No such luck. *[Interruption]* 11. I will probably be speaking for you know, maybe about 40 minutes because it is matter close to my heart, and I think that the Minister of Justice, as I said—yes, Minister, about 40 minutes. I know you would like to speak less.

Hon. Volney: Speak more.

Sen. P. Beckles: No, I am going to curtail it. A lot of what I wanted to say has been said already, so I do not want to repeat myself but there are some points I would like to develop.

A very popular phrase, Mr. President, in most debates over my years in politics is “the absence of political will”. It is a phrase that most people use to explain why the other side has failed. And it has become a very easy phrase to use. Some of us, who after a couple years in politics and have experience, realize that you come in with very good intentions and you pass your legislation and your policy, and then it comes to implementation, which is not always something that you specifically can do, you wake up and realize that it is not as easy as you would like. So that sometimes I sit here and listen and you get the very distinct impression that some of my colleagues on the other side who are now in Government are of the view that, once these things are passed everything will go very smoothly.

7.45 p.m.

I dare say that sometimes there are some simple, simple things as a society we are not able to do for all kinds of reasons and sometimes I think we even make decisions that make it impossible for us to enjoy some of the things that we do. I could use a simple example. There are many institutions that install air condition units, let me use that as an example, and people tell you, “We cannot adjust it.” I ask myself, is that because we do not have the political will, somebody does not have the political will to do that? Or is it because somebody installs a unit and nobody cannot fix it, cannot touch it, would not touch it; is that about political will or is that about the fact that sometimes we do things because some of us have the power to do it and this is the only way that it can be done or it should be done and nobody should interfere?

That is a simple, simple explanation that I have found in many places that I have gone. You sit and you are freezing and people say, “No, it cannot be fixed”, and sometimes that happens even in some of our courts. I have gone to a certain court, I think it was in Tunapuna, everybody is freezing, people are trembling and nobody seems to be able to fix it. I guess the Government—when the PNM was in office it would have been the PNM. When they switch they would say we would not have the political will and if the People’s Partnership comes into government, they say the PP does not have the political will to fix the unit, but I am saying, are there not managers to do these things? Therefore, sometimes we think those are little issues but they are not little issues because they tell us that something is wrong sometimes in how we manage our institutions and why simple things cannot be done.

I am happy that, as I said, the hon. Minister of Justice is going to bring to bear his experience, and hopefully it would not only be with this piece of legislation it would be other pieces of legislation. That is why I am so concerned about the ease

with which we seem to be suggesting that this piece of legislation is going to solve a lot of problems. The 125,000 cases—and you now have a situation where the Magistrates' Court would be freed up, but you know what is interesting is that we have been able to, very easily state all the problems that exist in the Magistrates' Court, and again, one might argue that we did not have the political will to solve them, because at the end of the day I genuinely hope that we are not transferring a problem to the High Court. I really hope that we recognize that for this legislation to work there are a multiplicity of things that need to be done that would probably take a couple of years for it to actually be properly implemented.

I was very intrigued by Sen. Abdulah's contribution. I was not in the Parliament but I was listening to him coming up. I would tell you why this piece of legislation is close to my heart. I do quite a bit of practice in the Magistrates' Court. Some attorneys do not want to go to the Magistrates' Court as you know, for all the reasons that we spoke about today, because you are just wasting time. But some of us argue that you are wasting time because you have legislation where it is taking three and four years or whatever, and now this is going to cut it into, maybe, a year. We all know that that is not quite true.

Mr. President, I will just give you my experience today. I went to court in San Fernando; the magistrate did not come; now that is what; political will? So, I waited and another magistrate left his court, came and adjourned the case. This matter is now three years old and it went to April from November, no date fixed. This is an indictable matter. Are you ready? No. Any witnesses? No. File? No. Anybody from the DPP? No. So, I left there and I went to Princes Town, no magistrate. [*Sigh*] Magistrate did not come, political will.

Sen. Cudjoe: PNM.

Sen. P. Beckles: PNM. Originally, my time to come here was ten o'clock, that is why I argued that ten o'clock was bad for me. So, the magistrate did not come, another magistrate had to adjourn, but that magistrate started a trial so I could not wait to represent my client, who, of course, was very angry and on a murder charge.

But what was interesting is that when I left San Fernando I saw the prison van in San Fernando and I asked myself, I wonder if that is the same prison van that is going to Princes Town? Of course, it was the same prison van, so I got there before the prison van which was about twenty-five minutes to eleven; the prison van got there about quarter to eleven for court to start at nine o'clock; political will.

Sen. Al-Rawi: PNM.

Sen. P. Beckles: PNM. So, I left and I asked one of my colleagues, I have to go to Parliament so could you please assist me, and meanwhile everybody is waiting in the court and as the hon. Attorney General described it, downstairs full, corridors full, outside full, everywhere is full, so all those matters are adjourned, and all my client asked was that he come back up one more time before the year finishes, before Christmas. That was his only request; more than likely for the police to make a judgment as to whether they should bring him upstairs or whether they should leave him downstairs. That is what goes on in the system now. I am asking myself and I want all of us to understand this—taking this out of the Magistrates' Court and we are putting it into the High Court we have solved all of those problems, because the question we ask ourselves is, why is it happening in the Magistrates' Court?

Now, Sen. Abdulah said that the Magistrates' Court is not in keeping with the decorum in which justice can be dispensed. I actually wrote it down, because he spoke about culture, so my question is, that culture which I just spoke about this morning is going to be eliminated from the Magistrates' Court and as we move to the system of the master, where, obviously, people would not be herded as the Attorney General said like goat, sheep and cattle; that would not take place anymore, and I do not know how we would describe how they would be herded, maybe like kings and queens in the High Court.

But in the real world, Mr. President, that is not quite how it works, and the reality check for us all is that our system is in crisis and, yes, we have to support this Bill because it is a step in the right direction, but it also tells us that something is wrong in our society when somehow we are developing a culture, and if I could use a local parlance, that "it could go so". That is what it is! Many times it is not an issue of political will, it is a question of the fact that we have become accustomed to a kind of mediocrity that is totally unacceptable.

Hon. Minister of Justice, I know you are aware of this because you have worked in the system. We should not have to necessarily take it out of the Magistrates' Court to go elsewhere for people to feel that we care about them. That is my point! And some of the things that we have said in the debate, I get the distinct impression that there is a feeling that the Magistrates' Court is, "this kind ah place where yuh have ah kind ah people and ah kind ah behaviour". But the fact of the matter is they are doing the majority of work; that is the bread and butter; that is in a sense a reflection of our society, and that in itself may account

for when we talk about political will it means all of us. It does not really necessarily mean as a great deal of people think, the Government. The political will is all of us having to think differently about the people that go there, because they all go for justice, whether it is obscene language, whether it is maintenance, whether it is domestic violence, whether it is murder, whether it is rape; people go there for justice.

I would tell the hon. Minister that because he has been in the system it is quite likely—because I listened to you on my way back up and I know you understand the system, and it may be quite likely that a number of the players that you spoke to in your consultation, they need to give that level of commitment of which you are speaking for this to work. Hon. Minister, in the law, one of the reasons in my humble view, why we have not been able to do a better job is because the law and a number of people that work in the legal profession, and by extension those who have responsibility to administer justice, have taken unto themselves a different kind of persona, and therefore, when people go to the courts for simple things, they make them feel less than what they are. Some of them would have you wait and return over and over and over, rather than simply serve you.

You talked about a paradigm shift because you are saying that this decision, in essence, is a paradigm shift. The paradigm shift is not just the legislation. The paradigm shift is the culture of which Sen. Adbulah spoke. How do you go simply to get a summons? How do you go to the police station to enquire about your child who is there and people serve you differently, so that they understand that that shift of which you speak will take place not only because we are talking about case management and it is going to commit us to timeframes and make sure that we understand, as lawyers, as witnesses, as staff working in the system, that at the end of the day we want to have a better Trinidad and Tobago. Because people have done reports and investigations on the administration of justice for the last couple decades and, in essence, we have not seen the kind of changes that we want.

So that, maybe two to three years from now, when we look back on this system, we hope that we would see the changes, but it requires training at all levels. It is not just the masters; the magistrates; the judges, but, you know more than I do that, whether it is your usher, whether it is the policeman working at the door, whether it is the people downstairs in the registry—and we have come a long way than we were before. But I am saying that we have to make a drastic shift in terms of transforming the way we think and operate, if it is what you are trying to do here we are to really reap the benefits.

8.00 p.m.

Hon. Minister, I would really like you, because I am not, to be quite frank, I am not yet comfortable with how it is going to work, so I would just like you to spend—maybe three minutes just to walk through it in a simple way, and I will tell you what I mean. I will use two examples.

One is a matter that I am doing where a gentleman is charged with murder and he started to appear in court in March. The matter next comes up for hearing next month. The file has not yet reached the DPP—in nine months. How do you think that this system is going to change that? I mean you have had consultations—that is one of my concerns. Another matter where some young men are charged with kidnapping and robbery and so, and the police have not yet completed the file, after ten months. I mean—you know it is mind-boggling. They object to bail, they are not ready to proceed, the file is not ready, you have no statement, you have no disclosure and this is going on every single day in the Magistrates' Court.

How do we make the shift? I am saying, how is this going to help? Is it that we are going to train them better? I mean, yes, I understand the whole concept of case management, but then my other question is this: how is it that we have actually arrived at that stage where somebody is charged and ten months, one year, fifteen months, sometimes two years, and I mean some of us have a family—I am not exaggerating. Some of you have family members who go through this. If you can pay for a lawyer who will go to court every time and make noise, the chances are yes, but what about if you do not and you are coming back every 28 days and the police “ent” come?

I am saying that something has to be done to ensure that there is a recognition, that the responsibility for that shift of which you speak, is every single person. It is not just the judge and the magistrate. A lot of people speak about the lawyers. It is always the lawyers; the lawyers are not ready; the lawyers did not come; the lawyers postponing, because they are always the easiest people to target. But if we do the proper investigation, Mr. President, it is a number of people within the system who have actually been responsible for the delays in the administration of justice.

Sometimes even the prisoners, they understand how it works. They know when to say they are not ready because the magistrate did not come. They know to say they are ready when the police did not come. You know, so that, we have gotten ourselves into a cycle where everybody, in a sense, has been taking advantage of the shortcomings and how are we able as we debate this Bill, as we

pass this Bill, how is it that we are going to make that shift? A lot of it also has to do with public service reform. Because it is a lot of the public servants who play a very, very critical role in ensuring that the system works.

I know the Attorney General spoke about the magistrates, you spoke about the magistrates and I think several other people spoke about the magistrates. Some of them I guess are very frustrated about the conditions under which they work. Some are lucky that they have decent courts and they have decent facilities; and some of them probably get up in the morning and when they think of where they have to go decide, “You see I, I really do not feel like going there today”. Because some of us who have worked in the private sector, and who are making tremendous sacrifices now, like Sen. Bharath, Sen. Dr. Moonan, my good friend Sen. Dr. Tewarie and others who have worked in the private sector—I know Sen. Maharaj—everyone has had some stint. And a number of people have taken substantial cuts in their salary that people do not believe. Because everybody thinks that when you become a Minister for some reason your salary goes to this level that—anyway. The fact of the matter is that—and then they want you to of course to perform and do impossible tasks, because you now have a new car and your salary real big. That is how people see it.

At the end of the day, a lot of the magistrates—I mean we all agree that you need to review their terms and conditions and that may have affected how a lot of these things have not worked in the way that we want it. I mean, we think of somebody like the Chief Magistrate, for example, not having a driver and you know, we ask ourselves—I mean those of you who sit on committees in Cabinet and you have the responsibility to determine the salaries of people who run the state organizations, and I mean sometimes you decide on a salary for somebody who is going to earn twice or three times more than what you are working for and doing half the job. They have a driver, they have a maid, some of them—I mean a Chief Magistrate who in essence has a responsibility to look after the whole, and you know, does not have a driver.

Now, a lot of people say it is not the Government and we know it is not the Government. It is another institution that is responsible for terms and conditions but, then we ask ourselves how does that happen. I do not know what is going to be the salary of a master, but I imagine that in terms of the existing salaries of masters they are going to get a very decent salary. Now, we think of what is going to happen when magistrates compare what they work for and certainly what a master works for, and I know from time to time those cause little issues. The efficiency you talked about and the balance you talked about, is that going to cause a problem? If you understand what I am saying. There is not a definition

here in terms of master. I imagine probably using the High Court definition, and there is not any indication in terms of what would be the qualification. Is that person a former magistrate? Is that person, having worked in the criminal arena—
[*Interruption*]

Sen. Al-Rawi: Master of the High Court.

Sen. P. Beckles: Master of the High Court, yes, right—so that you have those little issues that we are going to have to manage. But at the end of the day as we all agree and that—we agreed when we all voted for the Anti-Gang Bill, that there are things that we have to give the benefit of the doubt and give it the best shot and let us all try. But as we said then, and as I would say now, there are a number of things that must be put in place if we are to ensure that it succeeds.

Now, hon. Minister, you indicated that you had discussions with several persons, forensic, I think the law association and I think you gave almost all the persons, the Judiciary and so, that you spoke with and the hon. Attorney General indicated that Cabinet has approved some additional persons to work in the forensic laboratory.

Now, as I said, I do not want to be long, but I must tell you, hon. Minister, that I filed a question in the Parliament and I asked about the length of time it takes for exhibits to return to the various Magistrate's Courts in the categories of arms, ammunitions and drugs. And again I am—you have been in the court, so I know I may be boring you, because you know, a lot of these things, but I think it is important to say it for some of us who do not know that some exhibits are taking as long as three and four years, sometimes five, to return to the courts. How is it that we are going to—is it that they are overburdened? Is it that there is not enough staff? Some courts actually are able to get back their exhibits pretty quickly. I do not know how. Some courts they return a lot faster than other courts. Maybe the police officers are a lot more vigilant in their matters and some are pretty indifferent. But the bottom line is that the exhibits take an extremely long time—[*Interruption*]

Hon. Volney: Too long!

Sen. P. Beckles: As you say, too long. So I would not say much more on that, but save and except, just to say I am glad that that is an issue, and clearly if this is to work it is an area that we will have to address.

Now, I know Sen. Hinds spoke about the Tunapuna situation and I know that there is also this view—I am not yet very clear in my mind how the responsibilities in terms of how the courts work; what exactly are your responsibilities and what is the Judiciary's? In terms of who is responsible for the issue of maintenance and so, whether that falls in the Judiciary or that is your responsibility. I ask that because the Tunapuna court situation is a crisis situation.

Now, Tunapuna—since a couple months ago there has been a sewer problem. Tunapuna Court now operates in Port of Spain and they start at twelve ‘o’clock. It means that Port of Spain has lost a few courts and people from Tunapuna come to Port of Spain every day and nothing is really happening. The Tunapuna prisoners come and of course there is an issue very often—you have them combining with the Port of Spain prisoners and I really feel sorry for them. They said it would have been completed by September, then it went to November, then it went to January, it is now in April. When you listen to some of the arguments today, do we say that the Government does not have the political will to fix the sewer system in Tunapuna, that it is going to take almost eight months to fix? You understand what I am saying?

So that one can only hope that all these criticisms that are leveled, that where we blame the PNM every time, now that the shoe is on the other foot that they will be able to deal with these apparent simple matters. When that matter was raised before the sewer system collapsed and the air condition unit, it was raised by my colleague Sen. Hinds on a Motion on the Adjournment, I mean it was a big laugh; everybody was laughing. The Attorney General was talking about it and again “the PNM, the PNM”. He did not know that the entire system would collapse. And I am trying to figure out, as I used the example a while ago about the air condition unit; what could be so complex about a sewer system and an air condition unit that will take us almost nine months? I mean, what part of the world is it coming from?

8.15 p.m.

At the time when Sen. Hinds raised the Motion on the Adjournment the Attorney General said, “It is a simple maintenance issue and we can treat it;” and they would fix it. It is now six months; nothing has been done, and that complex does not only house the Tunapuna Court; it houses the Warden’s Office, the Post Office; it houses the Elections and Boundaries office, Town and Country Planning.

So, Minister, I am not going to go any further. You know. But I am more concerned about what you are trying to do, and I am saying I am giving you 100 per cent support. I already said that you bring to bear an experience from which we will all benefit, but I am saying, those are the things that sometimes, in an effort to do a lot different, it carries the system way back, because you know very well that if a court does not function for about 10 or 11 months, or a year, it is going to be almost impossible to recover. So I can only hope that in raising the points on behalf of Tunapuna that you can deal with it.

Hon. Minister, just a few more points I have to raise. I just want to, before I move on to a couple things that you dealt with, complete one of the points that Sen. Abdulah made. Sen. Abdulah referred to the fact that he engaged in peaceful picketing around the savannah in 1986.

Sen. Abdulah: Around the Oval.

Sen. P. Beckles: The Oval, sorry. And I know the hon. Attorney General was talking about what happened with cricket a little while ago and, of course, though, some people have given up on West Indies cricket because they have broken so many of our hearts, but at the end of the day we keep hoping. He spoke about peaceful picketing and the fact that on both occasions when he was arrested the PNM was in office. But I need to remind him that he was able to picket peacefully as a trade union leader. As I speak today, the trade union movement cannot picket, whether it be peacefully or otherwise. [*Desk thumping and laughter*]

Sen. George: He was arrested, for Christ's sake.

Sen. Deyalsingh: And they laugh at that.

Sen. P. Beckles: The point is not whether he was arrested, the trade union movement, the NGO movement, the church, right now the political parties, not a soul could picket, whether it be peaceful or otherwise.

Sen. Deyalsingh: No, but they laugh at that.

Sen. P. Beckles: Yes, they will laugh at that, because, I mean, they support that and trivialize it. You have to apply.

You know, when you sit now and you look at BBC and you see countries like Bahrain, Libya, Syria, Egypt—

Hon. Senator: Trinidad and Tobago.

Sen. P. Beckles: No, not Trinidad and Tobago. You see people demonstrating by the millions. Some of them have never been democratic societies, and in a democratic society where our Constitution speaks about freedom of religion and movement and the press and politics, you cannot march; you cannot picket peacefully—a government where the trade union movement is a partner. [*Desk thumping*]

Sen. Moheni: Senator, would you give way? I want to know what happened in 1970 and 1971 under the two states of emergency declared by the PNM.

Sen. P. Beckles: I could tell you, personally, you know. Sen. Abdulah is right next to you. I am one of those that marched in 1970 and 1971, and so too did my

father, and I hope you marched too. But right now I cannot march. That is what I am speaking about. [*Desk thumping*]

Hon. Senator: You will be shot on sight.

Sen. P. Beckles: So that, you know, you want to talk about '70 and '71. There are times when we would have our differences. That is what makes a country developed.

Sen. Moheni: Did you march after April 24?

Sen. P. Beckles: Did I march when?

Sen. Moheni: Between the April 24 and November 19.

Sen. P. Beckles: What year are you speaking about?

Sen. Moheni: 1970.

Sen. P. Beckles: There are some of us who were still brave enough, you know. The point about it is, 1970 had its reasons and there are many of us who were very proud of it, notwithstanding that the government at the time would have taken certain decisions. And you are taking your decisions now to stop people from marching. Okay? There were a lot of benefits from 1970, of which I am very proud.

As I was saying, I just want to say to the hon. Minister of Justice that I have a concern about the clause that deals with the media, clause 31. I would like you, in your winding up, to indicate why your Government is of the view that it is necessary to increase this fine by such a substantial amount. It says that:

“A person who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for two years.”

And it deals with the clause that says:

“No person shall print or publish or cause or procure to be printed or published, in relation to any sufficiency hearing, any particulars other than the following...”

And it lists.

When one moves from such a drastic figure, I am concerned. Hon. Minister, you spoke about having consultations with several stakeholders. I do not know whether the media was one of the institutions with which consultations were held,

but I am sure that you know and I know that the media has a very critical role in terms of sensitizing the public, in terms of reporting. What would have influenced such a draconian measure? I know you are talking about the paradigm shift and so, but I find that very unusual, and it may be that you will give us a reason for it. But I certainly find it very strange.

Whether it be on your years on the bench, whether it be when you were prosecuting, is it that in recent times you have found that the media has become more irresponsible? What would cause that? I would really like you to give me some indication. Because Trinidad and Tobago is one of the few countries in the world that has guaranteed freedom of the press in the Constitution, and I would just like to share with you an *Express* editorial of November 25, 2011, and it starts by saying:

“Despite the media-friendly face of the Prime Minister, it is becoming apparent that the Kamla Persad-Bissessar administration is not loath to undermine the constitutional guarantee of freedom of the press in Trinidad and Tobago. Last week, in debating legislation to eliminate preliminary enquiries, Justice Minister Herbert Volney once again heaved close to making his ministerial title ironic. Under the proposed law, penalties for reporting material from sufficiency...have been raised drastically.”

And they went on to talk about it. And at the end the editor is saying:

“In support of such a heavy-handed crackdown, so out of proportion to the offence, Minister Herbert Volney simply cited the need to update the legislation. But going so far in the opposite direction must be seen as a legislative big stick which the Government is using to beat the media into obedience. Such a draconian clause implies that journalists and their editors have no sense of responsibility, and would willingly flout best-practice tenets unless faced with highly punitive sanctions.”

I mean, there is a Media Association of Trinidad and Tobago and I would like to think that at least the hon. Minister could consider having discussions with the media. I do believe that it is not in all instances that you look at penalizing or you look at always increasing penalties. I think there are times when you should have discussions with them, because, obviously, you are going to need their support in terms of reporting crimes, in terms of sensitizing the public. They play a very, very important role, and you do not want a situation where some of them decide, “Okay, well, if that is the direction in which you are going, do not count on us.” But there may be that there is some reason that you are going to give that may

convince me that this clause is a clause that I should vote for, but I would say to you out front that I have strong reservations about supporting this particular clause, because I think it has gone way overboard.

I mean, we are a society where, yes, at times we know that there are some members of the press who may not be concerned with fair reporting, but then that is not, I think, the case in most instances and we do have a situation where you have an association; you have a Complaints Authority that I think we should utilize if we feel that the press is going overboard. So I do not know whether the Government had any discussion with the press on this matter, but I would be happy to find out if they did, and I would also be happy to find out whether this was a recommendation from the Media Association or whether this is a recommendation from the Government.

I know we are discussing the Legal Aid Bill on the next occasion, so I do not think that I will want to raise much on the matter. But, Minister, on your point about the coroners, I want to say that I support that point. I do believe it is a good idea. I do not know that you might be able to deal with it now, but having regard to the fact, again, the length of time that it takes, as you know, people normally give up on those matters because, I think it is worse than even some of the other matters that we have mentioned.

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

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. F. Al-Rawi*]

Question put and agreed to.

Sen. P. Beckles: [*Desk thumping*] Thank you, kindly. So I support that. As I said, I do not know whether you can treat with it at this stage.

My last point is how this legislation is going to impact on judicial review proceedings, because I think the accused person is going to be at a disadvantage. Of course, with the matter having gone to the High Court and having those committal proceedings, I do not think that that remedy is still going to exist. So I do not know if you have any comment on that, that might help me to allay my fears and the fears of some of the members of the public who have raised the matter with me.

At the end of the day, the Attorney General indicated that a number of attorneys were not happy when the civil court rules, for example, came into being,

but over time, I think the court had had a lot of training and, of course, we know what happened in the recent Privy Council decision. But the bottom line is that this is going to require training at all levels. It will require some buy-in, so that I hope that they would give your Ministry sufficient funding so that you would be able to go throughout the length and breadth of Trinidad and Tobago, because I feel that it is the kind of measure which the public would be very happy to know about, but I also feel that they would need some education so there would be certain levels of comfort and people will not panic.

8.30 p.m.

And as I close, you spoke about resources and that was one of the very important points that you made in terms of lack of resources of the magistrates and other systems. But you know, I sat in court quite recently and this last example will tell you about the extent of concern that I have had about the shift of which you speak, and that it is not going to be as easy as you think.

I sat in court last month, where there were several members of the DPP, and there were quite a few murder cases for hearing. And when it came to disclosure they indicated to the magistrate that they were not able to present the statements because the photocopying machine was not working. I sat there and I listened, and it was actually a very serious statement, and it was not the first time that I heard it. I raise that point because even the DPP's department in south, their photocopying machine has not been working for months, in Port of Spain it was not working for months. And when they went across to the Attorney General's department to use his photocopying machine that was not working either.

Sen. Cudjoe: Political will!

Sen. P. Beckles: Yes, political will, and they may have even argued that the PNM would have sabotaged those photocopying machines. But the point I am making, hon. Minister of Justice, it is those little things that we wonder about. And I know in your time because I did part of my in-service training with you, if you could recall, you may have forgotten, but I know—

Sen. Al-Rawi: You do not regret it now, do you?

Sen. P. Beckles: Yes, it was quite a long time ago, but, I know when you were working in the DPP's department things like photocopying machines did not come easily, but that was then, 20 years ago, maybe. I know, I came out in practice in 1988, and I think I worked with you somewhere in 1986. But could you believe in 2011, that a lawyer from the DPP's department will say to the Chief

Magistrate that I am not able to give defence counsel statements because the photocopying machine has not been working for months. And therein lies when people say about political will.

The issue of whether or not they have their own allocation, whether they have to depend on somebody else to get their allocation, if what you are asking is going to happen, those teething problems—those problems that appear to be simple but are very, very, important for what you call smooth implementation must be dealt with.

So, hon. Minister, as I said we are giving support to the Bill but there are some issues that I have raised and at committee stage I really hope that we are going to be able to deal with the issue of that sum that is going to be attached to the members of the media, who may in some way fall afoul of the law. So, Mr. President, I thank you. [*Desk thumping*]

The Minister of Justice (Hon. Herbert Volney): Thank you, Mr. President, I feel so much more at home in this Senate today—

Sen. Al-Rawi: Awww, welcome, welcome.

Hon. H. Volney: —than when I was here on the last occasion. [*Laughter*] I think perhaps, it is the warming presence of the Leader of Government Business who was absent on the last occasion. Yes, I have also used the opportunity to make up and kiss and hug hon. Senators Drayton and Baptiste-Mc Knight. [*Desk thumping*]

Hon. Senator: Well done!

Hon. H. Volney: I have no doubt they are waiting to see what I bring to the Senate when the debate resumes.

Yes, Mr. President, if I may start with the last point that was made by Sen. Beckles, on the issue of the fine for reporting evidence of proceedings at the sufficiency hearing. The original fine had been set at \$250,000, and at committee stage and—I think four years—there was a coming together of reason on both sides of the House. The hon. Prime Minister, as I recall had, asked whether it should be lowered to \$100,000, and immediately the Hon. Member for Diego Martin North/East said no, \$150,000, and so it was settled at \$150,000 and two years.

You see there was a time when all Members opposite were of one tie and in those days we know exactly where they were coming from. I do not know

whether there has been no caucus since the last meeting of the Lower House, but I would have thought that hon. Sen. Beckles would have asked her leader, Dr. Rowley, I believe what was the agreed number and I am sure he would have told her that he in fact voted for \$150,000 fine. So that—

Sen. Beckles: Notwithstanding the issue of the figure that was voted on. I would still like, if you could give me an idea of what would have accounted for the Government's decision to increase. Notwithstanding, the fact that we voted for that in the House. I would tell you that the hon. Dr. Keith Rowley, certainly gives to the Senators' discretion; if it is that a matter comes before the Parliament and we feel that there may be any need for us to raise with you an issue or even to enquire as to what has happened, we have that freedom.

Hon. H. Volney: Thank you for your intervention. Sen. Beckles, I recall that the hon. Prime Minister had suggested \$100,000. Now, I want to point out that under the Interpretation Act the fine of \$150,000 and imprisonment is the maximum fine, and that is a matter for the presiding officer of the court to determine, as long as it does not go above that figure. The purpose behind this fine is the type of reporting that is making itself into certain parts of the local media, where persons who are presumed to be innocent—the dirty water of evidence is being exposed it would seem with impunity in some cases, because no action is being taken, and what that can serve to do is not only compromise potential jurors who read and hear the discussion about it—because it would be discussed as well on the radio stations. They take the lead from the publishing media, the print media, and it could well affect the fairness of the trials of persons. Hence, there must be a deterrent to those media houses who choose to run afoul of the law, because they can afford to pay the fine as now obtains and proceed to do so knowing that there has been no enforcement of the law. And, it was felt that a good and appropriate fine that takes into account inflation and all those matters would serve as a deterrent to those media houses, and that was the rationale behind this fine.

Now, there are many matters that were raised. Let me start with Sen. Shamfa Cudjoe; she is not in the House now, but I wanted to let her know that she has a major fan in my dear wife, who listens to her more than she listens to me. And I had to sit down today and listen to what she has said and the hon. Senator should appreciate that if there is anyone on this side, apart from those who actually reside in Tobago, I know Tobago very, very well. In my days on the Bench, I perhaps was the only judge many years before who had actually volunteered to do the Tobago Assizes. And after a while I got the feel of the shortfalls, and what was

required in the justice system in Tobago—and she has very valid concerns, very valid concerns. And these are concerns that are being addressed.

As far as I am concerned. There should be at all times at least a resident judge in Tobago at all times. There are magistrates who are resident and the time perhaps has come for the court plant, the Magistrate's Court in Roxborough to be rebuilt. And I am giving active consideration to constructing a Magistrates' Court building in the Plymouth area, which is on that side of the island. So it is not to say that we are not thinking of Tobago. It is not a judicial centre because money has to be spent wisely and it is where the demand is greatest that the money will be spent. Remember we have to account at the end of the day for our stewardship of governance and that we are very mindful of. So, I have what heard of what Sen. Cudjoe has said.

Now to get to the Bill itself. I would like to first assure hon. Senators that there are a number of amendments that are being proposed. The list will be circulated momentarily; it is just being perfected, if I may put it that way, and hopefully, before I complete what I have to say here, I would have it circulated so that at the committee stage the amendments proposed will be made.

Some of them changed—some of them serve to introduce many of the suggestions that have been raised, in particular the suggestions of Sen. Elton Prescott SC, who spent it would seem quite a while looking at this Bill and going through it clause by clause.

Now on the issues of the alibi let me start, because that is an issue that was first raised by Sen. Dr. Victor Wheeler. The issue of alibi is a valid issue that has been raised, and while we maintain that the sooner the alibi is given or revealed is the easier it ought to be remembered, it is the way to go. You pick up someone and you ask him where were you and at that point in time he should be able to say where he was if he is given sufficient time to recall. Now 48 hours is, in fact, two days.

8.45 p.m.

But the point made by the hon. Senators that charges could arise years after, someone could be picked up a couple of years after—could be more than a couple of years—and would be asked at the initial hearing, “Well where were you three years ago on Christmas Eve?” Some of us would have been able to say, “in the local watering hole” at what time; others like Sen. Drayton, would say, that she was on her way to church, or Sen. Baptiste-Mc Knight may say that she was getting her Christmas ham into the oven, whether it is a pork ham or turkey, I do

not know. But there are many people who may not remember, given just 48 hours, and may require to consult with other persons.

Now, the whole purpose of getting the alibi notice—the information—is to serve two purposes: that a false alibi will not be concocted because of plenty time, too much time given in order to allow for its concoction, its fabrication and the support for it to be given. On the other hand, given an alibi as early as possible can help absolve a person—remove the allegation of guilt or the suggestion that he is involved in the commission of an offence, if at earliest, the alibi could be checked out by the accuser. If you say where you were and the law enforcement takes the information that is given by you and go and check it out, they could very well find that they have the wrong person in custody, and that helps towards removing you from the suspicion that you are under.

However, as I say, the point that the Senator has made that you may need a little longer time, on this side, I think I have discussed it with the Attorney General, and the longer period of five days has been accepted as a give and take; a better compromise. [*Desk thumping*] And we are happy to be able to amend the Bill in its form to allow for that situation.

Sen. Prescott SC had serious concerns as I understand it and these are concerns that I think are shared by Sen. Drayton. While she has not spoken, you know, we have a way or overhearing conversations, not just on the floor—[*Interruption*]

Sen. Beckles: On the phone.

Hon. H. Volney:—but in the tea room. In no way is the constitutional power of the Director of Public Prosecutions to commence or to conclude a prosecution being compromised by this bit of legislation. In fact, when you look at Schedule 5 which was raised as a source of concern, it does not give the power or it does not take away the power, it is merely a notification of an existing power. Because even under the present legislation as now obtains, if a magistrate commits someone for trial, the DPP has the prerogative not to file an indictment; he can terminate the matter. At the end of the day, whether a proceeding moves forward to closure by a verdict at a trial is determined by the filing of an indictment under the hand of the Director of Public Prosecutions; not the magistrate. The magistrate merely determines whether there is a prima facie case for the matter to be tried by a judge and jury; that is what obtains now.

As to whether it goes forward is a matter that the Director of Public Prosecutions will determine, and in fact, there are many cases that I have known. One of them I have had the personal experience of having before me as a former

judge, an indictment for murder against a man, who is now in jail serving 30 years, who had given a statement that he had shot the late Chandra Naraynsingh—rest her soul.

Now, he was charged with murder and the indictment before me as the judge was that of murder. And I looked at the proceedings and when the present director—not the present director—when the state counsel who was then the Assistant Director of Public Prosecutions, came to court, he said that he would not be proceeding with the indictment for murder and that they were prepared to accept manslaughter.

Now, you know the type of judge that I was, I was not to allow any subordinate officer in the court to dictate the court's pace because before me was an indictment for murder, and on the indicative evidence in the depositions, a case of murder was made out. So, I said I am not accepting any plea on what is before me. I asked him, "Do you have your witnesses?" and he said, "Yes". I said, "Well, based on those witnesses, if you call them, you should be able to establish the indictment and the jury will decide whether they accept the case or not on the evidence that is being led." Well, as it turned out, he asked for an adjournment which I gave him until the next morning for him to take instructions. Now, I knew what I was about; I started my career in the Director of Public Prosecutions office—Sen. Beckles would have known that; if not, Sen. Hinds.

However, the next day, there was a new indictment before me for manslaughter and such is the power of the DPP. The DPP determines what the judge will deal with. The counsel got up the following morning and said, "I will not be proceeding, My Lord, with the indictment for murder but we are proceeding with the indictment for manslaughter", and the accused got up and said, "To which I plead guilty". Of course, he did not anticipate that I was going to give him 30 years, and that was the subject of an appeal which was upheld subsequently. So there is the power of the DPP.

Sen. Beckles: And the judge—30 years.

Hon. H. Volney: No, the judge had little to do except the sentence for 30 years. [*Laughter*] But that is judicial history.

Mr. President, when you look at Schedule 5, it really is a notification when somebody has been put to trial after the sufficiency hearing has been completed that the master decides I am putting you to trial by a judge and jury. This document in this schedule is a document that must be served upon the person so put on trial, and in it the person is told that the DPP may file an indictment or the

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DPP may not file an indictment. It is just an advice to them that this does not necessarily mean that you are going to the assizes. So that you need not fear, there is no need to change that provision, that notification.

Now, what this Bill also serves to do is to allow the DPP in situations where he says, from the outset that, “I have enough evidence on which I can file my indictment to take this matter speedily to trial. I would have thought that and I do identify—and if I can get my legal people to word it quickly—that the proceedings of a coroner’s inquest where a coroner finds that there is a prima facie case made out for a charge to be laid should be in the Bill. So that a Director of Public Prosecutions, being armed with the coroner’s evidence and its conclusion, should be able to take that, file it as the supporting witness statements and documentary evidence together with his indictment, and take it straight to the master. And at that stage, the master will then continue with the sufficiency hearing after the initial hearing, and determine whether he agrees that there is a case to put the person on trial. He may agree or he may disagree and what then happens is the person is then put on trial or the person is discharged.

Now, one of the proposed amendments to the Bill which should be before hon. Senators shortly—if the hint could be taken by those who are here to support me so I do not have to spend my whole 60 minutes speaking, awaiting that document, Mr. President [*Laughter*—is that if the master feels that there is insufficient evidence, the master can say, “I find there is insufficient evidence” and discharge the accused person.

What will then happen is that if the Director of Public Prosecutions feels that he disagrees with the ruling of the master—and there is that provision in the law as it now obtains, except that it is with a magistrates’ decision—he can within a time frame apply for the statements and the decision, he can review them, and he can go to a judge and ask for a judge’s warrant to arrest or to apprehend the accused person who was discharged to bring him back into the system on the ground that the judge disagrees with the master, and finds that he should, in fact, be put to trial, so that provision remains.

The difference in the Bill as it now obtains, is that application must be made inter partes. Now, even after the Bill got through the Lower House, we have discovered—and it makes a great deal of sense—that if you serve a person who has been discharged on, say, a charge of murder, with an inter partes application, he is gone, into flight. And rather than do that, there is an amendment that we are bringing at the committee stage which says that the Director of Public Prosecutions can, in fact, go ex parte for the warrant to apprehend the person—

bring him in—and then for the inter partes application to be made to, say, to perfect the holding process just in case, and to give the other side the opportunity to be heard.

Now, this is why I say this is a balanced Bill. That is why my friends on the other side are supporting the measure; it is a balanced Bill. I mean, it is not perfect but, certainly, it gives the framework with which we can work, we can move forward. And this measure, I can assure hon. Senators present, it is not a measure that will be implemented next week or the week after because many things have to be put place. But the first step is to get to the legislative framework.

9.00 p.m.

Now, when it comes to the different stages, there are timelines that are established in the body of the Act for the sufficiency hearing and also for the initial hearing. Those timelines are there, but they may not be as guarded by sanction as Sen. Elton Prescott SC would like to have and I agree with him, there should be a guard against breaching it, there should be a consequence, if not follow to the letter of the law.

Here is where, Mr. President, I can give you the assurance that the Rules Committee of the Judiciary is working at the Criminal Procedure Rules. That is the information I have gotten from my people who have been working with the Judiciary and with other stakeholders in bringing this measure to the stage where it is today.

Now, the timelines will be perfected in the Rules of Court that would come, and I would like to propose the amendment when it comes to that section that deals with the timelines, that they be subject to Rules of Court, made pursuant to this Act, so that the Rules of Court will kick in to fine-tune the timelines and also, perhaps, to even penalize attorneys who are non-compliant with the Rules of Court. What we are in fact producing is the framework so that, at the end of the day, when the Rules of Court join with the legislative measure, when it is passed—I am told by my friends opposite that they will support it. Gladly and happily they are making themselves part of history tonight. This is just the starting point.

When this happens, in preparation for its operationalization, as Sen. Terrence Deyalsingh says, what we propose to do is that while these court buildings, purpose-built court buildings—I can assure the hon. Senator who brought that talk and that newspaper article, that whatever issues there were between, whether it be the Attorney General or any member of our Government, that is long gone as

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water under the bridge and right now, our Government, like never before, is working towards, inter alia, the construction of these four judicial centres to be completed. Trust me, I will ensure that they are completed by early 2015. They will be completed and they will be ready for handing over to the Chief Justice, so that he can take it over.

In the meanwhile, there is an implementation team in place that will make recommendations within the legal block that is led by the Judiciary, because the Judiciary is the end-user of both the legislation and the judicial centres to bring about a confluence whereby the legislative measures would have been in place, the human resources would have been obtained, persons would have been trained and there would be a readiness to implement this measure by January of 2015.

[MADAM VICE-PRESIDENT *in the Chair*]

In the meanwhile, this implementation team has been given a target and the Ministry of Justice proposes shortly, to bring to Cabinet, a Note for the outfitting of certain buildings to be identified. These buildings, when identified Mr. President and Madam Vice-President, if I may address both of you will be outfitted on a short-term basis, quickly. So that while the judicial centres are being built—and I anticipate by this week it will be confirmed that they be built in Carlsen Field, at Sangre Grande, in Trincity, and also in Siparia/Penal—and they are purpose-built judicial centres, comprising, for three of the largest centres, a wing to deal with Magistrates' Court matters and a wing to deal with Supreme Court matters, with special courts for the Supreme Court side, whereby jurors would not be in the glare of the public, whereby accused would not be walking up the same corridor as jurors, or witnesses, where there would be a basement and there would be sterile circulation for the different stakeholders.

These are matters that have been in the planning stages, since February 2011. There had been some planning in the last government—I recognize it—but the whole idea of having a mega centre of the last government was not adopted and we have chosen, on the initiative of the Ministry of Justice, to bring the justice to the communities by rather than having one large building with 16 courts somewhere in the East-West Corridor, to share it and bring the justice to communities. Hence, the court in Penal/Siparia will cover the High Court work of the deep south, if I may put it that way.

You will continue to have San Fernando serving the area around San Fernando, and then you have up to Princes Town. Then you would have the eastern counties with their own mega court. That is to say the eight courts, four

Magistrates' Courts, to replace and to relieve the magistrates of the burden that they have to endure and they have been enduring for so long, with new courts as well as High Courts, so that in matters of the eastern counties, that is to say from Arouca/Tacarigua—no, I beg your pardon, from Arima going all the way to the east including from Matelot, Valencia, all that side going down as far as Mayaro and all the areas in between, you would have the Sangre Grande High Court. It means that jurors, witnesses and persons involved will not have to come into and worsen the traffic situation in Port of Spain.

I recall presiding over a trial of a policeman who had been charged with murder. That happened in Matelot. The trial took place in Port of Spain and the witnesses from Matelot, ordinary folk, had to leave their home at 3.00 a.m. in order to get to court. By ten o'clock they were virtually sleeping on themselves and that trial went on for the better part of three weeks. Is that fair to simple ordinary people who are making a contribution to the administration of justice? It is not! And these are the kinds of factors that I took into account in going bold, as it were, on May 24, so that, I could have made a difference in the lives of these kinds of people.

The building of courthouses in the different areas is meant to have it such that persons would be tried by their peers in their communities and witnesses will come from their communities and would not have to travel miles into Port of Spain through the traffic. It will relieve the traffic situation in a small way, and this is but one step in the right direction, Madam Vice-President.

These matters are being put into place. There will be training, hopefully, very soon. The hon. Attorney General will bring a measure to amend the Supreme Court of Judicature Act to allow for more masters to be appointed. We have quite a few very experienced senior magistrates. Their next point of promotion would be that of Deputy Chief Magistrate. We know that the Deputy Chief Magistrate, once he is around—there is only one Deputy Chief Magistrate—everybody stays frustrated at the level of senior magistrate. Now you have a stepping stone from the magistracy into the High Court by putting one foot in as a Master, but with the experience of the magistracy. So, when these kinds of matters come—and the senior magistrates are the ones who actually preside over preliminary enquiries today. They are the ones who deal with the serious crimes; the indictable offences. Opportunity is there for the senior magistrates to progress in their careers. Of course, the appointment of these people would be a matter for the Judicial and Legal Service Commission.

[MR. PRESIDENT *in the Chair*]

When the Judicial and Legal Service Commission makes the appointments of masters, while we prepare temporary courthouses in the different areas, it means then that the masters can be trained under the Act. They can get accustomed. Staff to man the masters' courts or to—should not say “to man the courts”. That is an offensive way of putting it; to work in the courts with the masters. Perhaps, I should not use the word “masters” Maybe we need to look at that again, having “masters”. [*Interruption*]

Sen. Hinds: You are going very good.

Hon. H. Volney: I know. Because soon we have to look and see whether we continue to call it the master bedroom. [*Laughter*] But, the point is taken and the apologies were had.

We have looked at the legislation, Sen. Prescott SC, and we do not have a difficulty in removing the offences under the Anti-Gang Act from the schedule. Really and truly, they are misplaced there in any event. If we are keeping it as crimes of the blood, we should maintain that, and I accept your point, especially as we have some difficulties right now in operationalizing the Anti-Gang Act.

I have answered the question of where will we find masters. But, as I have said, that will be ultimately a matter for the Judicial and Legal Service Commission. There are many very good persons who can become masters. If after the next general, your Leader in the House wants to go to the Judiciary, there is always room. I think she is still of the age. [*Crosstalk*] So these, are matters for the Judicial and Legal Service Commission.

9.15 p.m.

The point was made also of the time allotted under 11(2)(a)(iii) to get an attorney. Well, while it is that the pool of criminal attorneys is rather shallow, it will allow for other attorneys with talent to come up—and I do not think that this is a matter which really, you know, should trouble Members of the Senate.

So let me basically introduce where the changes are being made. Let me start at the end with clause 34; there is a new clause 34 which is being introduced. Now, this section is intended to give the justice system breathing space. There are arguments in relation to the whole issue of whether there should be criminal statutes of limitations. But what I can say is that if we were to go on the basis of what has been happening in our courts—and those of us would read right now since September 16, when the law term was opened or thereabouts, there have been five of six assize courts in Port of Spain. There have been three in San Fernando. I do not think that there has been a Tobago assize since the opening.

If during that period seven trials have been completed, that would be a lot. There are at least two cases that have started, that have not been completed as yet. Now, if we are to go on this basis, Mr. President, it would mean that murder trials alone in the system, awaiting trial with that number of courts, and this case of delivery would take us easily 10 years to get on top of. Ten years! We could ill afford that because there are many, many cases of rape, serious cases of rape, where every woman is entitled to have her day in court. You have wounding, you have robbery, you have all types of cases; sexual offences with minors, all those cases have to be tried, they have to get judicial time as well.

So the point is that there are compelling reasons to put a cap somewhere. Now, as a former judge I can tell you, I had to deal with many motions to stay indictments for abuse of process from—I do not know if I ever entertained one from Sen. Beckles, but one of the first things—or Sen. Hinds. One of the first things that you do in an old case is you submit to the judge at the start a plea at Bar that: “This case is so old that there is so much prejudice if it were to go on, my client cannot get a fair trial, his witnesses are dead, the prosecution could barely make a case—”

Mr. President: Hon. Senators, the speaking time of the hon. Minister has expired.

Motion made: That the hon. Minister’s speaking time be extended by 15 minutes. [*Sen. P. Beckles*]

Question put and agreed to.

Hon. H. Volney: Thank you. Thank you all. You see the compelling argument for criminal statutes of limitation and this is—given my own experience in the other estate—that the longer a case takes to be heard, is the greater the chance of injustice on either side; and after a while it becomes a phenomenal waste of taxpayers’ money. So that is why it is important that those matters that are coming to the system be tried while they are relevant.

Now, this does not apply to cases of what I call blood crimes. All cases involving human blood, blood crimes no matter how long it takes, if you leave the country and you evade the process of the court when you come back you will be tried. And no matter how long it takes to do a murder trial, you will be tried for it, but there are many other cases. Some of the arguments for putting a section like 34: there is less need for a criminal sanction against a person who demonstrates rehabilitation by remaining law abiding for some time.

Sometimes a man is charged: he was charged when he was 18 years and robust and irresponsible. You put the same man on trial at 28 years, he is a totally

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different person, he has now a family, he is working, he has a wife, he has a home, an HDC house—thanks to the PNM or the People’s Partnership whoever was in government—and he has children going to school, he is a different man altogether and he may well, Mr. President, have kept a straight line since being charged; he learned his lesson, and the longer you take to try the matter the greater the injustice to him and society’s sense of fairness. And that is why I repeat: there is less need for criminal sanction against a person who demonstrates rehabilitation by remaining law abiding for some time.

In the interest of fairness a prosecution should be based on recent and more reliable evidence. Statutes of limitations encourage law enforcement and prosecutors to act in a timely fashion in apprehending and bringing wrongdoers to justice. Statutes of limitations grant repose or closure to a wrongdoer which may be appropriate when a focus on the past does not serve current interest.

Statutes of limitations foster a more stable and forward looking society. As time goes by society’s interest in retribution may lessen, and it is more appropriate to focus the State’s attention on dealing with recent criminal activity.

You see, Mr. President, that is one of the reasons we have to build the mega courts, the larger courts, that two of those can concentrate on getting rid of the older matters and two of them can concentrate on dealing with the matters which presently come into the system. So that persons can see, society can feel that, when somebody does the crime, it may not be everyone, but there will be persons who they would recall did this crime or allegedly did this crime last year, and they would see for themselves that they are convicted within a year. Now, what better way to restore public confidence in the judicial system than by the delivery of swift and sure justice that is fair? And that is what this Bill is about; that is what these judicial centres are all about.

Now, the amendments have been circulated. I do not have to go into them. Senators would have the opportunity—I think Senators have been giving copies and I do not think I need to bother this Senate at 9.25 p.m. with going through it clause by clause, because the intention is that at committee stage, Mr. President, we would all get an opportunity to go through it clause by clause.

Accordingly, Mr. President, having said that and having given the assurance to Senators opposite that we would not be rushing into implementing this legislation until everything is in place and we virtually have the green light from the stakeholders, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

9.30 p.m.

Senate in committee.

Clauses 1 and 2 ordered to stand part of Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, on the issue of clause 3, through you to the hon. Minister of Justice, is it intended that we would, through the practice directions to be issued, deal with the management of a witness statement and its terms of conditions?

Sen. Ramlogan: There is no need to define what a witness statement is, but certainly in the Civil Proceedings Rules of Court, there is a rule that addresses the question of what a witness statement should contain and it is very brief. The witness statement should contain the evidence. So, to the extent that there is a need for it, it will come in the rules.

Sen. Prescott SC: Mr. Chairman, on page 3, the word “Master” is said to mean “a Master of the High Court appointed to conduct proceedings under this Act”. It suggests that this is an ad hoc appointment. It is not that this case now becomes a case to be dealt with. It has not become High Court proceedings, but an officer of the court will be appointed to conduct proceedings under this Act and he is already a functionary of the High Court.

If you look at clause 16(2), you would note that it speaks of adjournments being fixed for the next day on which the master holds court at the place where the order is made. That kind of provision appears twice. I cannot immediately locate the other one. So, it tells us that this is an ad hoc appointment and I am, therefore, seeking, firstly, a clarification of whether it is. If it is not, why is the definition section not simply saying “‘Master’ means a Master of the High Court”?

Mr. Volney: As you would know, Senator, civil masters, who are on the civil side and this master is a master whom the Chief Justice appoints to conduct proceedings under this Act.

Sen. Prescott SC: He gets an ad hoc appointment. He may well be a civil master who is given a furlough or a sabbatical, or who has been seconded to do

something for two or three months. So, when we speak in clause 16 of the next day he has court, he may decide he is going to have court one day per week or one month in the year. Is that how you are viewing it; that the master is really a civil master, who has been asked to do some criminal work for a while?

Mr. Volney: No, the intention is that the Chief Justice, after the Judicial and Legal Service Commission appoints persons to be Masters of the Supreme Court, would assign one to the criminal—

Sen. Prescott SC:—who does criminal proceedings?

Mr. Volney: Yes, the criminal procedure, the sufficiency hearing.

Sen. Prescott SC: If this definition section had simply said, ““Master”” means a Master of the High Court”, it would not exclude such a person?

Mr. Volney: Yes, I tend to agree with you.

Sen. Prescott SC: In which case, would you like to look at it again?

Mr. Volney: I agree with you. The intention of the measure is to exclude the civil masters from doing the criminal sufficiency hearing. So while the Master is not called a Criminal Master, he, in fact, operates as a criminal master.

Sen. Prescott SC: Is “criminal” there an adjective? Mr. Volney does not clause 19 say a sufficiency hearing shall be held by a master? Mr. Volney did you not say they are not intended to be?

Mr. Volney: No. The civil masters, those assigned to the civil court, but they are not called civil masters. They are called masters.

Sen. Prescott SC: Maybe the rules of court should make the distinction as opposed to the Act.

Sen. Al-Rawi: Hon. Minister, through you, Mr. Chairman, I agree with my learned senior, Sen. Prescott SC, that you consider that. I think it would allow you a bit more flexibility, particularly in the event of a shortfall or cross-training if we delete the words “appointed to act” and just confine it to ““Master”, means a Master of the High Court”, leaving it, therefore, up to the Chief Justice to assign as he sees fit, as he does currently for the Family Court or for any other special pilot project that he may pursue.

Mr. Volney: I think we can grant that amendment. So, Mr. Chairman, I beg to move that clause 3(1) be amended by deleting “appointed to conduct proceedings under this Act” in the definition of master.

Question, on amendment, put and agreed to.

Sen. Al-Rawi: Mr. Chairman, through you, for ease of reading, the first time I read clause 3(2) and (3), I put an immediate question mark because it just did not flow. I had to read it about three times to understand that, “for the purposes of this Act, proceedings were instituted prior to the coming into force of this Act.” I suggest, respectfully, another comma, then “when the accused appeared”; similarly, in (3). It took, I believe, the hon. Senators behind as well two readings to get the same meaning. The proposal is that you insert a comma after the word “Act” in the second line of subclause (2) and similarly, for subclause (3), after the word “Act” in line 2 that you also include a comma there.

Sen. Prescott SC: I have a different view. As clumsy as it appears, it is the only way to do it.

Sen. Al-Rawi: My learned Senior, Sen. Prescott SC thinks it should stand as is. Will you give me one moment to have a view of it again?

Sen. Ramlogan: I think it read correctly the way it is at the moment. It is a mouthful, but it is the correct reading, if you read it carefully.

Sen. Al-Rawi: I withdraw the suggestion; I will be guided by the majority view.

Sen. Prescott SC: Unless you want to say “proceedings are deemed to have been instituted”? That might help.

Sen. Ramlogan: I think we will leave the drafting as is. It is a deeming provision really so there is no need to use the word “deeming”.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

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

Sen. Al-Rawi: Mr. Chairman, clause 4(2)—and this may be in need of clarification—through you to the hon. Minister.

“Where proceedings were instituted prior to the coming into force of this Act, the prosecutor or the accused may elect...”

Now, “prosecutor” is defined at clause 3 to mean “the Director of Public Prosecutions or a person acting under or in accordance with his general or special instructions”. My question here is: have we considered the impact of a private

complaint where currently permitted under the law a person offers a complaint who is not the Director of Public Prosecutions and, therefore, not a person acting, per se, under him?

Mr. Volney: The whole process will be driven by the Director of Public Prosecutions at the end of the day.

Sen. Al-Rawi: As I understand it, and you can correct me, hon. Minister, the Director of Public Prosecutions has the discretion to take over a prosecution or to give a fiat, but I know that the system is currently engaged in considering a number of private indictables as they are called in the Magistrates' Courts. That is the theme, the concept of private indictables which runs throughout the Bill. It also arises later on when we are looking at the Director of Public Prosecutions giving a direction to consider a matter summarily, one which can be tried either way.

My question is: how are we factoring the whole process of private indictables particularly where there is a concept in the Bill that the DPP is involved at every stage?

Mr. Volney: As far as I know, the incidence of private indictments is extremely rare. I do not know the source of the hon. Senator's information, but the only time we really hear about them is when the DPP is terminating them. It is not something that is encouraged.

Sen. Al-Rawi: It is not encouraged, but it is a phenomenon permitted under the law and one which is well used in recent times. All the way up to the Privy Council, more and more cases involving white collar crimes in particular are taken on behalf of companies or individuals complaining of fraud and they are brought by way of private indictment in the current preliminary enquiry process. I am aware of that for sure.

Mr. Volney: I am sorry, I am not aware of it.

Sen. Prescott SC: Mr. Chairman, I would rather suggest that the Minister be slow to have it appear that he is abolishing private indictables without more—some thought needs to be given to it. If we are about to abolish it, say so specifically. They exist, rare as they may be, in the operation and there are people who would prefer to have their cases heard even though the DPP might have a slightly different view.

Mr. Volney: We should not mix up fiats to prosecute and privately commenced or instituted indictable information. I know of many cases where the

DPP grants a fiat to prosecute on his behalf, but as to granting someone the go-ahead to file a private information, those I am not aware of.

Sen. Al-Rawi: Hon. Minister, through you, Mr. Chairman, there is no need to request permission to lay any complaint. A private citizen can lay any complaint right now at law and you do not need a fiat to do that.

Mr. Volney: At common law?

Sen. Al-Rawi: Yes, at common law; for any indictable offence.

Mr. Volney: This does not abolish the common law right of anyone.

Sen. Al-Rawi: This Bill contemplates materially that, for instance, in clause 4, where the proceedings were instituted prior to coming into force, the prosecutor or the accused may elect to have the case. The election is only by two people; the prosecutor or the accused.

Secondly, if you were to look at clause 6, for example:

“(1) Where a complaint in writing is made to a Master that an indictable offence has been committed by a person...

(a) where the complaint is without oath, issue a summons;...

(b) ...on oath, issue a warrant,
to compel the appearance...”

Then it goes down at subclause (2):

“...where the Director of Public Prosecutions is of the opinion that a person should be put on trial for an indictable offence, the Director of Public Prosecutions may prefer and file an indictment against that person, whether or not a complaint is made...”

Again leaving out the whole concept of the private indictment.

Unfortunately, we may have a statutory interpretation scenario where it could be viewed that we have impliedly repealed the concept of a private indictment and that is going to be one of the concepts that surely would be of interest to someone who takes a point.

Mr. Volney: I think that concern really is misplaced because you cannot just abolish the common law right by implication. This here is to allow the DPP as the public prosecutor to determine whether matters are tried at the higher level or in the Magistrates' Court. It does not take away. It does not say anywhere that it affects the right of the citizen to institute a private indictable complaint.

9.45 p.m.

Sen. Al-Rawi: It does not say that it affects their right but in confining certain selections throughout the Bill to only the prosecutor, DPP's person and the accused. We have left out the persons who can originate complaints under this Bill, privately, in accordance with their common law rights. What I am saying is, we have left out a limb that does exist and I am aware that it is solidly in existence. So the question is, what is going to be the effect of it?

It may also, for instance, call into view the need to have every complaint filed, referred to the DPP. That is something that is, in fact, not in here but could, perhaps, be in the practice rules where all complaints that are laid are, in fact, a copy sent to the DPP for advice.

Sen. Prescott SC: Mr. Chairman, could you allow me one contribution before. I am thinking—and it is my colleague here who reminds me—if it were not specifically dealt with in here, defence counsel faced with a private indictment may well challenge the validity of the entire indictment and the proceedings on the basis that this Act, which is the only Act that deals with preliminary enquiries, does not empower a private citizen to do it. I am thinking that you ought to look at it again.

Sen. Ramlogan: I think what we can do is to amend the definition of prosecutor and we can amend it to include “or in the case of the private prosecution of an offence, the person prosecuting that offence.”

Sen. Prescott SC: That is excellent.

Sen. Ramlogan: Would that satisfy you all?

Sen. Al-Rawi: I think so. Thank you very much that is an excellent suggestion, hon. Attorney General. I think that that ought to do it because it is in the context of the reference back in clause 4 to the word “prosecutor” as we go there.

Sen. Ramlogan: Throughout the Bill, that will solve the problem, if we do it in the definite section.

Sen. Al-Rawi: Thank you.

Mr. Chairman: Sorry, can you repeat that again?

Sen. Ramlogan: Yes. Definition of prosecutor, we add after the word “instructions”, “or in the case of the private prosecution of an offence, the person prosecuting that offence.”

Mr. Chairman: Thank you.

Sen. Ramlogan: So that ought to protect neither the DPP nor the accused and create that third road for private prosecutions.

Mr. Chairman: We will come back to clause 3 when we revisit that.

Sen. Ramlogan: Yes.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, I have sought the assistance of the staff to have some amendments passed around. I suspect that they are not ready in time. I do have a comment on clause 5(2). The way it is written now, it appears that a warrant may only be executed on a Sunday. Therefore, I am proposing that clause 5 should instead read—if you would bear with me. In the last line delete the word “a” before the word “Sunday” and substitute the words “any day including”. So it will read “a warrant under subsection (1) may be issued and executed at any time and may be issued and executed on any day, including Sunday.”

Sen. Ali: And public holidays?

Sen. Prescott SC: It might be superfluous since you say any day.

Sen. Dr. Armstrong: Then you could just leave out Sunday as well.

Sen. Prescott: It could say any day.

Sen. Ramlogan: You want to clear it up?

Sen. Prescott SC: On any day will suffice.

Mr. Chairman: It is proposed that we end at “any day.”

Mr. Volney: What is stated is on a Sunday and executed on any day.

Sen. Prescott SC: Well done George. He says any day.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed; That clause 6 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, just a clarification through you to the Minister. Insofar as we have defined the accused at clause 2—but it may be that clause 2 is cross-referenced to clause 6, is it? Sorry, in clause 3, “accused” means a person against whom a complaint is made or an indictment is preferred”. Then clause 6, “Where a complaint in writing is made to a Master that an indictable offence has been committed by a person (hereinafter referred to as ‘the accused’)” I was just wondering why we do not use the word “accused” and then we go down to the end of that person.

Mr. Chairman: So it should read “committed by an accused”?

Mr. Volney: Simply.

Sen. Al-Rawi: Yes. Only insofar as we have defined it already.

Mr. Volney: Yes, “by an accused”, Mr. Chairman.

Mr. Chairman: I understand that the amendment is that it would now read “Where a complaint in writing is made to a master that an indictable offence has been committed by an accused, the Master shall...” and it will continue as is.

Sen. Al-Rawi: At the end of it, Mr. Chairman, after paragraph (b) “to compel the appearance before him of the accused” as oppose to “that person”. There is subclause (2) which says: “Notwithstanding sub-section (1), where the Deputy of Public Prosecution is of the opinion that a person should be put on trial for an indictable offence,” again, the substitution of the word “person”.

Mr. Chairman: That an accused?

Sen. Al-Rawi: Yes, Sir. Also, “that person” again at the end of subclause (2). Again it is in (3) as well. So we have the use of “person” in subclauses (1), (2) and (3) and I am suggesting that we keep with the definition clause of “accused”.

Sen. Ramlogan: In this case you do not need it to—I think whilst I accept it in respect of subclause (1), I do not think it is appropriate in subclause (2) because until such time—this is where the DPP is still forming his opinion.

Sen. Al-Rawi: I see.

Sen. Ramlogan: A person will not be an accused until such time as he, in fact refers the indictment.

Sen. Al-Rawi: I see that. Accused means a person against whom a complaint is—I see.

Sen. Ramlogan: So (2) is appropriate given the stage at which we have reached.

Sen. Al-Rawi: Understood. Agreed. Thank you.

Sen. Dr. Tewarie: Mr. Chairman, if you look in (7), you will see the word “accused” begins to be used.

Sen. Ramlogan: Where?

Sen. Dr. Tewarie: That is after the matter is settled. That he or she is in fact an accused.

Sen. Al-Rawi: I agree “that person” should stand in (2) and (3), but not in subclause (1). Thank you.

Sen. Ramlogan: I think the point Sen. Dr. Tewarie is making, is really and truly—the drafting is deliberate. You see, clause (6) is before the person is, in fact, charged. So he becomes an accused from clause 7 onwards which is why they have used that language.

Sen. Al-Rawi: But not in subclause (1). Because where a complaint in writing is made—the minute a complaint is made by the definition clause, you are an accused.

Sen. Ramlogan: That is what we are saying. We leave it for (1)

Sen. Al-Rawi: Agreed, and not for (2) and (3). I agree with you. Thank you.

Mr. Chairman: Senator, my understanding of the amendment is that clause 6(1) will now read: “Where a complaint is made in writing to a Master that an indictable offence has been committed by an accused, the Master shall,” and in the last sentence—“compel the appearance before him of the accused.”

Sen. Al-Rawi: Yes, Mr. Chairman.

Mr. Volney: Also, Mr. Chairman, in subclause (3) at the end, “before him of that person” that could read “of the accused;” that there.

Mr. Chairman: Yes, I see. And the other amendment as I understand it, in subclause (3) of 6 is that the last sentence will read “appearance before him of the accused”.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 7 be amended as circulated.

“(6) A Master may, if he thinks fit, with the consent of the parties, proceed with a matter notwithstanding that the period referred to in subsection (5) has not elapsed.

(7) A Master may, if he thinks fit, issue a summons directing an accused to appear forthwith in cases where the accused is likely to leave Trinidad and Tobago.”

Sen. Al-Rawi: Mr. Chairman, if you could just allow us to catch up with the reading. Sorry.

Sen. Prescott SC: Mr. Chairman, I too—while Sen. Al-Rawi puts himself in order, my schedule of proposed amendments has now been circulated. Although it is not word perfect, there is a reference to clause 7(3) which I would like to have considered please. In whatever order you may wish.

Mr. Chairman: Shall we look at clause 7(3) first as amended in the proposal made by Sen. Prescott?

Sen. Prescott SC: I cannot see why anybody would want to have a provision saying “a summons shall not be signed”, then to say “in blank”, which is a conversational kind of language that does not seem to fit. I think if you remove it and say instead, “a summons shall be signed by the Master once it contains the requirements in subsection 7(1), it would not be necessary to tell them do not sign it in blank. I do not know if I am making myself clear Minister Volney.

Mr. Volney: I am told that it is in the present Act.

Sen. Prescott SC: Is it?

Mr. Volney: Yes.

Sen. Prescott SC: Well, I regret that I am coming to it late but it sounds very silly.

Mr. Volney: Yes. Summons to accused person, clause 7(3) “no summons shall be signed in blank”.

Sen. Prescott SC: What on earth does that mean to somebody to whom English is the second language?

Sen. Ramlogan: It is to prevent fraud.

Mr. Chairman: I suspect that sometimes you want to take care that the master does not sign the summons and then somebody goes filling it out afterwards. That is the procedure you trying to—

Sen. Prescott SC: No well, what is meant to someone who speaks English as a second language. I could give up that one, in light of what has been said.

Sen. Al-Rawi: It is like signing a blank cheque.

Mr. Chairman: So can we turn to the consideration of the amendment circulated by the Minister which are at subclauses (6) and (7)? A new (6) and (7) are being introduced.

Mr. Volney: Mr. Chairman, I beg to move that clause 7 be amended as circulated.

10.00 p.m.

Sen. Al-Rawi: Sorry, Mr. Chairman, regrettably the amendments that were circulated recently, just for a point of clarification for the new clause 7(7):

A Master may, if he thinks fit, issue a summons directing an accused to appear forthwith in cases where an affidavit is made by the complainant that the accused is likely to leave Trinidad and Tobago within forty-eight hours.

Do we want to confine it only to the complainant? Do we want to consider it as well and include the Office of the DPP where the circumstances that the DPP is going to prefer an indictment of his own volition?

Sen. Ramlogan: You are doing it by or on behalf of the complainant or the prosecutor?

Sen. Al-Rawi: I am just trying to think a little wide in terms of—the Act contemplates a complainant bringing a complaint and, therefore, summonses may be issued, et cetera.

Mr. Volney: It should be prosecutor.

Sen. Al-Rawi: Probably, but I am contemplating where the DPP initiates on his volition as the Act has.

Mr. Volney: Of course, the prosecutor will include the Director of Public Prosecutions.

Sen. Al-Rawi: Yes. In fact, the prosecutor as redefined now, would include all of the categories that we are thinking of.

Mr. Volney: Yes, the prosecutor as amended.

Sen. Al-Rawi: Yes. [*Crosstalk*]

Mr. Volney: This amendment was actually generated from concerns in the Lower House by your Member for Port of Spain South.

Sen. Al-Rawi: It fits in with the old common law of a writ ne exeat regns.

Mr. Volney: What does that mean?

Sen. Al-Rawi: A writ that you shall not leave the jurisdiction. A common law right—

Mr. Volney: Oh, I see.

Sen. Al-Rawi: I think Mr. Justice Tam issued one in 2009 lastly. So it fits in with the common law. It is not off. But I am just suggesting that instead of “complainant” that we introduce the word “prosecutor”.

Mr. Volney: Yes.

Sen. Dr. Armstrong: Mr. Chairman, not being a lawyer, it is not clear to me why it is necessary to say “within 48 hours”. Is that necessary? What is the purpose of that?

Mr. Volney: That could be deleted. That is what was suggested in the Lower House, but we can revisit it.

Sen. Beckles: Do we need it?

Mr. Volney: The summons must be issued within 48 hours. That is what it is supposed to read.

Mr. Chairman: So it is “issue a summons within 48 hours”?

Mr. Volney: Yes, Mr. Chairman.

Sen. Dr. Armstrong: Mr. Chairman, how would it read now? How would it read now, please?

Mr. Volney: It is when the accused is likely to leave within 48 hours. So it should stay as is.

Sen. Ramlogan: I think the concern raised by Sen. Al Rawi with respect to the narrowing of the person who could make the affidavit is a valid one. So if we take off “by the complainant” it would read, “A Master may, if he thinks fit, issue a summons directing an accused to appear forthwith in cases where the accused is likely to leave Trinidad within 48 hours.”

Mr. Volney: But you have the concern of Sen. Armstrong.

Sen. Ramlogan: With the forty-eight hours?

Mr. Volney: How long do you think it should be, Senator?

Sen. Ramlogan: Leave out the time, “likely to leave Trinidad and Tobago.”

Sen. Dr. Tewarie: And you have forthwith already which says that it must be done immediately.

Mr. Volney: This has to be read with subclause (5). That is why there is the 48 hours.

Sen. Al-Rawi: I think the 48 hours in subclause (5) is the standard of providing general notice; just notice to appear. So I am okay with clause 5, but I think that the restriction of the statement “within forty-eight hours” could flout justice if a man says, “Well, I am leaving next week and not now.”

Sen. Ramlogan: So we are deleting “an affidavit is made by the complainant” and “within forty-eight hours.”

Mr. Chairman: So you are deleting “within forty-eight hours”.

Sen. Ramlogan: Yes, and put a “.” after “Trinidad and Tobago” and take out “an affidavit is made by the complainant”. We do not need it. Take out the words, “an affidavit is made by the complainant that”. So after the word “where” we take out “an affidavit is made by the complainant that”.

Mr. Volney: So it should read, “where the accused is likely to leave Trinidad and Tobago.”

Sen. Baptiste-Mc Knight: So how does it read now?

Sen. Ramlogan: So, it would now read:

A Master may, if he thinks fit, issue a summons directing an accused to appear forthwith in cases where the accused is likely to leave Trinidad and Tobago.

In other words, if you are likely to flee the jurisdiction, then the master, if he thinks fit—and the words “if he thinks fit” mean that before they exercise their discretion, they would have to be satisfied on the evidence before them that the person is really trying to abscond or flee the jurisdiction.

Mr. Chairman: The amendment, as I understand it, to the amendment at subsection (7) will read:

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A Master may, if he thinks fit, issue a summons directing an accused to appear forthwith in cases where the accused is likely to leave Trinidad and Tobago.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Mr. Chairman: Sen. Prescott SC, you have an amendment circulated to clause 8(5).

Sen. Prescott SC: In the amendment distributed by the hon. Minister, although he has taken a different approach, that amendment is satisfactory and mine could be withdrawn.

Mr. Chairman: All right.

Mr. Volney: Your 8(5) is a whole subsection.

Sen. Prescott SC: Oh, pardon me, I had forgotten that.

Mr. Volney: You said to delete the entire subsection.

Sen. Prescott SC: I am sorry. Thank you very much. Mr. Chairman, when I spoke a moment ago, I was dealing with the use of the words “apprehension” and “arrested”, and I was regrettably not paying attention to the other one. In clause 8(5), I am recommending that the entire subsection be deleted. The subsection says:

“Where a summons was issued on the basis of a complaint without oath, a Master may, at any time before or after the time mentioned in the summons for the appearance of the accused, issue a warrant for the apprehension...”

Assume that the accused person has been served with the summons, which has given him a date by which he must appear, why should he be pounced upon at a date prior to that, and a the warrant served on him as though he had committed a wrong or failed to appear in response to a summons? What necessitates giving the master this power to have changed his mind and decided, notwithstanding I have issued a summons to you to turn up in court two days from today, I prefer to have you here by warrant now, without any prior warning to the accused?

Mr. Volney: You see, I think it is to deal with cases of suspected flight or intended flight, so that a warrant could be issued notwithstanding that a summons had been processed earlier. A warrant is the quicker way, because it is at large.

Sen. Prescott SC: In the circumstances, should we, therefore, introduce a new clause that reads in a similar fashion to your new clause 7(7), that “a Master may, if he thinks fit, issue a warrant directing an accused to appear forthwith in cases where the accused is likely to leave Trinidad and Tobago.”?

Sen. Al-Rawi: Can I interject? Just to assist in the thought development. I do not think, as I understood the intent behind this or an intention that we should think of, issuance of a warrant is a power which we are seeking to confer upon a master in circumstances where, obviously, evidence has come to him and he is now satisfied, “Look I may have issued a summons before and I did so, because there was no oath to the complaint, but I am now of the opinion that I have enough evidence before me to issue a warrant”, because there are rules as to the issuance of warrants and they cannot be done frivolously. You can have an unlawfully issued warrant if it is done frivolously.

I did not think that it was necessarily confined only to the circumstance of somebody who may be a flight risk, but may be something of a more serious nature, the evidence of which has been put before the master. So I was okay with the fact that a master may be satisfied to issue a warrant. I am not thinking to confine myself only in fashion of clause 7(7) as we just put for flight risk cases.

I thought that the difficulty that we had here was apprehension of the accused as opposed—the interchangeability of the use of the terms apprehension as opposed to arrest. That was where I thought we were looking to clean. I do not know if I have assisted in this. I am suggesting that to go for only flight risks may exclude a circumstance where there is legitimate evidence for the issuance of a warrant before the master for any circumstance that we cannot immediately foresee, but which he is satisfied is good evidence for.

Mr. Volney: I have looked at it again, and it seems to me that this provision deals with situations where there may be need to bring back an accused person to the court, and a summons has not worked and the serving officer would come and say, “Look, the summons is ineffective for the purpose of apprehending this person and bringing him back”, and would give the reasons why he cannot find the person. He has gone to serve the summons at the door of the given address, has been unable to locate the person and asks for a warrant. A warrant would then be at large and any officer knowing that there is a warrant out would be enabled, through this provision, to arrest the person knowing that a warrant has been issued for his arrest.

Sen. Al-Rawi: I think the issue was not so much that, which is very legitimate, of course, but the issuance of a warrant prior to the date for the summons coming due where a summons has been issued. I have no problem with the issuance of a warrant, and the master saying, “Look, I have changed my mind and I am now issuing a warrant even though your date is tomorrow to appear before me, because I have evidence which I am satisfied results in my proper discretion to issue a warrant.”

10.15 p.m.

I think that the mischief, if we look at it from the mischief rule kind of purpose, would be to facilitate empowering the master to issue a warrant notwithstanding the fact that he has already issued a summons and the date has not yet come. And I am comfortable with that, because I would like to broaden his powers because we cannot foresee immediately, you know, the circumstances in which he may wish to use the warrant as an aid.

Mr. Volney: You have got it right. That is quite right.

Mr. Chairman: So should you consider putting, “if he thinks fit” there as well? You say, “Master may, if he thinks fit at any time”.

Sen. Ramlogan: That is fine.

Sen. Prescott SC: May I even go further and suggest that we ought to say something that says the Master may only do that if there is new material before him. There must be something that prompts him to do this, to take this new step.

Sen. Ramlogan: Well, I would prefer to say, “if he thinks fit” and leave it there, because that would, perhaps, to all practical intents and purposes, encompass the provision of some material change in circumstance or something new—

Sen. Prescott SC: Just before we give it up, look at 8(1).

Sen. Ramlogan: 8(1)?

Sen. Prescott SC: Yes. Granted that is where the complaint is. It says, “if he is of the opinion that a case for so doing is made out”, so I am saying there ought to be some language along that line that says he must give his judicial consideration to some new matter that causes him to say, I am now upgrading this from summons to warrant. And it is not just a matter of the person not being served, because that seems to be covered in 8(3), and it is not a matter of the person not appearing because that is covered in 8(4).

Sen. Ramlogan: You see, the difficulty with that is once you indicate that the exercise of the power is conditional upon a change in circumstance, then you create a whole minefield of legal arguments about whether a change in circumstance has in fact occurred to trigger the exercise of the power, and that would result in a jurisprudence of its own. That is my concern.

Sen. Prescott SC: Assist me once more.

Sen. Ramlogan: Yes.

Sen. Prescott SC: What would cause a master to act under 8(5), as it now stands?

Sen. Ramlogan: You could have a myriad of circumstances, starting with the fact that they went to serve the summons, someone peeped through a curtain and then bad dogs were let loose, so that you cannot say for a fact that the person is not living there or they are there evading service, or perhaps something that suggests that the person may be trying to abscond—

Sen. Prescott SC: Attorney General, I was thinking that 8(3) and 8(4) appear to cover those circumstances, whether he is not accepting service or he is not appearing.

Sen. Ramlogan: Well, you see, it might have a twilight zone.

Sen. Al-Rawi: Could I intervene? Sorry.

Sen. Ramlogan: Yes, go ahead.

Sen. Al-Rawi: I agree with the hon. Attorney General that if we were to include in 8(5) new evidence or positions, we are going to create a minefield for exploitation by a sharp defendant attorney. I understood that 8(5) is a circumstance where we have—I follow my learned senior Prescott’s submission, that 8(3) is, you have got a summons, it cannot be served, that means efforts may have been done, but 8(5) is to address a situation where you have a summons, you may not yet have attempted service; new information comes to light of some draconian nature, that is presented to the master and the master says, “You know what, even though I have a summons and you have not served it yet but it is a properly issued summons, I am changing my mind and now putting a warrant”.

That is a broader circumstance than 8(3) is, so I am comfortable with 8(5) from that perspective. Sen. Prescott SC, I am just wondering if you catch where I am going, that I think that (5) and (3) are mutually exclusive in their operation, and that (3) does not necessarily encapsulate (5). Otherwise someone could take

the point of the summons having been issued and there is a log of the issuance. I am comforted, and this is where I join the hon. Attorney General, that for the issuance of a warrant in any event it would always have to be upon lawful grounds. And the common law says what those lawful grounds are, and that you can take a point in the common law, in fact, in judicial review proceedings as to the unlawful issuance of any warrant. So I did not want to necessarily include any particulars for evidence, fresh evidence, to be included in subclause (5). Does that help at all, senior?

Sen. Prescott SC: Yes. So that, “if he thinks fit” is understood to mean if he is satisfied that it should be upgraded without more?

Sen. Al-Rawi: Yes, because to issue the warrant you have to overcome the hurdle of having evidence and of lawfully issuing the warrant in the first place, because we cannot just issue warrants nilly-willy at common law. Correct me if I am wrong, hon. Minister of Justice.

Mr. Volney: Yes.

Sen. Al-Rawi: Yes, you must have evidence.

Sen. Prescott SC: So we will say, “if he thinks fit”?

Sen. Ramlogan: Yes.

Sen. Al-Rawi: Yes.

Sen. Ramlogan: I think, you see, Sen. Prescott, the point is that the creativity and imagination of persons who may be on the wrong side of the law, is such that the permutations are endless and you cannot cater for all. But I prefer you leave it general and entrust it to the master. There may be a twilight zone where you cannot say—you cannot say the person is evading service, you cannot say that they have not responded to the service, but you know that they are somewhere in-between.

Sen. Prescott SC: “If the circumstances warrant” might help, although warrant is going to be used twice?

Mr. Volney: But there is in any event a very similar provision in the Indictable Offences (Preliminary Enquiry) Act, at 8(2), which says the fact that a summons has been issued shall not prevent any magistrate from issuing the warrant at any time before or after the time mentioned in the summons for the appearance of the accused person. So you know it really is there, and there has been no complaint. It has worked; it is to enable process to be had.

Sen. Ramlogan: And this provision is really meant to preserve that power.

Mr. Chairman: As I understand it, the amendment with clause 8(5), is it, “Where a summons was issued on the basis of a complaint without oath, a Master may, if he thinks fit, at any time before or after” and continues as before?

Sen. Dr. Armstrong: What about including on “a Sunday”, are we going to address that again?

Sen. Ramlogan: Yes, we are doing that.

Sen. Dr. Armstrong: You will address that?

Mr. Volney: Yes, Mr. Chairman, in 8(2). Yes we are deleting “including a Sunday” and substituting “and on any day”.

Sen. Dr. Armstrong: Okay.

Mr. Chairman: “...at any time and on any day”, right?

Mr. Volney: Yes, Chairman.

Sen. Al-Rawi: May I just enquire if we are okay with the interchangeability of the language “apprehension of the accused” as opposed to arrest, a “warrant for the arrest of the accused”?

Mr. Volney: That is in the next clause.

Sen. Al-Rawi: It comes up in 8(4), 8(5), 8(6), 8(7).

Sen. Prescott SC: What they seem to have done is to change everything to read apprehension—

Sen. Al-Rawi: I see; I am sorry.

Sen. Prescott SC: And deleted arrested.

Mr. Chairman: You apprehend his drift?

Sen. Prescott SC: Put people in fear, but I suspect in criminal law it means something else.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

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Mr. Volney: Mr. Chairman, I beg to move that clause 9 be amended as circulated.

- 9
- A. In sub-clause (1), delete the word “arrest” and substitute the word “apprehension”.
 - B. In sub-clause (2)(b), delete the word “found” and substitute the word “bound”.
 - C. In sub-clause (3), delete the word “arrested” and substitute the word “apprehended”.

Sen. Prescott SC: Mr. Chairman, I have a suggestion for amendment.

Mr. Chairman: We agreed to have—

Sen. Prescott SC: Sorry, they have also done it, changed the word to “bound”—“found” to “bound”.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I was just looking at the use of the word “arrested” in 10(2), but I think I am comfortable with it, because we have changed “arrested” for “apprehension” in the other clauses, but I do not think it makes a difference here. Much obliged.

Question put and agreed to.

Clause 10, ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 11 be amended as circulated.

- 11 (A) In sub-clause (2):
- (i) delete the word “At” and insert the words “Subject to the Rules, at” before the words “an initial hearing”.
 - (ii) In sub-paragraph (a):
 - (a) Line 1, delete the word “accused’s” occurring after the words “verify the”;
 - (b) Add the words “of the accused” after the word “information” in the last line.
 - (iii) In sub-paragraph (b)(iii):
 - (a) In line 3, delete the word “accused’s” occurring after the words “record the”.
 - (b) Delete the words “of legal representation” after the word “refusal”
 - (iv) In sub-paragraph (c)(i), after the word “charge” insert the words “and providing a copy of the charge to the accused”.
- (B) In sub-clause (5), delete the words “either party” and substitute the words “the applicant”.

Sen. Prescott SC: Mr. Chairman, I have some suggestions. Firstly, in 11(2)(a), it is really because I do not like the style and I am suggesting a stylistic approach. The use of the word “accused’s” to me is clumsy, and so I am recommending that instead it should read—that you should delete the words “verify and accused’s” and substitute the words “seek verification of”, so it will now read, “a Master shall seek verification of the identity, place of abode or given address and other contact information of the accused”.

Mr. Volney: Yes, that is fine.

Sen. Prescott SC: Thank you very much. The next one.

Mr. Volney: Could we go with, “verify the identity, place of abode or given address and other contact information of the accused”, instead of “seek the verification”?

Sen. Prescott SC: Sure, yes. May I go on to the other one? May I?

Mr. Volney: Just a moment.

Sen. Ramlogan: One second.

Sen. Prescott SC: May I?

Mr. Volney: Yes.

Sen. Prescott SC: In 11(2)(b)(iii), it says, “if the accused is not represented and refuses legal representation, record the accused’s refusal of legal representation”, and really I am only proposing that we simply say, “record the refusal”, it kills two birds with one stone. It removes that use of the word “accused’s”, and the repetition of the fact of refusal.

Mr. Volney: Yes, a refusal.

Sen. Prescott SC: We simply say “record the refusal”. Is that okay?

Mr. Volney: Yes.

Sen. Ramlogan: Yes, that is fine.

Mr. Chairman: You are just omitting the word “accused”?

Sen. Ramlogan: No, no, the last three words up to refusal.

Mr. Volney: Stop at “refusal”.

Sen. Ramlogan: “...record the refusal.”

Mr. Chairman: So it would read, “if the accused is not represented and refuses legal representation, record the refusal”?

Mr. Volney: And at 11(5), Mr. Chairman.

Sen. Ramlogan: 11(2)(c).

Sen. Prescott SC: It reads now:

“(c) inform the accused of the charge by—

- i. reading the charge; or
- ii. providing the accused with a copy of the charge, where the accused is represented by an Attorney-at-law and consents to the waiving of the reading of the charge;”

And I am inclined to say that he should provide the accused with a copy of the charge regardless.

10.30 p.m.

It is a substantive change. I am saying to give him the charge whether or not he has someone there. Both read it and provide him with a copy.

Mr. President: Instead of “or”?

Sen. Prescott SC: Yes. So it will now read:

“Inform the accused of the charge by reading the charge and providing the accused with a copy of the charge;”

Mr. Volney: The idea behind this is that when they have lengthy charges you avoid having to read for two/three hours the charge—

Sen. Prescott SC: I would be quite happy if one did not have to read the charges, but I think you have to read the charge to an accused person regrettably.

Mr. Volney: Well this provision says you do not have to if you have an attorney.

Sen. Prescott SC: Really?

Sen. Ramlogan: Sen. Prescott SC, the problem is if you say “and” and you have to do both, you make it mandatory to read it and to give them.

Sen. Prescott SC: I would prefer him to have it, than to read it to him. He could take it home and—

Sen. Ramlogan: That ignores the practical reality of illiterate defendants, who may not be able to read and write.

Sen. Prescott SC: Forgive me, but can you imagine an illiterate person listening to a charge under the Anti-Terrorism Act?

Sen. Ramlogan: I have seen defendants who are ashamed to admit to the fact that they cannot read and write, but they sit and listen and say yes, whether they understand it or not, but the problem is giving it to them—the more effective of the two is actually the reading. Giving it to them, “de fella would accept it, because his girlfriend is in the back of the court in the public gallery and she does not know he can read and write, and he would just accept it.

Sen. Prescott SC: You would plead guilty and go to jail?

Sen. Ramlogan: I do not know about the pleading guilty part, but stranger things have happened. Normally people would say “not guilty”.

Sen. Prescott SC : I throw it out for consideration. He should have it, so that he may go to an attorney of his choice or go to someone who could advise him what it really means.

Sen. Al-Rawi: May I also add to this discussion. The Criminal Bar Association noted, and it is a feature of the common law, that you really do need to read a charge, but they did note as well, quite properly, that the reading of very complex charges, et cetera, or embarrassing charges, could be something you could obviate by an election; so I accept (c)(2) as providing that.

I do, however, like Sen. Prescott SC's proposal that (c)(1)—inform the accused of the charge by reading the charge and providing him with a copy thereof, so there is the additional step of making sure it is read and he got it; and in the case of him being represented, providing him with the charges there, so that is separate. That is where he elects and his attorney consents for the charge to simply be handed to him. I do not know if you follow me? Because there is nothing that compels us right now to hand the accused a copy of the charge.

Mr. Volney: What if we make it at the election of the accused that it either be read or—

Sen. Al-Rawi: Not so much. I am okay with the concept of seeing (i) and (ii) as is. I am just saying, if we could in the circumstance of somebody who is on his own, without representation, not only read it to him, but give him a copy of it as well.

Sen. Ramlogan: I think, Senator, I agree with that. That is a good point. If someone is unrepresented, they must get a copy of the charge, so that they can take it and seek legal advice; because when they go to the lawyer, nine out of 10 times they are speaking gibberish because they did not understand what transpired in court. To protect the defendant, especially those from the lower spectrum of society, it might be a useful thing to say if you are unrepresented that you must have a copy of the charge.

Sen. Al-Rawi: Yes, thank you.

Sen. Ramlogan: So we could insert that.

Mr. President: So after reading the charge “and give him a copy thereof”—“and provide a copy of the charge”.

Sen. Dr. Tewarie: Could I ask a question? It is a non-lawyer question? Would that mean that if a person were handed the charge, but the charge was not read out to them, the matter could be contested?

Sen. Al-Rawi: Potentially.

Sen. Prescott SC: At the present time you are required to read.

Sen. Dr. Tewarie: So you have to do both. Is that what we are saying?

Sen. Prescott SC: But I imagine we can if we want today say that from now on it will be not necessary to read. It is just risky.

Mr. Volney: Out of an abundance of caution, the charge should be read.

Sen. Al-Rawi: It is a feature of the common law in any event; I do not think we should deviate too far from it.

Mr. Volney: Yes.

Sen. Ramlogan: I subscribe to the view; unfortunately it takes a long time, especially in complex matters. I saw one last week in the newspaper; it took three hours to read the charges. The problem is that sometimes even when you are legally represented, we have often seen in actual practice where the defendant would communicate with the lawyer when the charges are finished being read or during, because there is something that the accused person picks up that might be a little different, or some inconsistency. But it must be a fundamental right to listen in open court to what you have been charged for. Equally, you must have the right to elect. In complex fraud matters you are represented by two senior counsels, you must have the right to elect and save time.

Sen. Al-Rawi: The election is to say, “Look, I do not want you do to it; I am aware of my right and I elected not to do it.” So I agree with the hon. Attorney General.

Hon. Volney: As the Attorney General says, if you have two senior counsels, for them to spend three hours for the charge being read, your refreshers are going to be—Sen. Prescott SC would know; he is laughing.

Sen. Al-Rawi: But refreshers do not apply for your first day of hearing. Mr. Chairman, could I enquire from the hon. Minister and the hon. Attorney General; Sen. Prescott SC raised this issue, it is in clause 11 of the concept of—I am aware that in indictable offences you are not called upon to enter a plea, and I am aware that if you wish to, in fact, confess or enter a plea of guilt, that there is a somewhat circuitous process by which the DPP is informed and then there is some sort of recording of that and then it is sent back, but insofar as we are seeking to simplify the process, and I really do not know how to work this out, so I am just going to throw out the raw idea: do we want, at this initial hearing, to facilitate, particularly for offences that are triable either way, indictable offences, the ability to enter a plea or to have some record of an intention to enter a plea?

Sen. Prescott SC: I am supportive of him giving an indication that he may wish to plead.

Sen. Al-Rawi: I think an indication would be more palatable, because it would not offend the rule of not entering a plea at indictable stage. But just so that the most expeditious use of resources could be had, because if you were at that moment at the initial hearing to say, “Listen, I am sorry; I am totally guilty of this thing; I am putting you on notice that I want to enter a plea”; you could then go the short-circuited way.

Mr. Volney: The master would not have any evidence before him yet; it is a very early time, and the whole procedure is quick—can be quick.

Sen. Prescott SC: Perhaps at the sufficiency hearing then, when we come to that?

Mr. Volney: At the sufficiency hearing, there is a provision there for it.

Sen. Al-Rawi: I see; thank you.

Mr. Volney: At the sufficiency hearing.

Sen. Prescott SC: At 11(2)(h)(v), which is on page 10—actually the architecture of 11(2)(h) is what causes the problem. It starts off by saying that the master must make a Scheduling Order in the form set out in Schedule 1, specifying the date on or before which—and in (v):

“the sufficiency hearing shall commence which date shall be no later than twenty-eight days from the date on which witness statements and other documentary evidence are served...”

I wanted to recommend that instead there must be a fixed date for the sufficiency hearing, not a date on or before which it should be held. May I just say it again? It opens by saying—I know there is a word for it, but I cannot remember what it is—that the master will specify the date on or before which, (v), the sufficiency hearing shall commence. I am of the view that he should say:

“the sufficiency hearing shall commence on a fixed date”

Mr. Volney: Senator, what if at the start of 11(2), we were to include:

“Subject to rules of court made pursuant to section 32(1) of the Act, a master at an initial hearing shall—

And it goes down, so that in the rules of court the judges and everybody would work out the details and the sanctions.

Sen. Prescott SC: All of (h) can be removed then?

Mr. Volney: All of this could be, once the rules kick in, because this measure is intended to provide a statutory basis.

Sen. Prescott SC: I do not see any phantoms there. It seems to me it could be done that way.

Sen. Al-Rawi: I think that would be very sensible. This would provide the skeleton of the intention, and then the rules could flesh it out or amend it.

Sen. Ramlogan: “Rules” was already defined, so all you need to say is “subject to rules”.

Sen. Al-Rawi: This paragraph (h) at page 10, (11)(h), proposes at (h)(ii) that an order for legal aid shall, if applicable be satisfied. This, when you compare it to the sufficiency hearing, 19 implies—if you look at page 16, (4)(a), it says:

“requests legal representation, a date shall be fixed by which the accused shall retain an Attorney-at-law to represent him or apply for legal aid;...”

I did hear the hon. Minister in his contribution take note of what I think is the discrepancy between clauses 11 and 19, because clause 11 to me, right now, suggests that once I got an initial hearing and I said, “I am not represented and I do not have a lawyer; I would like a lawyer, but I cannot afford one,” that you get automatic legal aid assistance. Because it says here:

“specifying the date on or before which an Order for legal aid shall if applicable be satisfied.”

I had a question mark next to (2) as to what we are you intending to do there. Did I catch the hon. Minister correctly in his opening address to say—did I understand you to say—that, “We are going at the State’s expense to provide you, for the purposes of this initial hearing or when you return at the sufficiency hearing, with representation?”

Mr. Volney: For the initial hearing, once you have been charged with an indictable offence. The amended Legal Aid Act would ensure that a duty counsel is appointed under that Act to watch your interest.

Sen. Al-Rawi: At the initial hearing?

Mr. Volney: Once you are charged.

Sen. Al-Rawi: The problem I am trying to figure out here—

Mr. Volney: Once you are arrested on suspicion, I beg your pardon, of an indictable offence, but that is even earlier.

Sen. Al-Rawi: It is the use of language in (h)(ii) on page 10 which says that:

“an order for legal aid shall, if applicable, be satisfied...”

Then in clause 19 where you talk about an application for legal aid—I have not looked at the legal aid provision yet, and not anticipating the Bill, but I do understand that we are going to be raising some of ceiling limits, et cetera. Right now it is difficult to access legal aid, unless you are basically on the raw poverty line.

Hon. Volney: That is coming, that is coming.

Sen. Al-Rawi: So the question here is: does (h)(2) on page 10 mean that you will get an order for legal aid?

Mr. Volney: Yes, once you are suspected and arrested on an indictable offence, you will get legal aid; you get duty counsel.

Sen. Prescott SC: Does “be satisfied” mean that such person has been appointed?

Sen. Al-Rawi: That is exactly my question.

Hon. Volney: I do not know why “satisfied”.

Sen. Prescott SC: Did you say that you do not know? Because I do not.

Sen. Al-Rawi: I had the question mark here.

Sen. Prescott SC: What does it mean, that he would have one appointed, an attorney appointed?

10.45 p.m.

Sen. Al-Rawi: Automatically whether he could afford it or not, it would seem to me to suggest.

Sen. Ramlogan: The satisfaction there refers to the complying with the appointment.

Sen. Prescott SC: The appointment?

Sen. Ramlogan: Yes.

Sen. Prescott SC: Okay. So that anybody in the criminal arena will know what it means?

Sen. Ramlogan: Apparently.

Sen. Prescott SC: Okay.

Sen. Al-Rawi: But what I am concerned about is—

Mr. Volney: The lawyers suggested this one.

Sen. Prescott SC: I did not know and I think my colleague—

Hon. Senator: I was not clear on it.

Sen. Al-Rawi: Apart from it being vague—

Sen. Ramlogan: A concept of being satisfaction.

Sen. Al-Rawi: —in terms of my understanding—

Mr. Volney: In order to be satisfied.

Sen. Al-Rawi: Right. But just to get it clear because this is probably going to be interpreted under *Pepper v Hart*, and I just want to get it right. What we are saying is that, it seems to me that this clause suggests—and please correct me if I am wrong—that a duty counsel is provided, I get to the initial hearing, I do not have an attorney, an order for legal aid will be made, whether I have asked for it or not?

Hon. Senator: If applicable.

Sen. Al-Rawi: What does if applicable mean?

Sen. Ramlogan: If applicable. If you pass the means test and all of that, it must be “if applicable”.

Sen. Al-Rawi: Then why does 19 speak about—if we look at clause 19, why does 19 talk about “now an application for legal aid”. Look at page 16.

“If an accused is not represented by an Attorney-at-law at a sufficiency hearing and—

- (a) requests legal representation, a date shall be fixed by which the accused shall retain an Attorney-at-law to represent him or apply for legal aid;”

Mr. Volney: No, no. If you look at the proposed amendments, as circulated, that part will be amended.

Sen. Ramlogan: Yes.

Mr. Volney: But you have not looked at that.

Sen. Al-Rawi: No, I regrettably only just got it before we started this committee stage.

Mr. Volney: I am sorry but the amendments suggested were quick in coming with every speaker—

Sen. Al-Rawi: I see.

Mr. Volney:—with every Senator making his contribution. So we tried to facilitate everyone.

Sen. Ramlogan: In real time.

Mr. Volney: In fact, I think just about every suggestion made has found itself in the circulated amendments.

Sen. Al-Rawi: I see. I have looked at 19(a). Thank you, hon. Minister, for the clarification.

Mr. Chairman: You had an amendment proposing a reference to the rules to be prepared by the—but I do not know quite where you wanted—

Sen. Al-Rawi: It was 11(2).

Sen. Ramlogan: 11(2).

Mr. Chairman: So, before “at an initial hearing”?

Sen. Ramlogan: “Yep.”

Mr. Chairman: And it reads “subject to the “rules””.

Sen. Ramlogan: “, at an initial hearing”.

Sen. Al-Rawi: Where? Page 9, (2), inserting just before the word “at”, on page 9—top of page 9(2) inserting before the word “a; subject to the rules, at an initial hearing you shall”, then do the rest.

Mr. Chairman: If I may just go through the amendments as I understand them. Clause 11 (2), “subject to the rules introduced before at an initial hearing a Master shall”. Then in (a) it will say “verify the identity, place of abode” and so on and end after “information of the accused”.

Mr. Volney: Yes.

Mr. Chairman: In (b) (iii) it will delete the word in the third line “accused’s” and will have “.” after “refusal” deleting the words “of legal representation”—

Mr. Volney: Yes.

Mr. Chairman: An in (c)—

Sen. Prescott SC: “;” please Sir, not a “.”

Mr. Chairman: “;” sorry; after “refusal”. In (c)(i) after reading the charge it will read “and provide a copy of the charge”. Is it “to the accused”?

Sen. Prescott SC: No, Sir, it should read inform the accused of the charge by (i) reading the charge and (ii) providing the accuse with a copy of the charge;

Sen. Al-Rawi: I did not understand that hon. Senator, I thought that (c) was reading “inform the accused of the charge by (i) reading the charge” and words to this effect “and providing him with a copy thereof” or, “providing the accused with a copy of the charge where the accused is represented by an Attorney-at-law and consents to the waiving of reading of the charge”.

Sen. Ramlogan: Remember we wanted to make specific provisions for those who are unrepresented—

Sen. Al-Rawi: I thought that (i) dealt with the unrepresented class.

Sen. Ramlogan: Yes.

Mr. Chairman: So (i) will read, “reading the charge and providing a copy of the charge to the accused;” and (ii) will remain as is?

Sen. Al-Rawi: Yes, Mr. Chairman.

Mr. Chairman: And at subclause (5), the last two lines it will read “not exceeding fourteen days to the applicant” we will be deleting “either party”, correct?

Mr. Volney: And substituting the words “to the applicant”.

Mr. Chairman: “to the applicant”, yes. It is in the amendment as circulated.

Question put and agreed.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12 ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 13 be amended as circulated.

Mr. Chairman: So that it will read within five days?

Mr. Volney: Yes, Chairman.

Sen. Al-Rawi: Just a quick revisit to 12—I know you are getting tired, hon. Minister, but we are ending up with law at the end of the day.

Clause 12 recommitted.

Question again proposed: That clause 12 stand part of the Bill.

“12. (1) Where an accused is charged with an offence specified in Schedule 2 and the Director of Public Prosecutions informs the Master that the case is to be dealt with summarily, the Master shall forthwith transfer...”.

How does this fit into the context of a private indictable? [*Inaudible*] Yes, Senior.

Mr. Chairman: All right? That is fine?

Sen. Ramlogan: Yes, that is fine.

Hon. Volney: Page 11.

Mr. Chairman: Are there any amendments to clause 12?

Mr. Volney: 12(1). Remove “the Director of Public Prosecutions” and put “the prosecutor”.

Mr. Chairman: Oh, I see.

Mr. Volney: Mr. Chairman, it is felt that in exercising that prerogative, the provision should be limited to the DPP alone and not to anyone else.

Sen. Al-Rawi: I guess I can see that in operation, the prerogative being the DPP’s—[*Interruption*] yes, I would imagine that a prosecutor could write in a private indictable to the DPP and seek his consent on that basis. I will be guided. Thank you, hon. Minister.

Question put and agreed to.

Clause 12 again ordered to stand part of the Bill.

Clause 13.

Question again proposed, That clause 13 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 13 be amended as circulated.

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“In sub-clause (1), delete the words “forty-eight hours” and substitute the words “five days”.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14.

Question again proposed, That clause 14 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, this is probably a slight omission. In line two the word “an” should appear just before the word “alibi”.

Mr. Chairman: “in support of an alibi”?

Sen. Prescott SC: Yes, the word “an” seems to be inadvertently omitted.

Mr. Volney: Yes, agreed.

Sen. Dr. Armstrong: Mr. Chairman, just a non-lawyer question as well. 14(4) where it talks about “the warning” in accordance with section 13, is that okay; in accordance with section 13 or 13(1) or all of 13? That is okay?

Sen. Ramlogan: Yes, that is fine. You do not need to specify.

Mr. Chairman: Clause 14 is to be amended by inserting the word “an” before the word “alibi” in line 2.

Sen. Al-Rawi: Mr. Chairman, just to assist you with speed, I do not know if anyone else has any objections up to clause 19?

Mr. Chairman: Well, let me finish clause 14.

Sen. Al-Rawi: I see.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clauses 15 to 18.

Question proposed: That clause 15 to 18 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, I do have a query which I had predicated earlier. In 16(2) there is a suggestion that the master may hold court at any time, that he may have these ad hoc sittings. Do you see that? Is says:

“Unless the accused and the prosecutor consent, an adjournment

shall not be longer than twenty-eight clear days, but where no court is to be held within the twenty-eight days, then the adjournment may be fixed for the next day on which the Master holds court...”

It is similar to the old quarter sessions where he turned up in a district whenever the vehicle got him there. And one wonders: is the master sitting on a permanent basis or a sustained way.

Mr. Volney: Well, a master could be assigned through regions, if there is a demand for two masters in the Port of Spain as opposed to the Siparia region.

Sen. Prescott SC: So it is the old quarter of sessions again?

Mr. Volney: The master could be assigned by the Chief Justice to go and he may have to come back, he may be not in the other place where he should be by virtue of another order, in which case he could sit the next day.

Sen. Prescott SC: “Yea”, so as we used to do in Tobago, he will fix the date when he gets back to that district?

Mr. Volney: Yes.

Sen. Prescott SC: Very well.

Mr. Volney: It gives him the flexibility.

Sen. Prescott SC: With our thrust towards expeditious completion of these, I wondered why he is not sitting permanently.

Mr. Volney: Well, sometimes the workload in one area may be heavier than in another and the Chief Justice in his wisdom would assign the master to go on an ad hoc basis to help clear up backlog.

Sen. Prescott SC: Understood, thanks.

Question put and agreed.

Clauses 15 to 18 ordered to stand part of the Bill.

11.00 p.m.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 19 be amended as circulated.

- 19
- A. In subclause (4)(a), delete the words “apply for legal aid” and substitute the words “make an order for legal aid to be granted within three weeks”.
 - B. In subclause (4)(b):
 - (i) In line 2, delete the word “accused’s” occurring after the words “made of the” and delete the words “of legal representation” after the word “refusal”.
 - C. In subclause (5):
 - (i) In line 2, delete the words “accused proves to the Master” and substitute the words “Master is satisfied”.
 - (ii) In subclause (5)(b) line 1, insert the words “as to” before the word “any”
 - D. Renumber subclause (6) as subclause (8).
 - E. Insert after subclause (5), the following new subclauses:
 - “(6) A Master may –
 - (a) if he considers it expedient to do so;
 - or
 - (b) at the request of the accused and in the interest of justice,
- adjourn an initial hearing to a certain date, time and place.
- (7) Unless the accused and the prosecutor consent, an adjournment shall not be longer than twenty-eight clear days, but where no court is to be held within the twenty-eight days, then the adjournment may be fixed for the next day on which the Master holds court at the place where the order is made.”

Sen. Prescott SC: Mr. Chairman, I have made some observations about clause 19(4)(b)—Oh, it is similar to an amendment I had recommended earlier, that we delete the words, “accused’s” and “of legal representation” at the end of the sentence.

Mr. Volney: I can tell you that the Chief Parliamentary Counsel is taking notes of the “accused’s” of the preferred drafting of the hon. Senator.

Sen. Prescott SC: Thank you very much.

Sen. Ramlogan: But there is nothing wrong with that.

Mr. Volney: I know that.

Sen. Prescott SC: If I may go to clause 19(5)? May I?

Mr. Volney: Yes.

Sen. Prescott SC: In clause 19(5) I am recommending that we do not put this burden on the—sorry, let me read it as I have it: “delete the words “accused” proves to the Master” and substitute the words Master is satisfied that a sufficiency hearing may proceed in the absence of the accused except where the Master is satisfied that he is ill.” So, that the burden is not on the accused to prove his illness. He may be so incapacitated or indisposed that he could not himself come forward to do it.

Mr. Volney: Yes, we can support that.

Sen. Prescott SC: I am much obliged.

Mr. Chairman: That is where the master is satisfied.

Mr. Volney: Yes, Mr. Chairman.

Sen. Prescott SC: Then in paragraph (b), I think it would assist the reading if the clause begins “as to”, so it would read: “Where the Master is satisfied as to any other matter”. Is everyone with me?

Mr. Volney: Yes, “as to any other matter.”

Sen. Prescott SC: Yes, if you could insert the words “as to” before the word “any” in (b).

Mr. Volney: Yes, agreed.

Sen. Prescott SC: Thank you. If those are accepted I would be supportive of clause 19.

Mr. Volney: Then in clause 19 as circulated?

Sen. Prescott SC: Yes.

Mr. Chairman: The question is that clause 19 is amended as circulated and as further amended on the representations made by Sen. Prescott, be approved.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

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

Sen. Prescott SC: Mr. Chairman, I have made a proposal in relation to clause 20, and that is that a new subclause (5) be added, which requires that the Master should cause copies of witness statements and other documentary evidence filed by the prosecutor to be provided to the accused or to his attorney-at-law. The language I have is:

“At a sufficiency hearing the Master shall cause copies of witness statements and other documentary evidence filed by the prosecutor to be provided to the accused or to his Attorney-at-law.”

Mr. Volney: The experience of those who have practiced—and I am sure Sen. Beckles and Sen. Hinds would tell you—is that if an accused is represented by an attorney, the attorney would prefer to get the papers directly from the court, because when he gets it from the accused—[*Laughs*—it is in tatters.

Sen. Beckles: “Aah”, tell me about it.

Mr. Volney: Yes, so to give it to the accused when he has an attorney is not the way that the practice wants it to go. [*Crosstalk*]

Sen. Ramlogan: There are other extraneous matters that bear upon—[*Crosstalk*] [*Laughter*—or rather are born out of necessity, I am advised.

Sen. Prescott SC: So, my new recommendation is, “At a sufficiency hearing the Master shall cause copies of witness statements and other”—sorry—“where the accused is represented by an attorney the Master shall cause copies to be provided to the attorney.”

Mr. Volney: But in clause 11, in the Scheduling Order, there is provision for the service on the accused of the witness statements.

Sen. Prescott SC: Is clause 11 dealing with sufficiency hearings?

Mr. Volney: Yes.

Sen. Prescott SC: Oh!

Mr. Volney: You get it at the initial hearing before the sufficiency.

Sen. Prescott SC: And it is unlikely to be changed?

Mr. Volney: Excuse me?

Sen. Prescott SC: Is it unlikely to be changed by the time we get to a sufficiency hearing?

Mr. Volney: Well, there would be additional statements.

Sen. Prescott SC: In which case I am recommending that the attorney should have whatever the new statements are, documentary evidence is.

Mr. Volney: There is no problem with the attorney getting it.

Sen. Prescott SC: Yes, I know. I was agreeing with you actually.

Mr. Volney: Yes, but to give it to the accused where he has counsel—

Sen. Prescott SC: Yes, I have to bow to the superior knowledge on that, but I am thinking that the attorney should have it and it should say so, where he is represented by an attorney.

Mr. Volney: And if you give it to him and he is in custody he will go into the prison and the prison lawyers will create problems for his legitimate lawyers—

Sen. Ramlogan: Correct!

Mr. Volney:—and that causes some strife in the process.

Sen. Prescott SC: Finally, should it say: “Where he is represented the Master shall cause copies of statements to be given to the Attorney-at-law.”

Mr. Volney: And then it is in clause 22 as well.

Sen. Prescott SC: Oh, is it? Sorry, I did not notice. Clause 22 provides it?

Mr. Volney: For further evidence—*[Interruption]*

Sen. Prescott SC: Sorry, I am not with you.

Mr. Volney: What is it that you would like?

Sen. Prescott SC: I am recommending in clause 20, that where the accused is represented by an attorney as opposed to subclause (3) where he is not, the master should provide his attorney with the witness statements and other documentary evidence.

Mr. Volney: Yes, that is—

Sen. Prescott SC: If you wish I may give you language which may be appropriate, although I am sure the CPC can deal with that. *[Interruption]* So,

your new clause 11(5) will read: “Where an accused is represented by an Attorney-at-law at a sufficiency hearing, the Master shall cause copies of witness statements and other documentary evidence filed by the prosecutor”—

Mr. Volney: Whether he is represented or not at clause 11, and if there is further evidence, at clause 22, the accused is served, in any event, with the witness statements.

Sen. Prescott SC: I suspect we are on the same page, but I am not sure. Are we?

Hon. Senator: We are on the same page.

Sen. Prescott SC: Mr. Chairman, what language do you now have for the new clause 11(5)?

Mr. Chairman: Clause 11—

Sen. Abdulah: Sorry, clause 20(5).

Sen. Prescott SC: Clause 20(5).

Sen. Ramlogan: Oh, you got me worried. [*Laughter*]

Mr. Chairman: There is no clause 20(5). You are proposing that there would be a new clause 20(5).

Sen. Prescott SC: Yes, that says: “Where an accused is represented by an Attorney-at-law at a sufficiency hearing, the Master shall cause copies of witness statements...”

Sen. Ramlogan: But, Sen. Prescott SC, does it not repeat what clause 22 says too?

Sen. Prescott SC: Clause 22?

Sen. Ramlogan: Yes.

Sen. Prescott SC: Clause 20(2)?

Sen. Ramlogan: Clause 22. Your proposed subclause (5) to clause 20, is it not taken care of in clause 22?

Sen. Prescott SC: Which deals with further evidence?

Mr. Volney: Clause 11(2)(h).

Sen. Ramlogan: And clause 11(2)(h).

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Sen. Prescott SC: Clause 11(2)(h)? Clause 11(2)(h) is at an initial hearing.

Mr. Volney: Yes, well that is the evidence.

Sen. Prescott SC: He comes to a sufficiency hearing and there are new statements, et cetera.

Mr. Volney: Well, at clause 22.

Sen. Prescott SC: That is covered by clause 22?

Sen. Ramlogan: That is correct, so you have it at both stages.

Sen. Prescott SC: Yes. I would not concede tiredness but it sounds as though you are right. [*Laughter*]

Mr. Volney: Yes, so we will leave it as.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Mr. Volney: Just before you go ahead, Mr. Chairman, go back to clause 21(8). Mr. Chairman, we would like to insert after the word, “before” the words “a coroner”.

Clause 21 recommitted.

Question again proposed: That clause 21 stand part of the Bill.

Sen. Prescott SC: In line 2?

Mr. Volney: Yes, so that we include that one time.

Mr. Chairman: In line 2 before “a coroner,” the “Integrity Commission”—is that it?

Mr. Volney: Yes.

Mr. Chairman: The question is that clause 21(8) be amended by introducing the words, “a coroner” after “before” in line 2 followed by a comma.

Question put and agreed to.

Clause 21, as amended, again ordered to stand part of the Bill.

Clause 22 ordered to stand part of the Bill.

Clause 23.

Question proposed: That clause 23 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, I have an amendment proposed in relation to clause 23, that we delete the words “the evidence, taken at its highest, is such that a jury properly directed, could properly return a verdict of guilty” and substitute “there is sufficient evidence to put the accused on trial”, so that it is consistent with the similar provisions in clause 24(7) and I think clause 29(2).

Mr. Volney: Mr. Chairman, through you, Senator, this standard of proof derives its source in the case, the celebrated case of *Sangit Chaitlal v The State*, and it is a long-standing authority for those who practise in the criminal courts. It is also there on the suggestion of the bench of the magistrates and of the Criminal Bar Association, well, the bench of the Supreme Court as well, and it is specifically left that way at their request.

Sen. Prescott SC: Very well, and I am guided, but there are occasions in the Bill where there appear to be another standard, and that is, that the master is satisfied that there is sufficient evidence to put the accused on trial, and I wondered if that—

Mr. Volney: Well, this is the test. This is the stated test.

Sen. Prescott SC: Okay, so should we change those parts which speak of the evidence being sufficient to put the accused on trial—

Sen. Al-Rawi: Does clause 24(7) not refer to that?

Sen. Prescott SC:—to meet the standard recommended in *Sangit Chaitlal*?

Sen. Al-Rawi: This is the issuance of a warrant.

Sen. Prescott SC: Is it different?

Mr. Volney: It is different.

Sen. Prescott SC: Clause 24(7) is as to a warrant?

Hon. Senator: Yes.

Sen. Prescott SC: To put him on trial.

Mr. Volney: And in any event we propose to amend that provision.

Sen. Prescott SC: We do?

Mr. Volney: Yes.

Sen. Prescott SC: What is clause 29(2)? Is that the same thing? I may be a little off there but I just need some clarification.

Mr. Volney: Clause 29?

Sen. Prescott SC: In clause 29(2), is there anything about—[*Interruption*] Okay, I seem to have it. [*Interruption*] Minister, if you look at clause 19(1) and compare it with clause 23, should the *Sangit Chaitlal* language not be used there?

Sen. Al-Rawi: Hon. Senior, I think that clause 19(1) states what the purpose of the sufficiency hearing is but clause 23 establishes what the hurdle is, what the test is, what the standard is with respect, specifically, to prima facie cases, so I did not read it that way. I do not know if that helps at all for a different perspective.

Sen. Prescott SC: Clause 23 is the standard?

Sen. Al-Rawi: Yes, Senior.

Sen. Prescott SC: That too, I am prepared to accede to.

Mr. Chairman: Are we ready on that?

Mr. Volney: Yes.

Question put and agreed to.

Clause 23 ordered to stand part of the Bill.

11.15 p.m.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 24 be amended as circulated:

- A. Delete subclauses (6) and (7) and substitute the following subclauses:
 - “(6) An application under subsection (4) shall be made *ex parte* and within three months of the receipt of the documents under that subsection.
 - (7) Where an application is made under subsection (4), the Judge shall –

- (a) fix a date for the *inter partes* hearing of the application; and
- (b) order that a copy of the application be served on the accused,

and the Judge may issue a summons or warrant to compel the appearance of the accused at the hearing.”

B. Renumber subclauses (8) and (9) as subclauses (10) and (11).

(8) An accused who is apprehended pursuant to a warrant under subsection (7) shall be committed to prison until he is discharged in due course of law or granted bail.

(9) At a hearing referred to in subsection (7), where the Judge is of the opinion that the evidence as given before the Master was sufficient to put the accused on trial, the Judge shall order that the accused be put on trial and the accused shall be further prosecuted in the like manner as if he had been put on trial by the Master by whom he was discharged.”

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

Clauses 25 to 30.

Question proposed, That clauses 25 to 30 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, there was something on 26 that is not very clear to me, 26(3), the last line of clause 3 at the top of page 23. Where it reads, “in every case in which the original document would be admissible.” Is it “would be admissible” or “would have been admissible?”

Sen. Volney: I am lost, Could you help me?

Sen. Prescott SC: It is at the top of page 23.

Sen. Ramlogan: He is changing the grammar. In which the original document “would have been admissible” or “would be admissible”.

Sen. Prescott SC: It is now lost or destroyed. So Sen. Dr. Tewarie, what is the proper grammatical tool that we are looking for—the past, prehistoric tense or something? [*Laughter*]

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Sen. Dr. Armstrong: “in which the original document would have been admissible”.

Sen. Volney: It would be admissible.

Sen. Prescott SC: As is?

Mr. Volney: As is.

Sen. Dr. Tewarie: What transpired with the original document will now transpire—*[Inaudible]*

Sen. Dr. Armstrong: But it is lost?

Sen. Al-Rawi: But the association of grammar is not necessary to—*[Interruption]*

Mr. Volney: It speaks of something to happen—“would be admissible”. “Would be” makes it admissible.

Question put and agreed. Clause 25 to 30 ordered to stand part of the Bill.

Clause 31.

Question proposed, That clause 31 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 31 be amended as circulated:

A. Renumber subclause (2) as subclause (3).

B. Insert after subclause (1), the following subclause:

“(2) Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Master.”

Mr. Chairman: Sen. Al Rawi you had a question.

Sen. Al-Rawi: No, no, thank you, Mr. Chairman.

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the Bill.

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Clauses 32 and 33.

Question proposed: That clauses 32 and 33 stand part of the Bill.

Sen. Ali: On subclause (2):

“Rules of Court made under subsection (1) shall be subject to negative resolution of Parliament.”

Are these not fresh rules for criminal activity as opposed to civil rules? And if so, will we be seeing it for the first time? In my view it should be subject to affirmative resolution.

Mr. Volney: Those are Judiciary rules. The practice, I will hope, would be that the rules committee having created them—*[Interruption]*

Sen. Ali: My advisor was telling me that he was going to propose affirmative resolution.

Mr. Volney: Not in this case. These are rules from the Rules Committee of Court chaired by the honourable Chief Justice.

Sen. Al Rawi: Sometimes problematic—just to help the hon. Senator through you, the Rules Committee is chaired by the honourable Chief Justice. We do have sometimes, problems with the functionality of the Rules Committee. But even though it is difficult, I would think that the negative resolution as much as I do not like it, does suffice, because it really does involve the Bar and the bench together, and then there is a sub-committee, in fact, of the Parliament that deals with it as well.

Sen. Ali: Okay, fine.

Sen. Ramlogan: There is adequate oversight.

Question put and agreed to.

Clauses 32 and 33, ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 34 be amended as circulated:

Delete and substitute the following clause:

“Discharge
on the
grounds of
delay
Schedule 6

34. (1) Where proceedings are instituted on or after the coming into force of this Act and the Master is not, within twelve months after the proceedings are instituted, in a position to order that the accused be put on trial, the Master shall discharge the accused and a verdict of not guilty shall be recorded.

(2) Except—

- (a) in the case of matters listed in Schedule 6; or
- (b) where the accused has evaded the process of the Court, after the expiration of ten years from the date on which an offence is alleged to have been committed—
- (c) no proceedings shall be instituted for that offence; or
- (d) no trial shall commence in respect of that offence.

(3) Except—

- (a) in the case of matters listed in Schedule 6; or
- (b) where the accused has evaded the process of the Court,
where—
- (c) proceedings have been instituted;
- (d) an accused is committed to stand trial; or
- (e) an order is made to put an accused on trial, whether before or after the commencement of this Act, a Judge shall, on an application by the accused, discharge the accused and record a verdict of not guilty if the offence is alleged to have been committed on a date that is ten years or more before the date of the application.”

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Question put and agreed to

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 3 recommitted..

Mr. Chairman: We will revisit clause 3. There were two amendments: under “Master”. It now reads:

““Master means a Master of the High Court;

and under “prosecutor” in the last line after “instructions”, we add “or, in the case of the private prosecution of an offence, the person prosecuting that offence.”

Question put and agreed to.

Clause 3, as amended, again ordered to stand part of the Bill.

Schedule 1 ordered to stand part of the Bill.

Schedule 2.

Question proposed: That Schedule 2 stand part of the Bill.

Sen. Hinds: Just a second, Mr. Chairman. Hon. Minister, did you not agree to take the Anti-Gang Act out of—

Mr. Volney: Yes, Schedule 6.

Sen. Hinds: Schedule 6.

Question put and agreed to.

Schedule 2 ordered to stand part of the Bill.

Schedules 3 to 5 ordered to stand part of the Bill.

Schedule 6

Question proposed: That Schedule 6 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that Schedule 6 be amended as circulated:

“Delete item 7 and renumber item 8 as item 7”.

Question put and agreed to.

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Schedule 6, as amended, ordered to stand part of the Bill.

Schedule 7.

Question proposed: That Schedule 6 stand part of the Bill.

Sen. Prescott SC: There is something at the top of page 40 that strike me as odd. Would somebody please read—top of page 40. Is that not part of Schedule 7. That is part of Schedule 7.

Mr. Chairman: We are dealing with Schedule 7. We have a question by Sen. Prescott SC.

Sen. Ramlogan: “Taken, take”.

Sen. Prescott SC: What is that? It sounds like shake and bake. What does “Taken, take” mean?

Sen. Ramlogan: It is kind of like shake and bake. [*Laughter*]

Sen. Prescott SC: Well should it be there? “Dat is we culture”? What is it doing there?

Mr. Volney: “Taken and acknowledged”.

Mr. Ramlogan: “Taken and acknowledged”. Take that out.

Mr. Prescott: Thank you very much. So it should now read, “Taken and acknowledged”.

Mr. Chairman: Schedule 7 should be amended as follows:

Delete the words “, **take**” after the word “Taken”.

Question put and agreed to.

Schedule 7, as amended, ordered to stand part of the Bill.

Schedule 8 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, with amendment.

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

Mr. President: This Bill requires a three-fifths majority. We will proceed to take a division.

The Senate voted: Ayes 29

AYES

George, Hon. E.

Ramlogan, Hon. A.

Sandy, Hon. Brig. J.

Bharath, Hon. V.

Greaves, Hon. V. St. Rose

Tewarie, Hon. Dr. B.

Karim, Hon. F.

Ramnarine, Hon. K.

Maharaj, Hon. D.

Moheni, E.

Abdulah, D.

Oudit, Mrs. L.

Maharaj, D.

Baynes, T.

Moonan, R.

Beckles, Ms. P.

Hinds, F.

Henry, Dr. L.

Al-Rawi, F.

Deyalsingh, T.

Ali, B.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

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Drayton, Mrs. H

Ramkissoon, Prof. H.

Wheeler, Dr. V.

Prescott SC, E.

Armstrong, Dr. J

Cudjoe, Miss S.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, December 06, 2011 at 1.30 p.m. We propose to debate at that sitting, “An act to amend the Legal Aid and Advice Act, Chap. 7:07”.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.34 p.m.