

*Visitors**Thursday September 13, 2012***SENATE***Thursday, September 13, 2012*

The Senate met at 1.30 p.m.

**PRAYERS**[MADAM VICE-PRESIDENT *in the Chair*]**VISITORS****Tenth Youth Parliament  
(Students)**

**Madam Vice-President:** Hon. Senators, before I make the announcement for absences, I would like to recognize and welcome the students who will be taking part in the Tenth Youth Parliament of Trinidad and Tobago carded for October 29, 2012. We welcome you here students, and I understand there are one or two teachers here, welcome. [*Desk thumping*]

**LEAVE OF ABSENCE**

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

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

**VACANT SEAT**

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MR. BASHARAT ALI

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President, in exercise of the power vested in him, is empowered to declare the seat of a Senator to be vacant:

*Vacant Seat*  
[MADAM VICE-PRESIDENT]

*Thursday September 13, 2012*

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, BASHARAT ALI, to be vacant, with effect from 31<sup>st</sup> August, 2012.

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 21st day of August, 2012."

**SENATORS' APPOINTMENT**

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: DR. LENNOX BERNARD

In exercise of the power vested in me by paragraph (e) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GEORGE MAXWELL RICHARDS, President as aforesaid, do hereby appoint you, LENNOX BERNARD, a Senator with effect from 1<sup>st</sup> September, 2012.

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 21st day of August, 2012."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MR. DON SYLVESTER

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DON SYLVESTER, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Timothy Hamel-Smith.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 13th day of September, 2012."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MR. ALBERT WILLIAM BENEDICT SYDNEY

WHEREAS Senator Professor Harold Ramkissoon is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALBERT WILLIAM BENEDICT SYDNEY, to be temporarily a member of the Senate, with effect from 13th September, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Professor Harold Ramkissoon.

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 11<sup>th</sup> day of September, 2012."

*Oath of Allegiance*  
[MADAM VICE-PRESIDENT]

*Thursday September 13, 2012*

**OATH OF ALLEGIANCE**

*The following Senators took and subscribed the Oath of Allegiance as required by law:*

Dr. Lennox Bernard, Don Sylvester and Albert William Benedict Sydney.

**ADMINISTRATION OF JUSTICE  
(INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2012**

Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011, brought from the House of Representatives [*The Attorney General*]; read the first time.

*Motion made:* That the next stage of the Bill be taken later in the proceedings. [*Hon. A. Ramlogan SC*]

*Question put and agreed to.*

**PETITION  
University of the Southern Caribbean**

**The Minister of Tertiary Education and Skills Training (Sen. The Hon. Fazal Karim):** Madam Vice-President, thank you very much. I wish to present a petition on behalf of the members of the University of the Southern Caribbean of Royal Road, Maracas, St. Joseph, Trinidad, herein referred to as the “University”.

The petitioners are desirous of constituting the University into a corporate body by a private Bill so that its aims and objectives could be more effectively achieved. To this end, the petitioners seek to, among other things, repeal the Caribbean Union College (Inc’n) Act, No. 43 of 1997.

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

*Petition read.*

*Question put and agreed to:* That the promoters be allowed to proceed.

**1.45 p.m.**

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Arima Corporation for the year ended September 30, 2004. [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]
2. Annual Audited Financial Statements of the National Helicopter Services Limited for the year ended September 30, 2010. [*Sen. The Hon. L. Howai*]

3. Annual Audited Financial Statements of the National Helicopter Services Limited for the year ended September 30, 2011. [*Sen. The Hon. L. Howai*]
4. Annual Audited Financial Statements of the Petroleum Company of Trinidad and Tobago Limited for the year ended September 30, 2011. [*Sen. The Hon. L. Howai*]
5. Annual Audited Financial Statements of the National Information and Communication Technology Company Limited for the financial year ended September 30, 2011. [*Sen. The Hon. L. Howai*]

**SELECT COMMITTEE REPORTS**

**Sen. Dr. James Armstrong:** Madam Vice-President, I have the honour to lay on the table the following reports as listed on the Order Paper in my name:

**Tobago Regional Health Authority  
(Presentation)**

Fifth Report of the Joint Select Committee established to enquire into and report to Parliament on Ministries (Group 2), Statutory Authorities and State Enterprises falling under the purview of the Tobago Regional Health Authority (TRHA).

**East Port of Spain Development Company Limited  
(Presentation)**

Sixth Report of the Joint Select Committee established to enquire into and report to Parliament on Ministries (Group 2), Statutory Authorities and State Enterprises falling under the purview of the East Port of Spain Development Company Limited (EPOSDC).

**Sen. Fitzgerald Hinds:** Madam Vice-President, I have the honour to lay on the table the following report as listed on the Order Paper in my name:

**Caribbean New Media Group Limited  
(Presentation)**

First Report of the Public Accounts (Enterprises) Committee on the Caribbean New Media Group (CNMG) Limited (Examination of Audited Financial Statements for the year ended December 31, 2008).

**ORAL ANSWER TO QUESTION**

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, having regard to the nature of the session, the question by Sen. Dr. Victor Wheeler we would like to defer it until the next sitting of the Parliament.

*The following question stood on the Order Paper in the name of Sen. Dr. Victor Wheeler:*

*Oral Answer to Question*

*Thursday September 13, 2012*

**International Tobago Pro Am Golf Tournament  
(Tourism Development Company Limited's Financial Commitment to)**

1. Could the Minister state whether or not the Tourism Development Company Limited made a financial commitment to the International Tobago Pro Am Golf Tournament held from January 3<sup>rd</sup> to 7<sup>th</sup> 2012?

If the answer is in the affirmative, could the Minister state:

- a. the amount of the financial commitment; and
- b. the total financial contribution paid to the tournament.

*Question, by leave, deferred.*

**ADMINISTRATION OF JUSTICE  
(INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2012**

*Order for second reading read.*

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Madam Vice-President, I beg to move:

That a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011, be now read a second time.

We are here today to deal with a very important matter, the genesis of which is fairly well known, having regard to the widespread publicity that precedes today's hearing. The history that precedes this, the introduction of the parent Bill is well known.

Preliminary enquiries were meant to be a sifting exercise to demonstrate that there is a prima facie case that would allow for an accused person to face a trial before a judge and jury in indictable and either way offences. That system has been with us now for almost a century. In Trinidad and Tobago it has been 97 years that that has been with the legal system as we know it. That is to tell you the antiquity of this preliminary enquiries procedure that we have had in the criminal justice system.

When the People's Partnership was elected, we had recognized early on that the need to quicken the pace of justice in the criminal justice system was a main priority, without which you could not really mount an effective campaign in the fight against crime. It is for that reason in the manifesto we had pledged to the people that we would address social issues and nurture the right environment, we would rethink the prison system, reorganize the justice system and make interventions of a proactive and preventative nature.

I think the backlog of cases in the magistracy is a disgrace. It has been a blot on the administration of justice for quite some time now. Justice delayed is justice denied, as the saying goes. Perhaps, no better an illustration of that came quite recently when a young man, Curtis Taylor, aged 47, was sentenced for a robbery he had committed when he was just 18 years of age. It took 27 years for his case to meander its way through the justice system until he had his day in court. That was 27 years; an 18-year-old young man was put through a justice system, and the journey lasted almost three decades.

Part of the reason for that, and I dare say a large part of the reason for that, was because of the preliminary enquiries procedure that we have in Trinidad and Tobago. A young man at age 18 years, having to live with the stigma of being charged for the robbery of Stephens' and Johnson's on Frederick Street, could have been given a second chance and a new lease on life.

That is why when that kind of delay plagues a system, it goes to the very root of the dignity of the human being. No civilized, functioning, democratic society, with respect for the rule of law, with fundamental rights enshrined in the Constitution, could continue to tolerate and accept that kind of situation. It is for that reason, in recognition of the extent of the problem and the consequences of it, that through various administrations, the idea of the abolition of preliminary enquiries has been raised time and again.

Permit me to cite by way of example the increasing workload on the magistracy. Many people in this country hear about the High Court and the criminal assizes, but in truth and in fact, truth be told, it is the Magistrates' Court where the bulk of justice is dispensed and sought. When I look at the caseload statistics from the magistracy, in 2005/2006 there were 69,510 cases. That went up to 70,769 the following year; in 2007/2008, 74,238; 2008/2009, there was a huge jump, almost 14,000 or thereabouts to 90,000; 2009/2010, a slight dip to 89,000; but in 2010/2011, we reached an important psychological barrier. For the first time in the country's legal history, there were over 100,000 pending cases in the Magistrates' Court. Those cases ranged from indictable offences, family matters, domestic violence, traffic, petty civil, private summary, ejectment and what have you.

The Magistrates' Court is the poor man's court. The petty civil limit in this country for jurisdiction for the Petty Civil Court, which is a Magistrates' Court, is \$15,000. In today's day and age, could you imagine how poor someone has to be and how aggrieved and hurt they must feel that they want to litigate and sue for a

sum below the value of \$15,000? That is the poor man's court. It is the court where women go to get maintenance. It is where you go to eject someone. It is where you deal with a range of custody and other matters, and the basket of cases that they deal with is of wide variety and bears testimony to the intellectual versatility of the magistrates, to whom we owe a great debt of gratitude in this country. They are the unsung heroes, and I pay tribute to them.

Madam Vice-President, in the year 2000 we appointed a Commission of Enquiry into the Administration of Justice, chaired by Lord Mackay of Clashfern. I happened to have been, at the material time, junior counsel to that commission of enquiry. I was taken aback when we visited the Magistrates' Court, as a young lawyer, to see what conditions obtained. You had "bandit and witness", "husband who beat wife and wife who geh licks" all mixing and mingling in the same place, with the bandit eyeballing the victim, and a husband, or in other cases, the wife who beat the husband, eyeballing the husband.

Lord Mackay in his report noted that:

The vast bulk of the court work is done in the Magistrates' Court. As a result, the perception of the administration of justice by the public at large is determined by the quality of justice dispensed by those courts. By far the most serious complaint made to us about the administration of justice in this country is one of delay. Its substantial reduction, if not complete elimination, must be the greatest task facing those responsible for the administration of justice in Trinidad and Tobago.

That was in 2000, the commission of enquiry. Back then it was recognized that the greatest task facing the justice system would be to eliminate and to reduce the backlog and the delay.

I make this point because for a magistrate to adjudicate in a family case, or in a little lawsuit, whether it is a travel agency or somebody you lent money to "dat dey eh pay yuh back and dey playing wrong and strong"—below \$15,000. For the magistrate to adjudicate in that case, he has to first deal with all the criminal matters, the indictable and either way offences. So when you go to the Magistrates' Court, people come there knowing that their case cannot be tried. The witnesses come there knowing that the case cannot be tried, and yet still they have to go through this mechanical routine of calling the case and adjourning it, calling the case and adjourning it.

The list is so long, by the time the magistrate is finished adjourning, "half day done", and then they must start to try cases. I mean, it is a recipe for disaster, and it is a disaster we have been courting for far too long in this country. The witnesses' memories fade. Many persons give up, hopeless and frustrated, and feel that there is no justice to be had in Trinidad and Tobago.



It is in that context and against that backdrop a Bill was brought to this Parliament, to this honourable Senate, to abolish preliminary enquiries. That Bill took a decade, over 10 years in gestation—10 years—during which time there were extensive consultations with all the stakeholders: the police, the Judiciary, the army, the DPP's Office, a lot of functionaries in the administration of justice—for 10 years.

To give credit, the former administration, when the People's National Movement was in power, they tried. They were trying to develop a Bill to fashion a solution to this problem. Of course, when we came into power, we managed to come up with the right formula and we brought a Bill. That Bill, no matter who was in power, required a constitutional majority. No government could have passed a law like that without support and cooperation from the parliamentary colleagues who sat opposite to them. It required that kind of majority.

It is for that reason where we all recognized there was a common problem, and this was the solution that was fashioned, that the Parliament rose to the occasion and demonstrated a level of political responsibility and maturity, a bipartisan approach was adopted and consensus was achieved.

Madam Vice-President, the Bill which was brought to this Senate, highlighted the fact that it was inconsistent with the provisions of the Constitution, in particular sections 4 and 5 of the Constitution.

**2.00 p.m.**

In the other place, in the Lower House, there was support for the Bill. In fact, the Leader of Government Business and the Opposition Chief Whip said that it was not a new idea, that way back in 2009 when they were in power, this was their idea.

The hon. Leader of the Opposition said, and I quote: "We look forward to supporting this Bill." He cited the same statistics that I cited, and they said that this would be opening the door to a new kind of justice that would be speedier and quick.

Now, when that Bill was passed in the other place and it came to this House, there was a change that occurred when it came to this House, and that change was in clause 34. And I wish to start, because I want to get the chronology very clear for Senators, so that we do not beat up on ourselves. To err is human, to forgive is divine; but let us not beat up on ourselves. I want to get the chronology right because a lot has been said and there has been a lot of misinformation.

Clause 34, when it came from the Lower House, had two subclauses. The first, I will read it, clause 34(1), said:

“Except in the case of matters listed in Schedule 6, 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 may discharge the accused.”

I want to pause to let us understand what the Lower House passed in that provision. That provision is saying that where proceedings are instituted whether on or after—after this law was passed—if the master, that is the criminal master, could not really say that you will be put to stand trial within 12 months, then the master may discharge the accused.

Twelve months in our legal system is a very short time; it is a very short time, but the intention was clearly to bring down the guillotine on the endemic delays that plague the system and to err in favour of the liberty of the accused person.

No matter you are charged, you go before a criminal master, and if within 12 months they cannot say, “look, you are to stand trial before a judge and jury”, and 12 months have elapsed, you will have your opportunity to say, “look, discharge me”.

That is a rather revolutionary provision, and it is a rather revolutionary position for us to have taken in the other place, in the elected House, but the clear will, as manifested in subclause (1), was that they intended to deal with the delay and they were going to impose some timelines in the criminal justice system, and that is clearly spelt out in subclause (1)—just 12 months.

Subclause 2:

“On an application by the accused, a Judge shall discharge an accused if the proceedings were instituted prior...”

—the first section only applied to what will apply after this became law. This subclause (2) dealt with matters that occurred prior.

“... 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, except—

- (a) in the case of matters listed in Schedule 6; or
- (b) where the accused has evaded the process of the Court and the trial on indictment has, for that reason, not commenced.”

Several things flow from that subclause. The first, the elected House, in its collective wisdom, felt that they will leave the judge with no discretion.

In subclause (1), they used the word “may”, so criminal matters that in the future—prospectively—the Lower House felt that the master should have discretion. We said the master “may” discharge the accused.

So going forward, 12 months passed, you cannot say that the person would stand trial, they said the master may discharge. That means that a judicial discretion existed. So they put it there in subclause (1) that the court will have discretion to exercise as to whether or not they should discharge that person.

Subclause (2) dealt with cases prior to the coming into force of this Act: old matters—old matters that have formed part of the backlog. And what did the elected chamber say? They said; “On an application by an accused, a Judge shall discharge...”

The first point I want to make is that the elected chamber, in its collective wisdom, felt that there should be no judicial discretion in the second case. No judicial discretion! The judge shall discharge, on satisfaction of the following grounds, that:

“the trial has not commenced within ten years after the proceedings...” have been “...instituted...”

What do we mean when we say “after the proceedings were instituted?” The answer to that has been the subject of much legal discussion, but much of it has been wrong. The answer to that lies in the definition clause in this very Bill, and it is in clause 3(2) which reads as follows:

“For the purposes of this Act, proceedings were instituted prior to the coming into force of this Act when the accused appeared before a Magistrate or Justice of the Peace and the charge was read to him prior to the coming into force of this Act.

Once you are charged and they bring you before the court and they read that charge and they ask you to plead, proceedings are instituted. So, what we received as a Senate was that in a case where a man was charged, and before this Act and 10 years passed, and the trial had not commenced—that is, the trial before a judge and jury—that means to say 10 years he is languishing in the preliminary enquiry. Once, for 10 years he has been languishing in the preliminary enquiry, then, [*Crosstalk*] yes, or after the enquiry and you move on to indictment, and the trial “eh” start, then the intention of the House was that the judge shall discharge such a person. The exception is made in Schedule 6 for blood crimes or where the accused has evaded the process of the court.

*Administration of Justice Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Thursday September 13, 2012*

Now, I pause there in dissecting and analyzing this subclause to highlight one important fact. Madam Vice-President, there has been a lot of talk about conspiracy theories, and without going into great detail by reference to any pending matter, I just want to say that those matters in respect of which those allegations have been made, when you check the date when the charges were laid, you will see that without any amendment when the law came to the Senate, as it stood, those persons would have benefited without any amendment. [*Desk thumping*]

You see, the allegation is that an amendment was somehow put in through the back door—I “aint” mincing words—the allegation is that an amendment was somehow slipped in through the back door when the Bill came to the Senate. We all missed it, and that “somehow” was by some conspiracy or design.

What I am trying to show you here, Madam Vice-President, is that that cannot hold water. Even without the amendment, the persons would have been able to benefit, and get their discharge on that, and I will tell you why. And I want to delve deeper now to debunk this myth about this conspiracy theory, and perhaps I should get to the actual statistic.

Madam Vice-President, in the Lower House, the Bill that the Government took did not have 10 years, it had seven—it had seven years. So that meant that if you are in the system for seven years, and “your trial eh start, yuh charged, yuh in the system for seven years and yuh trial eh start,” you shall be discharged; seven years is what the Bill had.

Piarco No. 1, you know when those charges were laid? March 22, 2002. Ten years passed, 10 years, 2002. Ten years passed. Piarco No. 2, May 17, 2004, eight years passed, eight years passed. [*Crosstalk*] All right, hold on, “me eh finish”. Now, the point here is this, if the Government wanted to help out anyone, and we went to the Parliament with a Bill that had seven years, well then the 10 years and the eight years—Piarco 1 and Piarco 2 would have been liable to be discharged because one is 10 years in the system, no trial, and the other one is eight years in the system. So, they were both in excess of the seven-year period, both! [*Crosstalk*] Both!

And the Government brought that Bill with seven years, and what happened in the Lower House? Now, we brought that Bill with seven years, seven years would have allowed both—the guillotine to fall on both; one is eight years in the system, the other is 10. What did the Government do? You know what happened?

The hon. Prime Minister, when the matter was being debated in the Lower House, changed seven to 10, and there was an exchange, which I would come to later, between herself and the Member for Diego Martin North/East, Mr. Imbert.

And what was the nature of the exchange? The Member for Diego Martin North/East, Mr. Imbert, was advocating and complaining about the fact that we were changing it from seven to 10. He wanted it to remain at seven! The Opposition wanted it to remain at seven! And they were quarreling about the expansion to 10. Had it remained at seven, from the date of charge—which is what the Opposition is advocating—both Piarco 1 and 2 would have been discharged, from the date of charge, because one is 10 years and the other is eight; eight or 10, they are both more than seven.

So, if the Government wanted to help anyone, we would have left it at seven. The Opposition wanted it at seven, we had it at seven, but the Prime Minister said she wanted it increased to 10. If the Government had within its contemplation helping anybody out for any specific reason, why would they increase it from seven to 10? Because when you increase it from seven to 10, Piarco 1 could be discharged but Piarco 2 cannot, because it is eight years in the system.

The point is, without realizing it, and that is the point I want to make—for all this grand conspiracy theory—is that I do not think that the Legislature had within its contemplation any particular case or any particular personality when they were considering this law. [*Desk thumping*] And the allegation that it is somehow designed to help someone, when you analyze the law itself and you chronicle what took place in the Legislature, it demonstrates that nothing could be further from the truth [*Desk thumping*] because it was the Government that increased it from seven to 10. It was the Opposition saying, we want it at seven; had it remained at seven, both would have fallen. [*Crosstalk*] But they both would have been caught.

You see, now, with that said, I want to make the point that I do not think the Parliament legislated with personalities or particular cases in mind. I think that the Parliament was trying to make good law, [*Desk thumping*] bearing in mind the endemic delays in our criminal justice system, and what it does to balance the scales of justice, what it does to the accused, and what it does to the public interest that has a right to prosecute crime. And in balancing those two competing principles, and the healthy tension that we were trying to manage, the fulcrum that we came up with, to balance the scales of justice was look, 10 years, that is in the Lower House, 10 years.

**2.15 p.m.**

But nobody thought about any special case because, if you were thinking about any special case, as the allegation has been made, you would leave it at seven. The Opposition wanted seven. Now, the change to that when the Bill came to this Senate, an amendment was done and the amendment was to amend that law so that you will have the possibility of discharge when 10 years had elapsed, not from the date of charge but from the date of the commission of the offence.

Now, was that done surreptitiously by sleight of hand? I want to humbly submit, no, it was not. If we are to be honest and frank about what transpired, it was not. It was not inserted in the dead of night in a committee stage; it was not in a footnote; it was frontally put on the floor of the House for debate. Permit me to cite the words in the presentation of the hon. Minister of Justice in piloting the Bill, because he spoke directly to the amendment, and I quote:

“Clause 34”—which is the contentious clause—“would provide for the discharge of the accused on the grounds of delay, except for the offences identified in Schedule VI 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.”

In piloting the Bill, the hon. Minister immediately flagged for attention “within 10 years of the commission of the crime”. He says further:

“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 position, which stated that where proceedings were instituted prior to the coming into force of this Act and the trial had not commenced within seven years, the accused shall be discharged. The same seven to 10 years thing.

“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 Members of this honourable House, 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.”

What the Minister of Justice was saying here is: look, we have a problem, the magistracy is creaking beneath the sheer weight of the volume of cases, it is 100,000 cases and we “eh” increase the number of magistrates. We keep giving them more work and more cases with the same resources and the same magistrates, and what has happened, since the Privy Council ruled in *Pratt and Morgan* you have to give capital offences priority, because you want to fast-track the penalty cases because you have a deadline of five years to comply and so on.

So, what the learned Minister was saying is, look, this is our problem, we have to clear the backlog while dealing with the oncoming avalanche which cascades down upon the system every day. So, you have to deal with both at the same time—simultaneously—and what he said is, look, “we think that if in 10 years’ time you eh charge or in 10 years’ time you eh facing trial, leh we consider that “George”—Emmanuel sorry—“leh we consider that closed”. That is the policy he was outlining for, us—that we would cut off that. We have to have a cut-off point. In many countries in the world they do have a cut-off point.

So that is what he was putting for us to consider for debate. That was his rationale and that was his justification. Now, let us analyze what he was saying: if you take the backlog from the magistracy as it is and you simply abolish preliminary enquiries and take all those matters and throw it at the High Court, the backlog moves from one point to the other. The pressure point moves from the knee to the hip, nothing happens. So, what he was saying is, look, we need to take a hard bite at this cherry and truncate it, let us trim off the excess fat, send the rest to the High Court and then you deal with those cases that are really alive within the 10 years. That is what he was saying. He did not hide it. He brought it out in the open and that is what he was saying.

Madam Vice-President, he went further. I quote again:

“So let me basically introduce where the changes are being made, let me start at the end with section 34; there is a new section 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

*Administration of Justice Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Thursday September 13, 2012*

right now since September 16, when the law term was opened or thereabouts, there have been five or 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.”

It never even start up.

“If during that period seven trials have been completed, that would be a lot. There are at least two cases which have started, which have not been completed...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 the delivery would take us easily 10 years to get on top of, 10 years! We could ill afford that...”

What he is saying is that to clear the backlog “it go take yuh 10 years; to just clear the backlog it go take yuh 10 years.” And if to clear the backlog will take you 10 years, what would you do about the cases that are coming on a daily basis now in the present? What would you do with it? You know what would happen? While you are clearing the old backlog you are creating a new one. As you are bailing out water, more water is coming in. It would always be saturated. He continues:

“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...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 can barely make a case—”

He explains what his judicial experience was. He says:

“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.”

—hon. Minister of Justice.

“Now, this does not apply to cases of what I call blood crimes.”

—and he goes on.

So, it is clear what was operating in the Minister’s mind, and I dare say what would have been operating on the minds of the Senate was that, look, you have to put a cap somewhere, we cannot continue as we are going—where a man who break in Stephens’ and Johnsons’ 27 years ago, when he was 18 years of age, is sentenced 27 years later, when he is a grown man with wife and children, with no hope or possibility of redemption or recovery—



**Sen. Singh:** It is a good thing he did not break into—[*Inaudible*] [*Laughter*]

**Sen. The Hon. A. Ramlogan SC:** So that is what the man was saying, we cannot continue as we are going, we need to put a cap somewhere. And if we do not put a cap and we try to tackle every single case in that backlog, “it go take yuh” 10 years to get on top of it, and if that 10 years pass, well then “yuh go have a next 10-year backlog when yuh finish that.” That is what he was saying.

**Sen. Hinds:** Lapwing, you know, boy.

**Sen. The Hon. A. Ramlogan SC:** I prefer to be a lapwing than a corbeaux my friend.

**Hon. Senator:** “Ooooh”, or a dove. [*Laughter*]

**Sen. The Hon. A. Ramlogan SC:** Or a dove. [*Crosstalk*]

**Hon. Senator:** “Yuh look for dat, yuh look for dat.”

**Sen. The Hon. A. Ramlogan SC:** You see, I would leave it for one of my colleagues to tell you about the seagull. All right?

Having put it on the floor, was the matter addressed by Senators or did we just ignore it? The truth is, when you look at *Hansard*, we did not ignore it. Concerns were expressed, the matter was debated and the section was analyzed. My dear friend Sen. Dr. Wheeler, on the Independent Bench, says:

“I am not sure if this will be a loophole to some”—persons—“for escaping coming to trial...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”—and he goes on to another area of concern.

So, the matter was flagged. I want to be very fair to the Senate, the matter was flagged.

Sen. Al-Rawi, my good friend on the Opposition Bench, says:

“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...And very importantly, the concept of clearing the backlog, because clause 34 of the Bill has the potential to allow 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.” [*Desk thumping*]

He is talking on the heels of the Minister of Justice who identified the problem we are facing. He had dimensioned the problem, and having dimensioned the problem with statistics, this was his response. He says:

*Administration of Justice Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Thursday September 13, 2012*

“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.”

Well the amnesty has the very same meaning and effect as the time cap that was imposed. [*Desk thumping*] The amnesty means that you discharge; you cannot be tried.

Section 10 says if 10 years pass since you committed an offence or 10 years pass since you get charged and “yuh eh face the trial court yet”, then you shall be discharged. That is precisely the amnesty by a different name, but a rose called by any other name shall smell just as sweet. There may be very minor offences which are indictable, where we can use the three-strikes rules in respect of and persons agree, et cetera. But the point is Sen. Al-Rawi was speaking from the same page, he was singing from the same hymn book, singing the same hymn and singing the same verse like the hon. Minister of Justice because he understood exactly what the Minister was saying, and his proposal was we should start a national discussion on an amnesty. Now the amnesty is a slightly different thing, yes, but the effect would be the same. When you grant an amnesty you cannot prosecute.

My dear friend Sen. Prescott SC, nothing escapes his eagle eye. Sen. Prescott said:

“Mr. President, if you are charged in this country with fraud, with currency infringement, with bid-rigging 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”—now current events, I know what you are talking about—“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...”

He continues:

“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”—the proceedings. Well, that is not relevant.

**2.30 p.m.**

The point is, Sen. Prescott understood it and he explained it for the Senate and he said look, you could easily take 10 years for that sufficiency hearing, and once you cross that 10 years' deadline you go before a judge and say dismiss.

I am being fair to us because I do not want to come here and say that everybody missed this thing and we legislate it by “voops, vaps and vaille que vaille”. I cannot say that the Opposition operated on “voops, vaps and vaille que vaille”. I cannot say that the Independent Bench operated on “voops, vaps and vaille que vaille”. I say that we operated with our eyes wide open and we considered and understood the policy implications. [*Desk thumping*] That is what I say.

You see, Madam Vice-President, that is why when you look in the Lower House, you will see that when this Bill went back from the Senate—nobody could point fingers at this Senate. I sit here as Attorney General when we pass laws, and on the Opposition Bench we have three and a half lawyers—[*Laughter*] you see—[*Interruption*]

**Sen. Deyalsingh:** Interns.

**Sen. The Hon. A. Ramlogan SC:** And they scrutinize everything. Madam Vice-President, for those who do not know in the public—who would be listening—the process is as follows: when the Senate sits and the Senate approves—when we have approved the changes it goes back to the elected Chamber, and when it goes back to the elected Chamber, they debate those amendments that we pass here and they will then vote here on it. When it went back, that clause was again highlighted in the Lower House by the hon. Minister of Justice and that clause was the subject of discussion between himself and the Member who spoke for the Opposition. In the end, just like we did, everyone said, aye, aye, aye, aye. We voted unanimously for it as we saw it, as we changed it, and as we wanted it. So let us not now distance ourselves from it.

So, Madam Vice-President, that is what transpired in the Senate. Many Senators contributed, many Senators spoke. Those who felt the need to contribute on it, contributed to it, those who did not, or mentioned this particular clause, did not. So, what brings us to the present crisis?

**Sen. Hinds:** Good question.

**Sen. The Hon. A. Ramlogan SC:** What brings us to the present crisis? Madam Vice-President, if an application was made by Mr. John Nelson, age 17, or Mr. Robin Singh, age 18, who had committed offences and have been waiting for 10 years, if applications had been made by them and they were discharged, I ask the question,

*Administration of Justice Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Thursday September 13, 2012*

and I ask you in all sincerity, would there have been a problem? If the hundreds of poor young men who are languishing in our jails, because they get bail, but to take bail in this country you have to have an unencumbered title deed if you are living in an HDC apartment you cannot get an unencumbered titled deed, yet. If “yuh mudder and fadder doh have money, yuh have no land”. And if you have, it is mortgaged to the bank—that is an encumbrance. “Yuh cyah take bail fuh yuh child.”

So, when we hear the gut-wrenching screams of the mothers crying for their sons, who are young men going into the jail, because they know when they go in jail they are coming out hard criminals. They get bail—it is the first offence—but they cannot make the bail. So when those thousands of young men who deserve a second lease on life—because of poverty they have to remain languishing in jail. When those persons who are affected by this, whom we had within our contemplation as well, if those men made applications the law served its purpose.

Now, that is why I put it in its—I locate what has happened in its proper social and political context. Because had applications been made by those persons who equally fall into the category—you see, by focusing on one or two persons, what we do is we throw a spotlight. This is like a crowded savannah, 10,000 people in the savannah, but the spotlight just happened to fall “wap” on two people and they say, “Oh God, oh God, nah, nah, nah, leh we call off this concert, it only have two people here”. And the next 10,000 waiting in all earnest sincerity, waiting for the light to come on because they are there and it affects them and they paid their money and they are there; they are in the system.

**Sen. Hinds:** Nice metaphor; nice metaphor.

**Sen. The Hon. A. Ramlogan SC:** You see, what we have done is we focused on the trees rather than the forest—no problem. We are here and I will tell you why we are here to change it.

Madam Vice-President, why we change is because of this. When this became law and when there was a proclamation on a piecemeal basis starting with section 34—the reason for which is evident—why start with section 34? The rest of the Act is being proclaimed in January. That is one part of the same one proclamation. The backlog that existed you “cyar” just take it up and have a wholesale transfer of the backlog from the magistracy to the High Court. What Parliament said was that cases 10 years that had not been for trial, or charges in respect of matters where the offences were committed 10 years ago, do not bother with them. We do not deem it live or worthy of prosecution. That is what we decided. We decided that the 10-year rule will operate to fall like a guillotine on those matters.

So, why bring that section in place first? Because you want to trim the excess fat off the backlog so that when you send the backlog—come January—to the Judiciary in the High Court, what they will get are live relevant cases that Parliament intended to deal with. [*Desk thumping*] So you trim the excess fat and you send the real live cases to be dealt with by the High Court.

Do you know why you need lead time? Firstly, you need to do the paperwork. The Clerk of the Peace, the judge's clerk, applications, you have to have that administration in place; you need that lead time to trim off the excess fat. It is like you are going to cook. When you are going to cook, before the wife starts to season and “chunkay” the pot she has to trim off the excess fat if she loves her husband and she does not want to kill him [*Laughter*] with cholesterol and so on. So you trim off the excess fat first, you put it in the basin, then you season it, and then you “chunkay” it in the pot. You do not “chunkay” it with the fat in the meat. “Yuh go kill somebody.”

So what was happening here is by proclaiming that section first we were simply truncating the backlog, trimming the excess fat and sending what is relevant to the High Court. There is no mystery in that.

**Sen. Hinds:** Ooh, that is why you give the nation indigestion, constipated indigestion.

**Sen. The Hon. A. Ramlogan SC:** You are intellectually constipated. [*Laughter*]

Madam Vice-President, the point—but why do we change this? When this became law and that proclamation came, the DPP of the country and I spoke, and the DPP pointed out that the ramifications and the implications, the consequences of that section, were very far-and-wide-reaching. And when he spoke to me about it, he spoke to me in the context of certain matters—not directing to any matter but simply to explain what the implications and ramifications were. The minute he spoke to me and I understood what he was saying, I went to see the hon. Prime Minister. At four o'clock in the morning I called. We had a discussion and she said come. By seven o'clock that morning the hon. Prime Minister had taken a decision to convene the Parliament and to repeal this clause in its entirety. [*Desk thumping*] Cabinet summoned, decision taken and that is why we are here today. Why? Why?

**Sen. Hinds:** I do not believe that.

**Sen. The Hon. A. Ramlogan SC:** Madam Vice-President, when I took a decision not to appeal the judgment of Justice Boodoosingh which quashed my extradition order in respect of certain persons, I did so on the basis that a trial in Trinidad and Tobago is what should occur. I did so on the basis that if I appeal that decision it will go all the way to the Privy Council, and the Privy Council may at the end of the day say, listen, we quash the extradition order and we remit it to go back to the Attorney General to make an extradition decision in accordance with the law.

You know what happens when that comes back? That is three to five years in the future. When it comes back to me three to five years in the future and I make a fresh decision whether yes to extradite or no—let us say I say yes, you know what is going to happen? Not only would Sen. Hinds not be here in Parliament, but what would happen then is that they would then be able to file for judicial review of that decision and you go through the whole thing all over again. And when I considered that it would be a further 10 years in the system, I said the better thing to do, consistent with the advice I received from Mr. James Lewis, Queen’s Counsel—and the advice, anybody who wants a copy of the advice, no problem I am sharing it with “all yuh”. No problem.

**Sen. Hinds:** Now? When we wanted it you did not want to give—  
[*Interruption*]

**Sen. George:** It did not matter then.

**Sen. The Hon. A. Ramlogan SC:** It did not matter. The matter was before the court, pending. So consistent with that advice that is what happened. When the DPP spoke to me and I realized that the basis upon which my decision was predicated, was now going to be affected, something had to be done and that is why we are before this Senate.

Furthermore, the Government cannot support bad law and the Government cannot support a provision that says 10 years from the date of the commission of the offence. We have a commission of enquiry going on into the collapse and the financial fiasco of Clico and the Hindu Credit Union. More than 10 years may have elapsed for us to discover and unearth the financial skulduggery that is alleged to have taken place there. So I could pass a law like that when I want to pursue social justice on behalf of the people in the public interest? No! That is why we are here, because this Government is serious about pursuing justice for the people. [*Desk thumping*]

That is why, Madam Vice-President, we have made the following changes and the changes are here. We could have changed “shall”—there were many options opened. We could have changed the word “shall” to “may”, so we could give the judge a discretion whether to discharge the people. I did not want to do that. You know why? Why even have the possibility of the application being made? If the judge, after 10 years, has a discretion, well, “we okay, the judge deciding dis ting; da is his wuk”. But then what if the judge says yes or no? They will appeal that decision to the court of appeal and then to the Privy Council—all that time passing and you cannot start the trial.

So I did not wish to retain the new tier that we had introduced at all. There should be no opportunity to challenge it on the ground of this 10-year rule because our system is too slow, it is plagued with inefficiency and the raw and harsh reality of our criminal justice system is that it may very well capture a lot of matters. The police service, in terms of detection and investigation of crime—there are many, especially in these kinds of areas that we have to bear in mind what the realities would be.

So what did we do? Outright repeal with retroactive effect and we have closed the trapdoor. We have gone further than doing that. We have actually gone on to nullify any pending actions. Any pending actions shall be void and any rights, privileges, obligations, liabilities or expectations that may have occurred are also nullified.

So we have plugged it from every conceivable angle to immunize this law from any anticipated legal challenge and we have done that in good faith, in the same way that this Senate acted in good faith when it made that law. [*Desk thumping*] The unintended consequences of that law which we all passed with our eyes wide open, we clearly did not appreciate at the material time.

The proclamation of the early section is not the point. Whether that section got proclaimed by itself first or the whole law got proclaimed, the section would still be there and you could have still made the application. In fact, if there was a political conspiracy it would have served our interest better—it would have served the conspirators’ interest better—to delay the proclamation because the longer you delay, the greater the argument and the strength and force of the application they will file. The longer the delay, the closer you are reaching to the 10 years.

**2.45 p.m.**

Now, Madam Vice-President, of course there are legal arguments all over. This matter, if it reaches elsewhere, we will deal with that. For myself I say, as the Attorney General of this country, I feel very comfortable in the law that we have passed, in the repeal of this section with retrospective effect and the nullification of pending matters. I feel comfortable with that. I feel that that really eliminates the escape hatch it presented.

Madam Vice-President, this is not the first time we are going to repeal a law. Let us be fair. When the Uff Commission of Enquiry was in full flight, the former administration, under the PNM, suddenly realized that it had not gazetted the Uff Commission. They convened an emergency session of Parliament to retroactively validate the Uff Commission of Enquiry, or else it would have been void ab initio. All would have been lost.

That is what Parliament is here for, to do the people's business. Are we perfect? No. [*Desk thumping*] But, are we responsible? I say, yes, and today we must act [*Desk thumping*] and demonstrate responsibility and maturity.

Madam Vice-President, this is not the first time. And I want to pay tribute to the hon. Prime Minister for the swift manner in which she took a decision—firm and decisive leadership when it is called for. [*Desk thumping*] No political dilly-dallying, no political intransigence, but quick, firm and determined action immediately.

Compare this with what happened in 2007 when the PNM amended the Home Mortgage Bank Act, giving the PNM treasurer, Andre Monteil, the power to purchase \$110 million in HMB shares. The then Prime Minister, Mr. Patrick Manning, promised—he said, “The Government will bring legislation to this Parliament to correct the damage done” and to force Mr. Montiel to retransfer those shares. He said, and I quote: “We will bring it before the general election.” To this day, “general election come and gone; you come and you gone” and no legislation was brought. [*Desk thumping*]

So I say, when we judge this Government and the actions of this Government, we must judge it fairly and we must judge it in its proper political context. There is no political arrogance. There is, in fact, a leader who demonstrates political humility, political responsibility and political maturity. That is why we are here today, to repeal that section with retroactive effect.



Madam Vice-President, a lot has been said about the chronology of events, as to why certain persons were not extradited. Why is it, they ask, when the challenge to the validity of the extradition Act—they had challenged the constitutionality of the extradition Act itself, and the question was asked: well, why, when that case was dismissed, you did not sign the warrant of extradition “one time”?

The truth be told, I did, but it was then pointed out to me that a written commitment was given, on behalf of the State by the former Attorney General under the PNM, that if an extradition order adverse to the defendants were made, he would allow a passage of seven days to facilitate any challenge because the Court of Appeal had said any extradition order adverse to any citizen is amenable and susceptible to judicial review.

Those are the facts. My heart is clean; my hand is clean and my conscience is very clear in this matter—very clear. [*Desk thumping*]

So, Madam Vice-President, with those few words, I wish to ask that Senators rise to the occasion. Let us not play perfect and let us not beat up on ourselves. Let us focus on the problem at hand and let us solve this problem in the public interest for the benefit of Trinidad and Tobago.

I beg to move. I thank you. [*Desk thumping*]

*Question proposed.*

**Sen. Faris Al-Rawi:** [*Desk thumping*] Thank you, Madam Vice-President; thank you, hon. Senators. The hon. Attorney General, at or about 2.48 p.m. this afternoon said, “Let us focus on the problem at hand.” Dare I say that in my humble submission I think that that was the first time he attempted to focus on the problem at hand in the entire hour that he spent addressing this honourable Chamber. [*Desk thumping*]

Madam Vice-President, we are here in compliance with Standing Order 48(2) which governs the rules of this Senate, to obviate the need for 15 days’ notice to deal with a Bill and to deal with something that is before the national community as a matter of great urgency. The last occasion on which this Senate sat, the House was adjourned to a date to be fixed, and we are, in fact, here for the second time in circumstances of a declared emergency by the Government, of sorts. But more particularly, Madam Vice-President, we are here to fix an issue that has not yet been defined with the form of precision and clarity that is required to be put on the floor of this Senate. [*Desk thumping*]

**Sen. Hinds:** Ohhhh!

**Sen. F. Al-Rawi:** Madam Vice-President, let me tell you why I say that.

**Sen. Hinds:** Talk!

**Sen. F. Al-Rawi:** We are here on a Bill which I saw for the first time in its final form when I got here to Parliament just before 1.30. We are here to repeal and to retroactively put in place laws which were vested in the citizens of this country and in persons in general, on August 31, 2012 as a result of a proclamation by His Excellency the President of the Republic.

Madam Vice-President, for the national community, I wish to explain that His Excellency the President makes proclamations as a matter of law at the invitation of the Cabinet of the Government of Trinidad and Tobago. There is a process by which this happens. There would have been a note taken to the Cabinet; deliberations would have been had; a Minute would have resulted from Cabinet; and a direction to the Office of the President would have ensued, as a result of which, His Excellency would have issued the type of proclamation that he did in this particular matter.

Madam Vice-President, the wording of the proclamation is very precise. The proclamation, in the instant case, is had under the *Gazette* of August 30, 2012 by Legal Notice No. 348, No. 8 of 2012. This proclamation, as it relates to this Act, which we now seek to amend today by the Bill before us, is that:

“WHEREAS it is provided by section 1(2) of the Administration of Justice (Indictable Proceedings) Act, 2011...that the Act shall come into operation on such date as is fixed by the President by Proclamation:

And whereas it is expedient that sections 1, 2, 3(1), 32, 34 and Schedule 6 of the Act come into operation on the 31st day of August, 2012:”

I will skip a clause:

“Now, therefore, I”—His Excellency—“do hereby appoint the 31st day of August, 2012 as the date on which sections 1, 2, 3(1), 32, 34 and Schedule 6 of the Act come into operation and the 2nd of January, 2013, as the date on which...”

And I can summarize by saying, the rest of the Act shall come into effect.

Now, Madam Vice-President, we as a Senate today are faced with a very, very difficult task, and that is to state with clarity the mischief that this amending legislation—this Bill—seeks to cure. The hon. Attorney General’s task, not only

as the titular head of the bar, but as the person piloting the amendment before this Senate, was to state with clarity what the mischief this Senate—and the both Houses of Parliament—is intended to deal with.

Dare I say, he did nothing of the sort. And that, Madam Vice-President—I cannot say it is a dereliction of his duty—but it is a serious shortcoming on his part because it is well known to every citizen of this country by now that the *Hansard* debate on today's date and yesterday's date, in relation to the amendment which we are now discussing and debating in this Parliament, will be examined in other places, Madam Vice-President, and in particular the courts of this land, and perhaps elsewhere. And that being the case, the aid to interpretation is critical to be clear and pellucidly clear on the Parliament's record.

Now, Madam Vice-President, a lot has been said, quite unfortunately, in the piloting of this Motion in relation to particular matters before the courts. Direct references to certain individuals and certain cases have fallen from the lips of the hon. Attorney General, I think, most unfortunately. I say so because this Senate—and certainly this Opposition Bench—is here to deal with the passage of laws which are general in application to all the citizens and persons of this country and not directly related to any class of persons, identifiable or not.

That is so because that is a direct prescription of the law in relation to legislation of this type. And let me tell you what the legislation of this type is. This is a very certain type of legislation. It is what we refer to in law as *ex post facto* legislation, and there was the argument raised in the Lower House debate yesterday which I paid attention to—and falling from the lips of the hon. Attorney General that this legislation could be viewed to being cast in relation to certain identifiable persons. That is certainly not the case, and I wish to put that clearly on the record for all persons who will visit our records at a later date to understand what we, as a Senate, are doing.

Madam Vice-President, the purpose that is before us right now is to cure a very certain mischief, and the mischief, Madam Vice-President, if I describe it, is an absurd proclamation on the part of the Government of Trinidad and Tobago of a part of the Administration of Justice (Preliminary Enquiry) Act, 2011. That is the absurdity.

I wish to explain what that absurdity is. The hon. Attorney General referred to contributions of Members in this Parliament, in this Senate, on November 29, 2011. In particular, he was selective in his reference to parts of the contribution of persons, including myself.

Madam Vice-President, we as a Parliament will not engage in approbation and reprobation of any one point. You cannot say yes and no to the same thing. It is absolutely certain that all Members of this Senate voted for very particular legislation, which is embodied in the 2011 Act—which is now before us for amendment—and in voting for that, Madam Vice-President, we specifically included, after certain assurances, the terms and conditions of section 34 of the Act, which this amendment section now seeks to repeal.

Madam Vice-President, I do not wish to give any impression that I resile from the terminology of section 34, and that is so because my notes of the debate as to discussions had with the Attorney General and with other Members in this Parliament reflect that we had direct conversations in relation to the potential impact of clause 34 on the general society in Trinidad and Tobago.

Madam Vice-President, the original intention of the Bill, the 2011 Act which we now seek to amend, is to ameliorate the criminal justice system by addressing one part of that criminal justice system, by repealing the Preliminary Enquiry Act and replacing it with new legislation which causes a sufficiency hearing as described in section 19 of the Act.

Madam Vice President, it also seeks to codify what is a common law right of all litigants in relation to seeking to have a discharge of proceedings on the ground of unusual delay. That is a common law right which exists. That is where section 34 lives.

**3.00 p.m.**

Madam Vice-President, insofar as the hon. Attorney General referred to my contribution, it is incumbent upon me to remind him that in discussing the reasonableness and proportionality of the law which we then discussed, and which we are discussing today, I pointed out to him the specific parameters of my conditional support and that was—as is set out in my *Hansard* contribution—that the reasonableness and proportionality to satisfy section 13 of the Constitution, which is the exception to the intrusion of enshrined rights in sections 4 and 5 of the Constitution, was to be had not only by the reasonableness and proportionality of the terms of the law as set out in the sections, but specifically by the operationalization and the manner of the operationalization of the Act when it was to be proclaimed.

Madam Vice-President, the hon. Attorney General failed to reflect upon the very specific undertakings given by the hon. Minister of Justice, who is curiously absent today, as the original person piloting this Bill and also as the person vested

by the hon. Prime Minister in the creation of his Ministry with the responsibility of five certain areas of law, which include this law. So it is very curious that he is not here today.

He failed to tell us of the direct and specific undertakings and obligations [*Desk thumping*] given to this Parliament, and by extension, to the people of this country, by that Minister.

**Sen. Hinds:** By the Government.

**Sen. F. Al-Rawi:** Madam Vice-President, lest I have to remind those listening that a Minister speaks with collective, responsible voices behind him, under section 75 of our Constitution. So the hon. Minister of Justice, when he spoke and gave undertakings and described the context of the operationalization of this Bill, did so with the collective voices of the entire Executive.

So, it is important for us in describing the mischief—and the mischief that this particular Bill seeks to address is the deviation by the Government from the true intent as to the operationalization of this Bill. Let me say that simply. [*Desk thumping*] This Bill—as the language of the Act which we now seek to amend will demonstrate, and as the *Hansard* clearly demonstrates—was intended to be operationalized in one go.

Secondly, it was intended to be operationalized after the establishment and satisfaction of very certain conditions. Those conditions in summary form were as follows: one, the drafting and laying of criminal procedure rules by the Rules Committee established to develop them under sections 32 of this Act, having those laid in the Parliament of Trinidad and Tobago and debated.

Secondly, there would be the resources for training and establishment masters to man the system. Because, we pointed out that there were 38 judges of the High Court, four current masters—one on early pre-retirement leave—several magistrates. You were taking the workload from the magistrates and giving it to three, now four masters. We pointed out that it was an impossibility for the system to function without masters particularly schooled in criminal law, and also by masters supported by judicial staff.

Now, Madam Vice-President, let me put on record the words of the hon. Minister of Justice, Herbert Volney, with your leave, I am certain, as he piloted this Bill on November 29, 2011. The hon. Minister said that the intent was to transform our overburdened criminal justice system—page 1. He said that and he reflected upon the honourable Chief Justice's statements at the opening of the law

term on September 16, 2011 that major changes have been in the planning stages for years, and that the Judiciary confidently expected that with the employment of the criminal management rules that have been proposed that the system would be ameliorated.

He specifically reflected upon, at page 4 of his contribution as I have it, that it would introduce case management principles and sanctions for transgression. He specifically, at page 8 as I have it, in discussing Part I of the Bill, said as follows:

“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 scepticism 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.”

He goes on, Madam Vice-President, and it is imperative that I put this in context, to say:

“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,”—et cetera—“...this Bill belongs to...Trinidad and Tobago and suits our litigious attitude.”

He says, specifically at page 16:

“Mr. President, the issue was also discussed at a stakeholder meeting in April of this year”—that is 2011—“wherein the Director of Public Prosecutions...” was involved.

He goes on to say at page 18. He says:

“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 of the...”—DPP.

He says, Madam Vice-President, continuing in the paragraph after, that the accused may apply to a judge for a discharge. He reflects upon the circumstances there. He says, Madam Vice-President, specifically in relation to:

“Part IV 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...”

He says, Madam Vice-President, that specifically:

“My friends on the opposite side in the other place indicated their willingness to revert to the original provision,...”

This is in relation to the 10-year prescription in section 34 which stated where proceedings prior and the trial has not commenced, that the accused shall be discharged. He goes on:

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

The hon. Attorney General himself, in dealing with the circumstances of this debate—after I had made my contribution on this debate, said specifically—with your leave, Madam Vice-President, and I quote from his *Hansard* contribution Tuesday, November 29, 2012. He had this to say:

“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.”

He goes to say:

“And that is something”—that is page 125—“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.”

And he did that in the context of this Bill, Madam Vice-President, then articulated, which is now an Act.

He went on, very importantly, at page 134 to say:

“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 in his wind-up at the end of the debate very importantly, had to say:

“Now to get to the Bill itself.”—At page 199 and this is on Tuesday, November 29, 2011—“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,…”

Of course, those amendments came later at the committee stage, somewhere after 9.30 of that night.

Madam Vice-President, the hon. Minister said specifically at page 205:

“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 in place.”

He goes on to say, Madam Vice-President:

“...I can give you the assurance that the Rules Committee of the Judiciary is working at the Criminal Procedure Rules.”

He says:

“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 put in place, the human resources would have been obtained, persons would have”—to be—“trained and there would be a readiness to implement this measure by January of 2015.”

He says at page 208:

“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.”

He says, Madam Vice-President, that magistrates had to be trained. They had the potential of upward mobility to masters and that they would deal with the preliminary enquiries in the sufficiency hearing as was being proposed.

He then went on to say that when the Judicial and Legal Service Commission makes appointments of masters we will prepare temporary courthouses. He says that those courthouses will come into effect to operationalize this Bill.

He says at page 212:

“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 matters which presently come into the system. So that persons can see, society...”—somebody cares, basically he says.

The hon. Minister in his direct language in this Senate—and I would not go to the direct representations made in the House of Representatives because my time is short. But, he specifically laid down the fact that this Act was going to be proclaimed only after the rules had come into effect; the courts were built; the masters were appointed; they were appointed by the Judicial and Legal Service Commission; and they were trained in the criminal procedure aspects.

### **3.15 p.m.**

Madam Vice-President, all of that said that the real mischief before us now is the fact that section 34 has come upon us, at the behest of this Government. It has been proclaimed in very curious circumstances which are yet to be answered. None of the conditions precedent for the original intention of this Parliament to work—that is, that the Act come into effect and be proclaimed after condition precedents were met—have been satisfied.

Now, Madam Vice-President, you heard me reflect upon the direct representations made by the hon. Minister, in particular, the fact that there had been consultation with a wide range of stakeholders including, specifically, the Director of Public Prosecutions. I find that statement, now, today, as I stand with information now in the public domain, to be devoid of truth. I say so specifically in light of a press release by the Director of Public Prosecutions in relation to a particular matter which refers to the fact, and I quote, Madam Vice-President, that:

“On Independence Day, section 34 of the Act...was brought into force. Curiously, no other substantive provision of this Act has been brought into force even though the declared legislative thrust of this Act is the abolition of preliminary enquiries. Section 34(1) cannot stand on its own without absurdity, while”—section—“34(2) and”—section—“34(3) have nothing to do with...such abolition.”

The honourable DPP says:

“I was initially consulted about the Act as a Bill in March 2011. I commented in detail by letter dated the 6<sup>th</sup> of May 2011 and forwarded same to the Hon. Mr. Herbert Volney, Minister of Justice. I could not comment on section 34 or Schedule 6 as now contained in the Act because they were not in the draft bill kindly sent to me by the Minister of Justice.”

He says:

“I had never been asked to comment on the significance of section 34(2) and 34(3), prior to the Bill being introduced into the Parliament of Trinidad and Tobago on the 11<sup>th</sup> of November 2011.

However, I attended a meeting held by the Judiciary and Justice Sector Committee at the Chief Justice’s Conference Room at the Hall of Justice on 24<sup>th</sup> of July, 2012. One of the items on the agenda was the *Implementation Process for the Regime under the...Act*.

During this meeting, the effect and to some extent, the import of section 34 of the Act were raised. This prompted a response by the Minister of Justice that Cabinet had made a decision.”

Madam Vice-President, he goes on to say:

“Again, I stress that I was not consulted on this change to clause 34 of the Bill.”

He says:

“...the offences in Schedule 6...”—he goes on to say:

“This has the potential to disfigure the international visage of Trinidad and Tobago....

May I hasten to add”—and he goes on—“that I consulted with legal luminaries, based both at home and abroad and they have not been able to point me in the direction of...legislation”—to—“be considered... a sibling of or parallel with section 34(2) and 34(3)...”

Madam Vice-President, he says:

“Consequently, in the light of the Attorney General’s statement and as the respective stakeholders were not in a state of readiness for the implementation of the Act, it could not be reasonably expected that the Act and in particular section 34, would come into operation in the opaque fashion that it has.”

Madam Vice-President, in quite a few years that I have been practising law, and in the many, many thousands of volumes of pages that I have digested in that time, going backward in time, I have never come across a statement by the constitutionally appointed Director of Public Prosecutions of the type that I have just read into the record of this Parliament. That sends a chill down the collective spines of every citizen in this country that the collective will of the Parliament, as to the manner in which this Act ought to have been proclaimed, and brought into operationalization, was wrong. That is the mischief which, we, as a Senate, are now sitting to cure.

We are not here, Madam Vice-President, to deal with any one single matter. We are not here to deal with that. That would be to traverse the realm of law where legislation is referred to as *ad hominem* which refers to the fact, in the natural meaning of *ad hominem*, that you are directing it to particular individuals, but more particularly, that you are engaging in a purpose, which as a legislature, you ought not to traverse. [*Desk thumping*] Therefore, we, as a Senate, need to be very conscious in our deliberations and statements here today; a caution not offered by the hon. Attorney General—the titular head of the Bar.

**Sen. Singh:** Should tell that to the Leader of the Opposition.

**Sen. F. Al-Rawi:** I have yet to hear a contribution from the Leader of the Government Bench other than crosstalk. I will wait for his contribution. [*Desk thumping*] My point is, it is the piloting of this Bill in the Senate where the obligation of the Attorney General is to lay down the parameters of what we are seeking to

do. We are seeking to cure the absurdity and the opaque fashion, as described by the honourable DPP, [*Desk thumping*] of the proclamation of a stand-alone section of this Act which should never have happened, and which was divorced from the minds of every Senator sitting here when we dealt with that Bill which became law in November 2011.

**Sen. Hinds:** What is that word again? Opaque?

**Sen. F. Al-Rawi:** So, Madam Vice-President, the issue on the table for the Government to answer in the public forum, not as a matter of law only, is why proclaim what has been described—not by the PNM—as an absurdity? Why proclaim an absurdity? I want to demonstrate the absurdity by reference to the terms of the Act itself which we now seek to amend. The Act says specifically that—if I could find my Act. The Act No. 20 of 2011 says, Madam Vice-President, the proclamation refers to section 1, coming into effect; section 2, coming into effect; section 3(1) coming into effect; section 32, coming into effect; and section 34 coming into effect.

Madam Vice-President, section 1, if you permit me, “Short title and commencement”. Section 2:

“This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.”

Section 3(1): the definition section. Section 3(2), which is not put into effect, and section 3(3), which is not put into effect, deal with when proceedings are deemed to have been started, both before and after the Act. The hon. Attorney General pointed to us to say that the answer as to when proceedings are brought into effect is in subsections (2) and (3) of section 3 yet they are not in effect, so why point it out? What is he talking about? [*Desk thumping*]

Madam Vice-President, you look next to section 32. Section 32 of the Act is the specific clause which deals with:

“The Rules Committee established by the Supreme Court of Judicature...”—having the power to—“...make Rules...for the purpose of proceedings under this Act.”

You skip over section 33, not enacted, and you come to section 34 which is the stand-alone section which is now before us for amendment by way of repeal. Ex post facto! Section 33 is the one that we really ought to pay attention to as demonstrating that the original intention of this Parliament, this Senate, was for the implementation and proclamation of this Act as a whole.

Permit me, Madam Vice-President, to reflect on the terms of section 33. Section 33:

“(1) The Indictable Offences (Preliminary Enquiry) Act is repealed.

(2) Notwithstanding subsection (1), the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to proceedings which were instituted prior to the coming into force of this Act where neither the prosecutor nor the accused elects to have the case determined in accordance with that Act.”

So, why proclaim section 34 supposedly to get rid of backlog by applications to a judge who has no criminal proceedings rules, because section 32 is now being put into effect, allowing the automatic invocation and vesting of rights in citizens? Why allow them that without specifically proclaiming and putting into effect section 33? It is a glorious absurdity in law! [*Desk thumping*] Section 33 of this Act had to have been put into effect because what we now have are two sets of law operating at the same time: the preliminary enquiry Act, which we sought to abolish, and the stand-alone absurd provisions of section 34, which were never intended to stand alone.

Madam Vice-President, dodge all you want; fancy footwork all you want, engage in ad hominem debate all you want—and let me explain that. Ad hominem debate is when you call in aid the failings of a personal nature of your opponents opposite as some form of merit for your argument. The Attorney General’s contribution is ad hominem; there is no substance to it. [*Desk thumping*]

He has failed to set the mischief before this House in clear terms. He has failed to regale this Parliament with the protection that it deserves when this legislation—the amending legislation—is no doubt going to be reviewed. He has failed to regale the Parliament with the protection that it deserves in stating that the purpose of this amending Act is, number one, to have general purpose for the benefit of our citizens in general. Two, to right the absurdity put into effect by the United National Congress People’s Partnership—there are four of them now. It is to put right that absurdity of the opaque and unreasonable proclamation of section 34 of the Act.

So, Madam Vice-President, we demand answers as to how and why the proclamation of section 34 came about because that is the mischief before us. There is no mischief to cure any certain set of proceedings; that is not what this debate is about; it cannot be. It is to return to the purposive construction of the original Act. The original Act was debated under certain representations by the

Minister, and it was declared to come into effect in certain circumstances. The proclamation of section 34 in the absurd fashion that has happened is the mischief. So, Madam Vice-President, those answers have to be given in careful form.

Let me reflect by way of comfort to Senators present that we, as a Parliament, are perfectly entitled to right certain mischiefs that we see. We are entitled and have the ability, as a legislature, to legislate widely. We can do so with comfort—ex post facto. We can pronounce retrospective or retroactive laws, we can do that, but we must do it within the confines of a section 13 reasonableness, under the Constitution. It must be reasonable and the case law says that reasonableness is to be had by way of an appreciation as to the proportionality of the law.

Madam Vice-President, if we confine ourselves in this debate, as we must properly do, to the fact that we are curing the absurdity of the Government in proclaiming section 34 in the horrible fashion that it has, then we are on safe ground [*Desk thumping*] and we must always be on safe ground.

**Sen. Hinds:** Well put!

**Sen. F. Al-Rawi:** The conditionality that I offered to the Parliament as to reasonableness and proportionality in debating the first law, Act No. 20 of 2011, was specifically that the wider proportionality argument was that the operationalization had to be careful and certain.

**3.30 p.m.**

Madam Vice-President, I wish to read into the record of *Hansard* the dicta from the Privy Council in the Privy Council's Board's statement in *Surratt v Attorney General of Trinidad and Tobago* [2008] AC 655, at paragraph 58, where the Privy Council said:

“It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in sections 4 and 5 of the Constitution is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited, either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it.”

So, the legitimate aim before this Parliament, in this Bill, is that we are curing the absurdity of the Government. We are curing the inexplicable actions of the Cabinet of Trinidad and Tobago in causing His Excellency the President, as he must, to proclaim the laws in the manner that they have. That is our legitimate aim. The

proportionality of what we are doing is that we are doing this amendment for the general good of this country in returning to the original intention of the law as we put it into effect in Act No. 20 of 2011. [*Desk thumping*] There is nothing else.

It is shameful for the hon. Attorney General, as a successful lawyer as he is and as the titular head of the Bar, to have gone on an unnecessary sojourn into ad hominem attacks of the Opposition and members of society in the manner that he did. It does not advance the legitimate aim and purpose and proportionality of this amending legislation. It is irrelevant. And more than that, by the sound and fury that emanated from his vessel, it suggests to the wider community that there is an untoward purpose, which I certainly do not want to ascribe to him.

Madam Vice-President, unless and until the Cabinet of the Republic of Trinidad and Tobago explains and holds accountable to the national community those persons who caused the proclamation of this law by bringing a Note to the Cabinet, by advocating the particulars of the Note and by causing a Cabinet Minute to go out as to an absurd proclamation, unless that happens, this country is not going to be satisfied. And it is disingenuous in the extreme of anybody on the Government Benches to pretend that the hon. Prime Minister caused amendments, in the rushed fashion that we are doing now, because of some goodwill. [*Desk thumping*] It is public pressure. It is the lack of transparency. It is the lack of particulars. It is the lack of satisfaction of burning answers that has caused that move, but there seems to be no restraint by this Government.

Imagine that I have to stand here in this Parliament—wearing a very careful balance, as I must, between being a pure lawyer and being someone advocating political rights—and try to make sense of the absurdity that this Government has put us in—is the most horrible circumstance that any serious intellectual and citizen could ever be faced with. Shame on you the Government! Shame on you! You ought to know better. [*Desk thumping*]

**Sen. Cudjoe:** Shame, shame!

**Sen. F. Al-Rawi:** There is a school of law relative to the set aside of consent orders in the court.

**Madam Vice-President:** Hon. Senators, the speaking time of the 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, Madam Vice-President. I was reflecting upon a school of law, in relation to the set aside of compromises or agreements. Sometimes it is had in what we refer to in court as consent orders. Sometimes lawyers enter into a consent order before a judge knowing, with eyes wide open, as the Attorney General has used the expression. You sometimes go to the court and say: “Can I set this aside?” The law is very certain that it is very difficult to do that. It is difficult to go back on what you have agreed upon. But you are allowed to do that in certain circumstances: misrepresentation of a material fact, material non-disclosure and mistake. That is littered throughout the laws of this country.

When I went through the debate—the contributions of the Members opposite—I can say with certainty, in light of the pronouncements by the DPP, that there appears to have been a misrepresentation and/or mistake, and/or wilful neglect on the part of persons contributing in the piloting of Act No. 20 of 2011. Let me say that again. The representations as to consultation with stakeholders, including the DPP, expressly given in the debate in November 2011, turn out to not have been full and true because the DPP has said in no uncertain terms that he was not consulted in relation to measures brought before this Parliament.

And when we come here, we come here knowing that the Minister of Justice, armed with a team of lawyers, having passed through the LRC, having passed through stakeholder consultation, having said so, having passed through the eyes and hands of the Attorney General and his whole division and the CPC and the department, we expect that the representations as to consultation are full and true. But it turns out from the words of the DPP that that is not the case and, therefore, a serious question has to come upon us: what is the sanction or consequence for misleading the Parliament, whether there is in fact a contempt of Parliament, in relation to representations made? [*Desk thumping*]

**Sen. Hinds:** Yes.

**Sen. F. Al-Rawi:** Who is going to hold the mantle of blame? It is critical that these answers are given because if you want to set the tone of compliance to good law of all citizens being truly with none above the law, then everybody must stand up and take accountability.

**Sen. George:** “Yuh wrong.”

**Sen. F. Al-Rawi:** There is no approbation and reprobation of clause 34. We agreed to it in very certain circumstances.



Madam Vice-President, are you aware that section 27 of the Act allows for the sixth schedule to be amended? The sixth schedule may be amended by order of the Minister of Justice. Any difficulty to be experienced in relation to the operationalization of clause 34 could have been cured by an amendment to Schedule 6, which clause 34 operates upon, in terms of exceptions, easy fix. It could have been done if you had genuine consultations with the DPP, if you listened to what he had to say in July, as he says. But that did not happen. You went to a meeting with him, you listened to what he had to say and you did nothing. [*Desk thumping*] What did you do? You went and you proclaimed the law.

You heard the DPP of this country say, one, I was not consulted on the ramifications of clause 34—[*Interruption*]

**Sen. George:** What have you all done for the last 20 years?

**Sen. F. Al-Rawi:**—two, having seen clause 34, I expressed concern. He said: “I was given the answer that Cabinet had made a decision.” That is what he said. So, what are we doing? Instead of listening to the DPP—you always say listen to the people, listen to the people, listen to the people—listen to the DPP. Do not go off and proclaim law. [*Desk thumping*] Listen to the DPP, amend Schedule 6.

**Sen. George:** What?

**Sen. F. Al-Rawi:** Amend Schedule 6. The hon. Attorney General said that there are many options. Why were they not taken avail of? [*Desk thumping*] Why were they not implemented prior to the absurd proclamation of section 34? Why? Where are the answers? Today was the first time in debate the hon. Attorney General ever quoted anything I had to say. His 99 per cent fashion is to ignore the suggestions made by the Opposition and in particular, me.

**Sen. George:** That is not true. That is not true.

**Sen. F. Al-Rawi:** When we sit here we sit to draft law.

**Sen. Cudjoe:** Good law.

**Sen. F. Al-Rawi:** Good law! We all participated in the development of good law. But, last year on the Order Paper we had, sitting on the Order Paper for three years, proposals to amend the Land Adjudication Act. Do you know when that was assented to? Nineteen eight-one, not proclaimed; the Children’s Authority Act, not proclaimed; the Municipal Corporations Act, not proclaimed; the Electronic Transactions Act, the DNA Act, not proclaimed. Why the rush to make an absurdity of the collective will of Parliament? Why? [*Desk thumping*]

Then, Madam Vice-President, to add insult to injury, no explanation. You say that you are man. You say that you have fortitude and that we must stand up and say: “mea culpa”—made a mistake—yet you do not answer the real question—*[Interruption]*

**Sen. George:** Of course, he answered.

**Sen. F. Al-Rawi:**—the real mischief before this Parliament: why was section 34 proclaimed—*[Interruption]*

**Sen. George:** He answered it.

**Sen. F. Al-Rawi:**—in the absurd fashion that it was, without the prerequisites being in place? Why?

**Sen. George:** He answered it.

**Sen. F. Al-Rawi:** When?

**Sen. George:** When he spoke.

**Sen. F. Al-Rawi:** Get his contribution hon. Minister and show it to me. I have it. *[Interruption]*

**Sen. Cudjoe:** Do not be distracted, you have seven minutes. Do not be distracted by the seagulls.

**Sen. F. Al-Rawi:** Madam Vice-President, there are many cases in law in relation to legislation of this type, many cases which deal with the point of an allegation of improper purpose, of what is referred to as ad hominem legislation. I genuinely feel that this amending legislation, if kept in the confines as I have articulated it ought to be kept in, can survive scrutiny. But, we have a facility in court called a wasted costs order. If a lawyer, under the Civil Proceedings Rules, engages in something that is an abuse of process or something that should not have been done, the court can make a declaration that the attorney pay the costs himself. I want to know who on that Government Bench is going to pay the costs that are going to be associated in the hundreds of millions of dollars to the taxpayers of this country when these matters go to the court as to the constitutionality of the amending legislation which we are forced to deal with today.

I want to know if a wasted costs order would be of the type done there because nobody is taking responsibility. Minister of Justice, classic—I cannot say the description that “he duck and ran”—not here, not even present, not present. His Ministry—under the vesting of his Ministry created by the Prime Minister—he is responsible for this Bill. Where is he? Where is he?

**Sen. Hinds:** Having champagne.

**Sen. George:** The AG has done that.

**Sen. F. Al-Rawi:** The Attorney General has come to advocate his cause—  
[*Interruption*]

**Sen. George:** That is right.

**Sen. F. Al-Rawi:**—and done so ad hominem, distractions, no form of particularity, no form of addressing the real issues. I want to know if the Attorney General, as the Minister of Justice, advocate in this matter, is going to pay wasted costs.

**Sen. George:** No.

**Sen. F. Al-Rawi:** Or you, or any one of us.

**Sen. George:** I will pay.

**Sen. Hinds:** He could afford it. He could afford it. He could afford it “long time.”

**Sen. F. Al-Rawi:** Madam Vice-President, these questions lie on the table. Do you know how it would have been solved? I am going to come back because we have a new face opposite as the Leader of the Government Bench. Where is my legislative agenda? Where is it? [*Desk thumping*]

**Sen. Cudjoe:** Two and a half years.

**Sen. F. Al-Rawi:** Two and a half years into the batting and now an experienced veteran politician returns to the Parliament. Where is it? Jamaica has it on their website. If we had a position here—I am aware that the PNM did not have a legislative agenda but I was not a part of that then.

**3.45 p.m.**

**Sen. Singh:** Ay-ay-ay, spoken like a leader.

**Sen. F. Al-Rawi:** I am saying, Madam Vice-President, talking to a new standard, you got to walk the talk. Where is my agenda? Where are the draft criminal proceedings rules that should be laid in this Parliament on that agenda? [*Crosstalk*] Where is the amending legislation to come to the Summary Courts Act and to the Supreme Court Act—to cause the post of masters to be created—that are meant to inter-articulate with this Bill? Where is it? Where is the agenda? [*Crosstalk*]

*Administration of Justice Bill, 2012*  
[SEN. AL-RAWI]

*Thursday September 13, 2012*

What am I greeted with? Seagulls opposite? Noises emanating from the Bench. [*Desk thumping*] So, Madam Vice-President, this Government [*Desk thumping*] has got to do a lot better.

Madam Vice-President, you will remember—and I will end on this point—there was one Bill that I did not contribute to at the committee stage purposefully, the Electronic Monitoring Bill. I said that it was a good idea, wrong time, wrong implementation factors, and I did not contribute. Everybody in this Senate was shocked that I did not contribute. I did not do so, Madam Vice-President, because it had become clear to me, by the time that was passed, that I could not accept the word of this Government.

My notes on my papers—I keep all my papers after every session—I have four volumes of these from the last debate. I have my Bill when we discussed section 34 and I have the endorsements of what I will refer to as the sidebar that I had with the Attorney General as to the causes and effects that section 34 would have and assurances were given, as a result of which I spoke to my Members in the Lower House and said: get it on *Hansard* by way of undertaking! And they did, but, Madam Vice-President, I am not doing that again.

I want to put on record right now that there is need for further consideration of certain aspects of Act No. 20 of 2011 as will be amended, and the Government has to come with particulars and with expedition. It must be done.

So Senators opposite, hon. Gentlemen and Ladies as you all are, ask the questions that we are asking. Have the courage to announce it. Tell us really, mea culpa, there is no debate about section 34. It is a good idea. There is a hard decision about removing the backlog of cases. It is a hard decision, shifting magistrates to masters and lawyers to judges. You know what? They are all lawyers, so we are going to have, as the hon. Attorney General puts it, movement from the knee to the hip. It is not going to solve the situation.

There are hundreds of thousands of cases in backlog and the only way to deal with that is to deal with it in the very careful way that I suggested in my original contribution in November, which was by way of consideration of how you drop the guillotine. It is not true to say that the guillotine ought to have been dropped in the manner in which the Attorney General pretends today that clause 34 should have. That is not the intention of this Parliament. It was not the intention in November and it is not the intention now.

So, Madam Vice-President, I commend restraint to Members of this Senate. You can beat on certain issues if you want; confine it to the original mischief. Let us return to the original construction and purposive meaning of the original Act No. 20 of

2011. Let us confine ourselves to making proportionate and reasonable law within the context of section 13 of the Constitution and I thank you for the opportunity to contribute today. [*Desk thumping*]

**Sen. Elton Prescott SC:** Thank you very much, Madam Vice-President. Thank you colleagues in the Senate for this opportunity to enter into the debate on the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2012.

I do so after having heard a substantial amount of the debate in the other House yesterday and having heard the hon. Attorney General today and my friend, Sen. Al-Rawi, so that I know what I am about to propose may not be heard above the tumult and the shouting to repeal section 34. Nonetheless, I am not in favour of repealing it.

You see, I took the view when we debated the Act—what has now become Act 20 of 2011—that it was good legislation. Its objectives were laudable and, therefore, no one in the Parliament, in either House, could have had any doubt that this was the way to go. There would be need to make adjustments because we are not perfect, but it was legislation that had in mind good governance and, if I am right about that, if it passed the test of good governance as it appears to me it did—then, what therefore, renders today’s activity an effort to achieve good governance? [*Desk thumping*]

Let me say it again. If, as it is my view now and it was my view then, what we did in Act 20 of 2011 was an attempt at good governance—and it would have stood the test of time—what renders today’s activity an attempt at good governance?

The hon. Attorney General has not told us that he has since found that Act 20 of 2011 is bad law; nor has he told us that he has found section 34 of that Act to be bad law. Indeed, he came here and spoke in glowing terms of that piece of legislation. He saw it as the guillotine to be used to trim excess fat off the backlog. Nobody will forget those graphic usages of the language.

Let me pause. When we sat here in 2012, earlier, to debate that piece of legislation, we saw the move to introduce the guillotine as the proper thing to do. It was not revolutionary; people had thought about it before. In fact, Sen. Al-Rawi had used the word “amnesty” and I agreed with the Attorney General that it was meant to achieve the same effect; that we will remove some backlog and the way to do it would have been to put things in the hands of a judge who would say, either you get serious or I am going to discharge this case, and we remove large numbers of proceedings that way.

Indeed, I saw in a press release yesterday that the Director of Public Prosecutions told the Minister of Justice in May 2012 that there were 47 matters

*Administration of Justice Bill, 2012*  
[SEN. E. PRESCOTT SC]

*Thursday September 13, 2012*

for which committal papers had been received for offences committed more than 10 years ago and which were not covered by the Schedule 6 of that Act.

So we would have had, at the very least, 47 matters to be dealt with immediately and I can recall hearing, when I first came into the Senate on the day when this matter was being debated in November, that there were 10,000-odd cases—these are not my words; they were the words of Sen. Al-Rawi at the time—waiting to go through the pipeline. So we may have rid ourselves of at least 1,000 and I am certain it would have been very much more than that had we gone ahead and applied all of Act 20 of 2011.

Now, if we had maintained it, judges would have had the opportunity of commenting on any matter that came before them and would have discharged them or not discharged them as the judge saw fit. What do we achieve by repealing section 34? There is no longer the provision that removes the backlog. So, is Act 20 of 2011 still capable of achieving the same objective we all thought that we were implementing? Removing backlog? Removing preliminary enquiries? Was section 34 not germane to the whole process that we had planned?

I throw these questions out, but the answers are obvious. These are rhetorical questions. Clearly we were on a good path. Nobody is going to deny the Government that. They were on a good path, but now you have created a large gap in the process so the implementation goes back to where it was. All that we have done now is created sufficiency hearings and we put them before the master. So what?

Applications are still going to be made before judges to discharge cases because of the common law right to have them discharged where it becomes unfair to continue still remains, and judges are still going to take their good time to deliberate on those things. So delays are not going to disappear just like that, so why remove section 34?

I really am not clear on what were the reasons and, rather than chastise the hon. Attorney General—probably he means well—he needs to be reminded that it is he who told us that what the Parliament was setting out to do was to balance endemic delays against the right of the accused to have a fair trial. The right of the accused to have a fair trial has not gone away and the repeal of section 34 is not going to take that away from him either. He can still go before a judge and he can still challenge the DPP or whomsoever for maintaining those actions on the book against him.

So how does this repeal, therefore, bring about the balance? How does it maintain the balance? We were introducing a limitation period, you have taken that away. The repeal is not going to get us where we want to go.

I have noted—and I should like to put it on the record—that this objective of the Minister of Justice when he appeared here to equilibrate equity and justice and to bring about revolutionary change in the justice system has not been achieved. It will be thwarted by the repeal of section 34. In my view, section 34 was more than a palliative. It would have been an effective piece of medication to deal with the disease that we were facing; and there is more to it.

Let us look at what the law says. This is my view of the law. There may well be others who take a different view of it and I may well be wrong. I would like to start with a reference to the Interpretation Act. Section 27 of the Interpretation Act, Chap. 3:01 says:

“(1) Where a written law repeals or revokes a written law, the repeal or revocation does not, except as in this section otherwise provided, and unless the contrary intention appears—”

—among other things it does not:

“(b) affect the previous operation of the written law so repealed or revoked, or anything duly done or suffered thereunder.”

It does not affect the previous operation of that law. In short, between August 30, 2012 and even now, Act 20 of 2011 continues to have effect. One needs to ask whether the Interpretation Act, section 27(1)(b) ceases to have effect.

#### **4.00 p.m.**

Section 27(1)(c) says also, the revocation does not affect:

“...any right, privilege, obligation or liability acquired, accrued or incurred under the written law so repealed or revoked.”

It does not affect any right, privilege acquired or accrued under the written law, so repealed or revoked.

I shall deal in a moment with ad hominem legislation. Even without reference to that it seems to be clear that the Interpretation Act section 27(1)(c) is saying: people who have acquired rights between the promulgation of this piece of legislation and today, if the repeal is successfully passed, have some right that they may challenge this very piece of repeal legislation and say that that right cannot be taken away from me as you appear to be attempting to do today.

Finally, section 27(1)(e): the repeal or revocation does not affect any legal proceeding or remedy in respect of any such right. We have to deal with that here. I am sure the hon. Attorney General is going to be clear on how he is going to answer it, but for the moment my view is the view that I wish to put forward—that section 27 needs to be addressed and addressed squarely because we are bound to find ourselves going all the way back to the Privy Council by persons who feel that they have lost the protection of section 27(1) by what we are attempting to do here today.

I go back to what section 13 of the Constitution says. The Parliament passes law for the maintenance—well let me read it clearly—of peace and good order. Is that not right? It is not section 13, section 60-something. Section 53, Parliament makes “laws for the peace, order and good Government of Trinidad and Tobago,…” We are not proceeding along the lines of good Government by seeking to repeal section 34, Madam Vice-President. That is the view I wish to propound here today with all the vigour that I can command.

You would have heard the reference to *ad hominem* legislation. It is regarded by courts of law as abhorrent to do that—to pass laws that are meant to deal with specific groups of people—particularly if it is going to be adverse to their rights.

Section 34 falls squarely within that category of bad laws to me. There are people—at least 47, according to the Director of Public Prosecutions and maybe more—who are now chasing, racing to the court to take advantage of section 34. I do not know if anybody has said it yet—this piece of repeal is meant to blunt their efforts. It is meant to stop them in their tracks. It is meant to take away the right which section 34 gave to them to say to a judge discharge these proceedings against me.

**Hon. Senator:** Exactly!

**Sen. E. Prescott SC:** If you create legislation meant to blunt the rights of an individual given to him by a piece of legislation, “it wrong. You mustn do dat!” There are cases which have been decided long ago dealing with precisely those kinds of things. As it turns out, the one or two I am going to refer to—a country imposing adverse and repulsive pieces of legislation to deal with a small group of people, 13 or so, and taking away even greater rights in criminal proceedings. I do not think anybody is concerned with the degree or the quality of the rights that are being taken away. The fact is, the principle remains, if you create legislation that is meant to impugn the rights of someone—rights created by legislation—that is not something that people are warm to.



I am putting it likely because there is no doubt that Parliament can create legislation that takes away rights. There is no doubt about that. I am urging—in a very delicate fashion—that we are engaging, embarking rather on a path that would lead to us, very likely, being ridiculed in courts here and abroad because it is abhorrent. It cannot be that we set out to say—of those persons who have already sought to take advantage of the benefit that section 34 provides—that we are going to blunt their efforts, that we are going to nullify their actions.

The hon. Attorney General said it here. He says, we are nullifying pending actions, rights and privileges, plugging every conceivable angle to protect it from—I suppose was the word he used—pending legal challenges. It is clear that this Parliament is being asked to say as to those who have filed actions, we are coming after you, and we are going to plug every loophole to prevent you from exercising your rights and I doubt that even two of those 47 are going to sit quietly and say I am sorry, but I do not have any more money, I am not going to fight this case.

Talking about money, I had made the observation on November 29, 2011. A reference had been made to it by the hon. Attorney General to what people with money can achieve in this society. As it is my wont I did not go after it with a “three canal”. I chose language that I thought might be appropriate. The hon. Attorney General, regrettably did not read what I thought was the carefully worded part of the statement because I was not being complimentary of the legislation at the time. I was using language that was adverse. I said clause 34(2)—[*Crosstalk*—is where the bane of the thing is. [*Crosstalk*] Clause 34 was not received in this Parliament with great adulation.

We all knew that it had the quality that would turn against us—well we did not expect the proclamation to be so quickly—that people would come forward right away and say, “oh the judge must discharge the case”. I went on to say, having read part of it, 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. I was not being clairvoyant but nonetheless this is what we said: Madam Vice-President, if you are charged in this country with fraud, with currency infringement, with bid rigging and you have enough money to take the matter to the Privy Council at each stage, 10 years later you may well find that you are still at the initial hearing or the sufficiency hearing.

Do you think these people of those 47, do you think any of them is going to sit idly by and allow all that has been acquired over those 10 years to be taken away by a piece of legislation like this, legislation of which there has been comments in judicial circles that it is abhorrent, it is repugnant in a society that has a proper regard for the rights and freedoms of individuals?

I may be the only person today who is prepared to say it. Do not repeal section 34.

**Sen. Ramlogan SC:** What about the consequences?

**Sen. E. Prescott SC:** I have asked the Clerk to prepare some suggestions for amendment. I am quite prepared to say that although there are those who feel, or who are never satisfied with the judge's exercise of a discretion, if a judge of our courts has been given the opportunity, or his discretion has been acknowledged by legislation, he will treat with each such application for discharge fairly and on its merits. If—as I proposed in my amendments—he is required to take account of the actions of the applicant over the 10-year period, he is bound to say of some of those applications I shall not discharge you because you have spent an inordinate amount of time challenging the steps taken by the DPP up and down the judicial highway and really abusing the process.

**Sen. Ramlogan SC:** Yeah!

**Sen. E. Prescott SC:** So I would urge that the judge—by this piece of legislation—be given the power to discount from the counting of the 10-year period, such periods as he thinks were spent by an applicant in playing games because he could afford to do it. There is nothing wrong with us staying with section 34 and making those kinds of changes in the legislation. I should ask that they be considered and that we come out of this looking a little better than we are being asked to do today. What we are setting out to do today is not looking good.

It will not look good 10 years from today. It would not look good when the very applicants have come back from the Privy Council after 10 years and stick their fingers up and say they have to discharge the case anyway because that repeal that you sought to have there just did not work. I hope that my relaxation into the ordinary language did not offend anybody's tympanum.

**Sen. Ramlogan SC:** Why do you not put a semicolon under it?

**Sen. E. Prescott SC:** This might be a good opportunity to say that maybe this Parliament ought to consider going into a special select committee and let us look at all of the Administration of Justice (Indictable Proceedings) Act, 2011, and let us fashion it in the way that we want to. I suspect we will end up doing exactly what we attempted to do in 2011 and early 2012—keeping the guillotine on those cases where the DPP is not serious. Where the DPP is not ready to indict after 10 years, one ought to be able to look at it and say I am not to be permitting that. You must allow for some discounting in the computation of the time for people who have taken advantage of the system because they can afford to do so.

I want to return to something that I also brought to the attention of the Parliament in November 2011. I had started off by saying this was an attack on the constitutional power of the DPP, that it was an attempt to defang the DPP. I said this on November 29, 2011. Although “attack” is a strong word, I stood behind it. The DPP is given a constitutional power to introduce, to indict rather. He is given the power to discontinue an indictment or any such criminal proceedings if he so chooses.

We were going into legislation in 2011 that was going to introduce a new person who had the power to discharge indictments. We were being very careful about it. I am not satisfied that we were not being careful in 2011. I do not know if that allegation is being made against us now, but this Parliament was taking very good care to produce legislation that was workable. We are not here to say that we made an error and I think I heard somebody use the Latin *mea culpa*. What we produced was good. Somebody needs to tell us why we are now seeking to change what was good into what is clearly not good; what is bound to be declared not good in the long run.

All the hon. Attorney General has told us so far is the proclamation was made and then one morning between himself and the Prime Minister he made a certain effort and they both came to the view that the Parliament needed to be brought together to determine whether we should continue to use the guillotine against preliminary enquiries. That is what we spent years trying to do. Trying to introduce the guillotine.

**Sen. Ramlogan SC:** Madam Vice-President, I just wanted to remind my learned friend, Sen. Prescott, that it is not just that I met with the Prime Minister and we decided the proclamation. That meeting was as a direct result of the intervention by the DPP. Might I just say for the record as well, the intervention by the DPP also included a written request that we repeal this section. So it was pursuant to and based upon the request by the DPP as well that this be repealed as he has said publicly that we are here. That is the position. Thanks.

**4.15 p.m.**

**Sen. E. Prescott SC:** Thank you very much. Well, maybe I should just take the opportunity to read into the record some aspects of what has been attributed to the DPP in a press release yesterday. He said:

“Section 34(1) cannot stand on its own without absurdity, while 34(2) and 34(3) have nothing to do with any such abolition.”—of preliminary enquiries.

In short, the proclamation of those sections would simply have led us to look even more absurd.

He said that he had no “consultation”—I think that is the word he had used—in certain aspects of what had been proposed going forward. He said:

“...clause 34 was changed on the 29<sup>th</sup> of November 2011 on a motion in the Senate by the Hon. Minister of Justice. The effect of that change was to prevent the prosecution of offences not covered by Schedule 6 where the conduct alleged occurred more than ten (10) years ago...I was not consulted on this change to clause 34 of the Bill.”

We have not heard any rejection of that assertion by the DPP. I think that it has been made clear that the DPP does not often step forward and make public pronouncements about what he is doing, so that this must have caused him some loss of sleep or some anxiety.

So, he goes on to say:

“On Independence Day, the proclamation of section 34 of the Act took me by surprise. I learnt about it in the press. I should stress”—and I think one ought to say this—“that I am satisfied that even without this provision, the right of an accused to a fair trial is and always has been properly protected, especially in the case of inordinate delay.”

And then he relied on the well-known powers of judges where there is likely to be a repairable prejudice actually or presumptively to step forward and ensure a fair trial. The DPP, one concedes, supports a repeal, but I am speaking against a repeal and I have given my reasons for so doing.

Madam Vice-President, for the purpose of the record, I seek your leave to read something further into the record also. This appears today in the *Guardian* newspaper at page 9, and it is attributed to an attorney-at-law, Mr. Reginald Armour SC for whom I have great regard. He captioned, “The Section 34 Conundrum: ad hominem.” He started off by a citation from a text, an article by Peter A. Gerangelos, G-E-R-A-N-G-E-L-O-S, a senior lecturer in law at the Faculty of Law at the University of Sydney. He said:

“When purported amendments to the law applicable in a pending case are impugned as unconstitutional legislative interferences, they are often ad hominem, retrospective, and tailored to address the very issues in the pending case.”—ad hominem, addressed to certain people; retrospective, going back in time—“and tailored to address the very issues in the pending case.”

We are told that there are pending cases on today, the issues about which are wrapped up in section 34, and this piece of legislation is intended to deal precisely with those things.

I am continuing the quotation:

“Prima facie, unlimited legislative power in this regard may pose a potential threat to the purposes underlying the separation of powers,”—the reference to the separation of powers ought to cause our eyebrows to raise—“in particular, ensuring that legal disputes are protected from political influence and factional interest.”

Madam Vice-President, I am saying that it does not take any great stretch of logic for anyone to conclude that here is a political interference in the rights of an individual or a number of individuals, several individuals of whom it may be said, that they have simply taken advantage of what is provided in current legislation. They would have done no wrong by seeking to make the application.

The right of the judge to say when they go before him, even in section 34, using the word “shall”: “I do not accept this application. I do not make the order for a discharge. I think you have been evading the process.” Those rights have not been taken away from him. There would have been no reason to go to this length to dig this deep and run the risk of a further excursion all the way up to the Privy Council as we like to say in some circles, and then it comes back here with one simple straightforward statement: “This repeal is ad hominem; this repeal of legislation appears to us to be ad hominem and is repugnant in a society which has a proper regard for the rights of its citizens.”

Mr. Armour goes on to say:

“I share the ‘grave concerns’ of others over the limited proclamation of section 34 of the Administration of Justice (Indictable Proceedings) Act 2011. I have even greater concerns as to how successful the reported attempt at repeal is likely to be.

To be effective, the repealing legislation and the debate to bring it into being must accomplish two things, both of which will involve walking a very delicate line. Not only must the repealing legislation have retrospective effect; equally and more important even, that repealing legislation must avoid being struck down as offending the ad hominem doctrine.”

May I just read one more paragraph from it, because it did not mean to be spent on those things:

*Administration of Justice Bill, 2012*  
[SEN. E. PRESCOTT SC]

*Thursday September 13, 2012*

“The ad hominem doctrine means, simply, that there exists an inviolable line in the separation of powers between the legitimate work, on the one hand, of LEGISLATORS and on the other hand, of the JUDICIARY.”

He makes the clear juxtaposition. We are legislators, the Judiciary has its function to perform, it has pending proceedings before it, why are we interfering with it? How do we justify the interference in what the Judiciary is setting out to do? Are we not concerned that people who look on—thinking people, discerning people—will say, “But isn’t there a principle of separation of powers?” Why are you interfering with the Judiciary? The Judiciary has proceedings before it.

Now, what I am recommending is that you simply confirm the judge’s power to apply discretionary principles when an application of such a nature comes before him, and to say about the application: “I am not satisfied that the applicant is deserving of having this case discharged.” He may well invite the DPP to address him when the application comes before him and to satisfy him about the value or the validity of the application or the value of continuing with these proceedings, and then if he is not satisfied with the DPP’s explanation he reserves the power to say, “I discharge”. Mr. Armour goes on:

“As such, in passing legislation, Parliament must be scrupulous to ensure that the repealing legislation is not framed in terms or substance to direct any court as to the outcome of any case which is pending before that court”—one could not be more clear—“that is to say, it must not be so framed as to amount to a direction to the judicial branch which can be said to interfere with the court’s independent adjudication in a pending case or, directs the exercise of judicial discretion in determining the case.”

So, to be effective, the repeal must neither be framed nor argued for, expressly or by implication, so as to appear to target any individual or class of individuals or to purport to give any form of direction to the judicial branch in relation to any pending cases which have been brought under section 34. The DPP said that there were 47 of those, so it is a class of 47 or may be less because they may not all have been able to get to the court on time, money being what is needed to fuel that kind of action.

In England, in the case of *Liyanage v. Reginam* in 1967, certain observations were made about the ad hominem legislation and the courts abhorrence of that kind of legislation. I have brought along some passages from it, and would you permit me to read from it. It is *Liyanage against the Queen*. I have copied 1967, 1 All England Reports, I think it is. That is page 659, a judgment of Lord Pearce and you will find at page 659 “H”, he says what amounts to:

“...their lordships are not prepared to hold that every enactment in this field” of criminal legislation of—“which can be described as *ad hominem* and *ex post facto* must inevitably usurp or infringe the judicial power.”

We started off with that premise. You are entitled to bring legislation, and you may well bring *ad hominem* legislation. Not all of it is going to be struck down. It may well be *ex post facto*, not all of it would be struck down, but there is the chance that you are usurping or infringing the judicial power. And I am expressing my anxiety that I suspect that that there is where we are heading with this particular interference, and we need not do it when there are options available to us. One of those options has been provided by Sen. Al-Rawi. I am saying the option considered by the Attorney General yesterday and rejected, that we should move from the judge “shall” discharge to the judge “may” discharge, is also a reasonable option. In fact, in my view, it is the better option.

If we introduce categorizations and directives to the judge that when he is exercising his discretion he may take into account the behaviour—and I use the word “behaviour” loosely—of the applicant in that he may have contributed to the delay by his own applications; applications which were without merit.

Lord Pearce went on to say the following, at page 660.

“As has been indicated already, legislation *ad hominem* which is thus directed to the course of particular proceedings may not always amount to an interference with the functions of the judiciary. But”—and this was in the case before him—“their lordships have no doubt that there was such interference; that is was not only the likely but the intended effect of the impugned enactments; and that it is fatal to their validity.”

So here was a court saying, we have found that a particular piece of legislation had a direct objective of interfering in pending proceedings and concluding that for that reason only the validity of the piece of law was impugned. We ought not to allow ourselves to be so treated when these applicants have begun to challenge what we are attempting to do here today. The repeal—I am going to use his words—“constituted a grave and deliberate incursion into the judicial sphere.”

The judges of our courts can be relied on to act judicially in all circumstances. There may be times when a higher court may take a different view, but clearly our judicial system deserves our best support because we get worthy judges being appointed to the bench, and the independence and the integrity of the judicial power is never to be under threat. This is the first step in that kind of attack on the power of the Judiciary. “Attack” might be too strong a word, again, I say that. It

may be that this is a reaction that, had it been thought through with greater deliberation, may have led to quite a different kind of action. We may have come here for quite different reasons.

Madam Vice-President, if we should go to committee stage, I propose to bring before you for consideration that such should be the case: that the judge should have regard, in particular, to the length of and the reasons for the delay in commencing the trial on indictment. That is to say, the judge exercising a discretion under an amended section 34, and he may exclude the, or any period or periods, between the institution of proceedings against the accused and the date when the DPP has preferred an indictment against the accused.

I wish to make one final observation, Madam Vice-President, and that is, at the time of the debate, there were Members of this Senate who made the observations that certain pieces of legislation ought to have been given some consideration and included under Schedule 6 and I should be seeking to have them introduced. They would be offences under the Sedition Act; offences under the Prevention of Corruption Act; offences under the Proceeds of Crime Act and offences under the Anti-Terrorism Act. These are very grave offences and ought not, by the mere effluxion of time to disappear from the reach of the Director of Public Prosecutions. So that if the opportunity does arise, I propose to make those observations and to seek to persuade this Senate at the committee level that we ought to go in that direction.

In those circumstances, Madam Vice-President, I thank you for the opportunity you have given me to have addressed this question, and I trust that the opportunity will arise for Senators to have a further contemplation of the two things that I am proposing, that is to say, that rather than repeal, that we amend the Bill before us in a way that I have suggested, and that we put this matter before a select committee for its full consideration and a full analysis of the parent Act and of this Bill. Thank you very much. [*Desk thumping*]

**Madam Vice-President:** Hon. Senators, it is 4.30 and I propose that we take an extended tea break and resume at 5.30 p.m. The sitting is now suspended until 5.30 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.30 p.m.:** *Sitting resumed.*

**Sen. Fitzgerald Hinds:** Thank you very much, Madam Vice-President, for the opportunity to make a fairly brief contribution to this important development in a time of crisis in Trinidad and Tobago.



I listened to the Attorney General today, as I did yesterday, and today he began somewhat with an analogy of 10,000 persons in the savannah at a concert and the spotlight placed upon two, and the promoter is saying to call the concert off because there are only two persons there, and disregarding the other 10,000. *[Interruption]* Well, 9,998—he said approximately 10,000 persons, you cannot take that from me.

I kind of like the analogy because the persons on whom the spotlight was fixed in his analogy, they did not have ordinary tickets, they had VVIP tickets. They were special. They paid special amounts for their tickets. In fact, you would have heard the Leader of the Opposition yesterday speak, and I have the honour to tell you that I saw myself a cheque for \$2 million, which was written to the United National Congress for their last campaign by a certain individual.

**Hon. Senators:** By whom?

**Sen. F. Hinds:** When we spoke in this debate on the amendment that we are now seeking to correct today, we were mindful that there were certain matters in the legal system, and we were reminded of the concept of sub judice, so we had to be careful, all of us. While we had contemplation on certain things, you would remember we had to be cautious about what we said about it. Therefore, that in part explained some of the limitations and the expressions that otherwise would have flowed on those matters.

So even today we have to be mindful again because we are aware that we are trying to fix a mess. And even though the solution that is before us today—in other words the Bill to repeal section 24 that is before us, we are aware that the Parliament—*[Interruption]*—section 34, sorry. The Parliament is now doing its best to tidy up a serious legal conundrum, a mess created by a host of seagulls, in metaphor, that landed in Port of Spain. We are mindful that with the best efforts of the Parliament, both Houses, we are to expect that there would be legal challenge against what will be done today. We are not unmindful that what we say here will be observed.

I spoke here in the last debate on the FIU, and mentioned a case involving an insurance company that went to the Privy Council, and we saw therein that the Privy Council looked at *Hansard* to see if it could garner, if it could glean from the debate, what was the purpose and intention of the Parliament. With that in view, we have to be very careful.

Let me say, I saw a cheque myself for \$2 million that was paid by some individual, a group.

**Sen. George:** Who? I hope you have good evidence.

**Sen. F. Hinds:** I have it. We have it, “doh” worry; we have it. The Attorney General told us about the whole idea that prevailed in the mind of the Government when we dealt with the amendment last year, in which that infamous clause 34 was inserted. He spoke of the backlog of cases; that is old stuff, we know that. We do not want to hear about that again.

He spoke about Curtis Taylor, some “fella” who had a matter for 27 years, and Furness Withy, and Stephens’ & Johnson’s, Todd and Fogarty, Bata, Woolworth’s and all of that. [*Crosstalk*] We know about that. But that is not why we are here today. We understood that. The Parliament intended at that time to assist the Government, as another arm of the State. The Executive came with a plan, it required the support of the Parliament, and it got it, in order to deal with that problem. We are past that. We passed the measures, and they were there on the books waiting for two things: for the Government to keep its commitment to the Parliament, by which it promised that it would not proclaim and put into effect that law until it had done the basic infrastructural, systemic and other works in order to make it happen, to make it real, to give it life.

We did framework legislation—if I may put it that way—and we sat. Suddenly, like the Director of Public Prosecutions, like the Criminal Bar Association, we would discover through the media that the Government stealthily and surreptitiously went in the dead of night, when people were in their red, white and black, fire crackers were going off and horns were being blown. We were still waiting for that \$5 million CD from Machel Montano which this Government spent our money to try to obtain. We have no problem with artistes expressing themselves professionally and earning an income in doing it. The only thing is that the Government promised this nation that on the verge of independence we would have gotten that golden CD; we have not had it as yet. The Government broke its promise.

The Prime Minister promised us that by independence we would have gotten the CCJ; the Prime Minister broke her promise. The only Minister who has kept his promise is Minister Volney, who had promised this nation that he would release 50 persons. We did not know who the 50 were; now we are beginning to find out. [*Desk thumping and laughter*]

Let me quote from the *Daily Express* of Thursday, September 13, 2012, today, at page 13. They took, in the public interest, the decision to publish in full text the statement of the Director of Public Prosecutions, Mr. Roger Gaspard, who I am sure, acting in the public interest, made an intervention yet again, yet again.

In part, Mr. Gaspard said:

“In February 2012 the Ministry of Justice made a request of me for an indication of the number of matters to which 34(3) of the Act would apply. My office responded by letter dated May 22, 2012, advising that there were 47 matters for which committal papers had been received for offences committed more than ten years ago and which were not covered by Schedule 6”—so that is 47.

Mr. Volney has done very well, but he is not here today. Why is he not here? My colleague Sen. Faris Al-Rawi mooted the point. I reinforce it: why is he not here?

When the media approached him about the mess that the Government created that brought us here again—remember we came here to do the FIU. We had said “Happy Independence” to the nation and we went on vacation. They brought us back here, creating an emergency. We dealt with the FIU. We thought we would come back later on, we are here again today. This Government practises “seagullism”; and for those who may not know, let me remind the nation. This is a phenomenon that is seen in Charlotteville, Tobago, from time to time. All of a sudden, out of the blue—you remember, Madam Vice-President—thousands of seagulls descend upon the bay, and they are known for making a lot of noise and a lot of mess.

So when I saw the *Express* headline: “What a mess”, I realized and reminded myself that this Government practises “seagullism”, a whole lot of mess. [*Desk thumping*] When this Government leaves the bay of Trinidad and Tobago, it would be an unwholesome mess for someone else to clean up. But we are here to do a bit of cleaning up today. Look at their bewildered faces; they get us into trouble and they do not know how to get us out—big trouble.

We do not want to hear about those things. We do not want to hear about backlogs, we passed that. We have asked the Government—this is the second day of debate in the Parliament. We heard from several Government spokespersons in the Parliament in the other place yesterday. We have heard from the Attorney General here today. They have access to the very energetic media, and active media in Trinidad and Tobago. As I speak to you now, they have not yet answered a simple question: why did you go to proclaim section 34 of the Act alone?

Hear what the Director of Public Prosecutions had to say:

“I note that the original clause 34 of the Bill was first introduced in November 2011 and as then drafted would not have affected the captioned proceedings. It also did not concern the date when offences were alleged to have been committed as a basis for discharge.”

In simple language he was saying that it did not contemplate the date—time did not run from the date of the offence in the original clause. However, he goes on to say:

“...clause 34 was changed on November 29, 2011, on a motion in the Senate by the hon. Minister of Justice. The effect of that change was to prevent the prosecution of offences not covered by Schedule 6, where the conduct alleged occurred more than ten years ago. Again, I stress that I was not consulted on this change to clause 34 of the Bill.”

Madam Vice-President, if that question had been answered yesterday, we probably would not be here today, but we as the official Opposition in Trinidad and Tobago are duty bound to demand an answer from the Government, and to say to it, “You do not have to answer, but if you do not, certain inferences would be drawn.” The one inference that would be drawn is that there was some kind of conspiracy, some kind of thread running through the whole system, from the day that they embraced certain persons, obtained moneys from them for their campaign, obtaining up into the last election.

Madam Vice-President, we have focused, as the Attorney General told us, on two persons in the big dance, but it is not only two; it is plenty. So if we would get an answer to that we would be quite happy.

The Bill that came to the Senate—and the Attorney General stumbled over himself today. Let me say so. He is, he is—let me reserve my thought on that for the moment. Let me say he stumbled on himself today, because, in an attempt to explain to this Senate that it would have made a difference—in other words had the Bill as presented to this Senate remained as it was, it would have already been detrimental to the public interest and persons would have been outside of the guillotine. So he said, but I do not think so.

**5.45 p.m.**

The Bill that came to the Senate actually spoke to 10 years—forget the dispute downstairs or the discussion downstairs whether it is seven or 10—it came here saying 10 years from the date the person was charged for the offence.

Piarco 1 and Piarco 2, the Attorney General tells us, was seven years and 10 years, but they were both in the preliminary enquiry stage—nobody was charged as yet. So, whether it was seven years or 10 years, it would not have mattered; that is the position, because they were not yet charged.

The Bill came here saying 10 years after charge. Time would have run from the day they were charged, Madam Vice-President. And if clause 34 did not exist, as we now know, the common law principles for dealing with delays and dealing with applications for matters to be permanently stayed even were already there and continue to be there.

In fact, as we repeal this section 34 we would then be able to rely on the common law principles as subsisted before we attempted to impose that section 34. But, as we know, and as I just read from the DPP, the Minister of Justice amended it in the Senate, and he made it 10 years from the date of the offence.

Now, when the offences took place in some of the cases we are aware of, in 1999 and 1998, by the time of the passage of that, then, once it was from with reference to the day that persons had allegedly committed the offences, then the time would have already run, so they were already out of the loop.

So, Madam Vice-President, I simply wanted to correct that because to me the Attorney General confused the thing, and some citizens of the country would have been misled as a consequence.

Madam Vice-President, I would ask your leave to just quote, marginally, from the editorial of today's *Express* as well, which I think—I was formulating my own words in which to put this, but I think the *Express* editorial has put it better than I could, and therefore, with your leave I would like to quote an element of it, under the headline, "Government must come clean on section 34". And it says, let me get through this quickly:

"Yesterday's emergency session of the Parliament has left the country no clearer about the circumstances that prompted the Cabinet's unexpected decision to activate Section 34 of the Administration of Justice (Indictable Proceedings) Act, 2011."

No clearer! Let me continue.

"Against a background of growing public outrage, Attorney General Arnand Ramlogan chose to go on the offensive. With a broad brush, he painted a picture across the Parliament arguing that Opposition and the Independent should share equal responsibility with the government for approving legislation with unintended consequences. He then boasted that in now moving to repeal Section 34, the government was demonstrating its willingness to listen to the people.

What was glossed over in his performance”—let me restate that. “What was glossed over in his performance was the specific issue in between that had sent the House into emergency session. Why, having given an undertaking to the Parliament that the legislation would not come into effect until the supporting rules were in place to ensure effective implementation of the Act, did the government decide to pre-empt the process and single out the controversial Section 34 for proclamation by the President?

What troubles the public is the perception that in extracting Section 34 for special attention, and having it proclaimed unknown even to the DPP on Independence Day the government might have been serving the needs of a special interest.

For the public, therefore, the heart of the issue is the matter of trust in the government.”

I could not have put it better. It has come down to a question of trust. I have said here a thousand times, I will make it a thousand and one today, the people of Trinidad and Tobago have justifiably lost trust and confidence in you. [*Desk thumping*]

Madam Vice-President, we continue to demand an answer to the question, and you know the Government could dance, it could duck, it could hide, all we simply want to know is, why did you do that? The Attorney General told us this morning, he went through the rationale for the legislation, gave us a wonderful and noble picture about what the plans were—to clear the backlog, not only the actual backlog, but to put systems in place to ensure that you do not create any further backlog in the process.

That sounds good, but if that be so, why did you only proclaim section 34, which—as senior counsel Prescott pointed out and others have already pointed out—did not have the effect of dealing with the other issues, including the removal of the preliminary enquiry as we now know it, to replace it with the programme with the sufficiency hearing?

To come here this morning to tell me about the benefits of the legislation, and what it was intended to do, when you as the Executive, you as the Cabinet of Trinidad and Tobago, had it within your powers to proclaim or not proclaim, you chose to proclaim only section 34, and left out altogether the movement that we had come to Parliament about, to abolish the preliminary enquiry.

**Sen. Al-Rawi:** True intent of the Bill.

**Sen. F. Hinds:** The real heart and soul of the Bill, as I am being reminded by my friend the learned Sen. Al-Rawi. “So who we foolin?”

We had called on the Prime Minister to explain; she is the head of the Cabinet. We are aware that there are some members of the Cabinet who do not understand what happened and why it happened. If that is so, Madam Vice-President, if some members of the Cabinet were not aware of what happened, and it took them by as much surprise as it did the DPP and the Opposition and all the citizens who are now outraged in this country, then I will be calling on the Commissioner of Police to initiate an investigation for possibly perverting the course of justice in Trinidad and Tobago. Somebody did something gravely, seriously and possibly criminally wrong.

We have come here today, Madam Vice-President, to fix this, but if somebody in the Government created this problem, logic tells us, you cannot be part of the problem and part of the solution.

I met a mature citizen two days ago, who in expressing exasperation about the Government’s conduct in this sordid affair, this embarrassing affair, at 50 years of our independence, and they “doh” want to recognize Dr. Williams and the PNM, [*Crosstalk*] at this time, when we should be singing praises, I asked myself this morning where is Keshorn Walcott? They rode on the waves of the young man’s success. They surfed on the high points of the wave with young Keshorn, and thank God for him and his gold, and I want to commend the youngster, [*Desk thumping*] because had it not been for him, it would have been a long, hot, bitter summer for that Government. They have nothing else to celebrate or talk about; and as soon as the Keshorn Walcott issue died down in the national interest, we ended up with a holy mess again.

**Hon. Senator:** Hot, hot, hot mess.

**Sen. F. Hinds:** “Seagullism.” You all should go to the Olympics, you would get the first prize, you would get a gold. [*Desk thumping*] You fly like a seagull, you make noise like a seagull, and you make mess like seagulls. [*Desk thumping*]

Madam Vice-President, I do not want them coming here to tell me today about what this was intended—I “doh” want to hear that! We have come here to fix this, and if there are elements in the Government, because all did not know about it, in fairness to the Cabinet. If there are elements in the Government—I told you that I am writing the Commissioner of Police—I plan to do that and ask him to initiate

an investigation. But I am saying, when I met this elderly gentleman two days ago expressing exasperation on this matter, he said to me, “I hear the Attorney General say, jail eh make to ripe fig.” I said, “Yes, he say so.” He say, “Well, I want to tell the Attorney General, Parliament is not for everybody either. [*Desk thumping*] And Government is not for everybody because you cannot be a good anything unless you are first a good person.”

I heard the former head of ASJA, Mansoor Ibrahim, about seven years ago at the formal opening of a Parliament, in this Chamber, joint meeting of the Houses, you know, we brought him along with others to do their religious pieces at the opening of the session—invocations—and he, among other things, said something that lingered in my head. The UNC was in Government at that time. That was more than six years ago, I am sorry. The UNC, yeah, was in Government, and I sat there looking on—[*Interruption*]

**Hon. Senator:** Six years ago, the UNC was in Government?

**Sen. F. Hinds:** Yes, that is all right, that is all right. I sat there looking on, and he said, and I quote, and he is a Muslim “eh”, like my friend.

**Hon. Senator:** Sen. Al-Rawi.

**Sen. F. Hinds:** Yes. [*Laughter*] He said, even if you smear a dead pig with honey, that would not make it sweet.

**Hon. Senator:** “Ah doubt he say that.”

**Sen. F. Hinds:** He said that. That is on the record of the Parliament.

**Hon. Senator:** Sweet pig, never!

**Sen. F. Hinds:** I said he said that!

**Hon. Senator:** All right.

**Sen. F. Hinds:** I was present. I struck me like a bolt of lightning as I looked on my colleagues on the other side, and reminded myself [*Crosstalk*] that ministerial office does not sweeten everything.

And when people who are unfit for certain positions end up in the cloak of the offices of those positions, it could be dangerous. Could you imagine a criminal, a rank criminal, becoming a police officer? “He dangerous!” Dangerous! On that, for the time being, I will say no more, except to remind myself what the elderly gentleman told me, and I would never forget, “just as jail eh make to ripe fig, Parliament eh fit for everybody”.



**Hon. Senator:** Sip your porridge cool.

**Sen. F. Hinds:** Madam Vice-President, in his contribution in the other place, Minister Volney pretended to take the rap. Some of the things he said sounded like he was taking responsibility for the mess that has happened, and he “eh” resign yet.

In a serious country, the Attorney General and the Minister of Justice would have been gone already. [*Desk thumping*] In a serious country the Prime Minister of Trinidad and Tobago would have been gone already. In a serious country, the entire Cabinet of the Republic of Trinidad and Tobago would have been gone already for what has happened here. [*Crosstalk*]

I venture to say, Madam Vice-President, I will not be distracted by that seagull you know, king seagull. [*Desk thumping*]

**Sen. Cudjoe:** King of the seagulls. [*Interruption*]

**Sen. F. Hinds:** I will not be distracted! Madam Vice-President, I venture to say, [*Crosstalk*] Madam Vice-President, I have serious—as I have expressed in public a thousand times, and written to the Integrity Commission and the Commissioner of Police—I have serious issues with the Minister of National Security holding that office in this country, real issues. I think that what I have seen in this matter is worse than anything that I have ever seen.

**Madam Vice-President:** Sen. Hinds, proceed with the Motion at hand.

**Sen. F. Hinds:** I will.

**Madam Vice-President:** I do not think the Minister of National Security is in this debate so you can continue, please. [*Crosstalk*]

**Sen. F. Hinds:** Madam Vice-President, I can show you—[*Interruption*] [*Crosstalk*]

**Hon. Senator:** He has no behaviour, man.

**Sen. F. Hinds:** What is that?

**Sen. George:** When Madam Vice-President —

**Sen. Singh:** You must take your seat next time when she is on her feet.

**Sen. F. Hinds:** I always do.

**Sen. George:** No, you did not.

**Sen. F. Hinds:** I saw him sit down, I was on my legs. He did not stand up. [*Crosstalk*]

**Sen. George:** That was typical of him.

**Sen. F. Hinds:** Madam Vice-President—[*Interruption*]

**Sen. Karim:** That is “seagullism”. [*Laughter*]

**Sen. F. Hinds:**—you know and I have never and will direct no discourtesies to the Chair. [*Crosstalk*] Madam Vice-President, I was making the point that of all the transgressions, all the sins, all the deeds of the Government, you see this one it is the worst. That is what I am saying.

**Sen. George:** What was the transgression?

**Sen. F. Hinds:** That is what I am saying. Minister Volney told us that he was looking out for the poor. The reason why he attempted to give an explanation to our question, why did you proclaim section 24 alone?

**Hon. Senator:** Thirty-four.

**Sen. F. Hinds:** Thirty-four. He tried to give a half explanation; he said that he was concerned about the young men who are in jail and suffering and they cannot get bail and all of these things. Well I know that he is expressing concern about the poor, but his history as a public servant shows that he also has concerns for the rich.

**Hon. Senator:** Madam Vice-President, 35(5), please.

**Sen. Karim:** Imputing.

**Sen. F. Hinds:** What is offensive about that?

**Madam Vice-President:** Thirty-five, yes.

**Sen. F. Hinds:** That he has concerns for the rich?

**Hon. Senator:** That is imputing improper motives.

**Sen. F. Hinds:** Tell me what is improper about that?

**Madam Vice-President:** Sen. Hinds—

**Sen. F. Hinds:** Madam Vice-President—

**Madam Vice-President:** Have your seat. You have to be extremely cautious. I know that in the passion that you would like to deliver this, certainly you would like to raise other matters that are more emotive, but bear in mind that you do not cast aspersion or at least call any improper motive to any Member of this Parliament, Upper or Lower House. [*Crosstalk*]

**Sen. F. Hinds:** I thank you very much, Madam Vice-President, but feel confident to say that my words a moment ago were that he, Minister Volney, in his contribution in the other place, explained that he had deep concerns for the poor, and he was concerned about their incarceration and their inability to access bail and such like. I simply said that he has demonstrated in public service in this country that he also has a heart for the rich. I do not think anything is improper about that.

**6.00 p.m.**

He served as a public servant in the Brad Boyce matter. [*Desk thumping*] He served in the Naraynsingh case; he served as a public servant in the Rick Gomes case; he served—

**Madam Vice-President:** Senator, take your seat, please! Senator, please, this is the third time, I am going to ask you to contain your comments on no person, public, Member of Parliament or any other matter, any other person, no public individual. Contain it to points raised as a part of your debate in relation to this Motion, please, or on this Bill.

**Sen. F. Hinds:** Thank you very much. Madam Vice-President, there have been some discussions about whether it should have been seven years or 10 years as the trigger, if you like—to the time, sorry, that should run before the guillotine falls and a person is outside of the ambit, the clutches of the law for some allegation that he or she may have participated in.

The Constitution of the Republic of Trinidad and Tobago, at section 5(2)(c)(iii), suggests that an individual is entitled to that so-called constitutional right to be tried promptly. The question of promptitude is what has brought us here today, because—

**Hon. Senator:** Promptitude?

**Sen. F. Hinds:** Yes, it is—it is delays that lead to the backlogs in the courts, and this provision of the Constitution speaks to the rights to have a prompt trial.

The other issue touching and concerning this, and it came out in some of the discussions, is that witnesses may forget details. One of the reasons why you want to take cases off the books—and people make applications and in some cases they succeed—is because the witnesses, over time, may have lost some of the details and may no longer be reliable witnesses.

*Administration of Justice Bill, 2012*  
[SEN. HINDS]

*Thursday September 13, 2012*

Let me make reference to a case, the *State v. Brad Boyce* in which these matters arose. I want to quote just some elements from the case, and this is reported in the T&T News Bulletin Board, ttnews.com, dated January 12, 2006—just pulled it off—and in that case the headline says:

“Ruling was Wrong in the Brad Boyce Trial

The Privy Council tells”—the judge—“his ruling was wrong in”—that—“trial”.

**Sen. Maharaj:** Madam Vice-President, 35(1), the Brad Boyce ruling, how is that helping?

**Madam Vice-President:** Go ahead and develop your point but keep it within the framework of the Bill, please.

**Hon. Senator:** Go ahead.

**Madam Vice-President:** Yes, go ahead.

**Sen. F. Hinds:** Allow the Vice-President to do her job “nah” and mind your three phones. [*Laughter and desk thumping*] Madam Vice-President, may I continue?

“The Privy Council has ruled that”—the—“High Court Judge...was wrong when he told a jury to return a not guilty verdict in the Brad Boyce trial seven years ago.

But despite the ruling Brad Boyce will not be rearrested.

The ruling was handed down by the Privy Council this morning and it comes after this country’s Director of Public Prosecution appealed”—the—“decision to free Brad Boyce.

The Privy Council noted that”—the judge—“of his own motion, recalled pathologist, Dr. ...Des Vignes to ask him about his qualifications”—and, this is the point, Madam Vice-President—“the law lords said”—that the judge—“still acting on his own accord, called”—another—“chief pathologist”—to give evidence about another one.

“The DPP challenged the...decision saying to exclude the evidence of Dr. Des Vignes was wrong in point of law.

The Privy Council says he must remain free because too much time”—hear this piece—“because too much time had passed since the incident and much of the eyewitness testimony would now be unreliable.”

**Hon. Senator:** Delays, delays.

**Sen. F. Hinds:** Yes, and that is the point. What this really highlights, not only the fact that the judge got it all wrong, but it had the effect of causing the accused not to be rearrested and retried. That is the point I wanted to make. *[Interruption]*

Madam Vice-President, I heard my friend on the other side talking about, I tried—you heard him, Madam Vice-President. You did not hear him? Well, let me ignore him. *[Laughter]* Let me ignore him, except to let him know that any land I own was well-hard-worked-for and paid for. *[Desk thumping]* And my name did not call alongside anyone else from Israel or otherwise. My name was not called in any Desalcott scandal, and I can produce my deed for my house and I can take you to my bank, my records would become available—you can see I took a mortgage like every decent hard-working citizen and I paid for what I own. *[Desk thumping]*

**Hon. Senator:** What was the ruling? What was the ruling?

**Sen. F. Hinds:** Let me continue, Madam Vice-President. In that case, and it is coincidental that in that case the deceased's younger brother and his friend Cookie attended a party on the night of August 31, 1996, and that is interesting because it was on August 31, 2012, that this Government secretly went in the dead of night and proclaimed section 34. You see the similarity, Madam Vice-President?

**Sen. George:** Once you gazette something it is possible.

**Sen. F. Hinds:** Madam Vice-President, can I speak in peace? Minister George does not want me to speak in peace.

**Sen. George:** But gazetting makes things public. *[Crosstalk]* Gazetting is what makes things public.

**Sen. F. Hinds:** I do not want to take up too much time going through the case, but the judgment shows that there were several instances of inexplicable bad law and bad decisions on the part of the judge leading to the eventual outcome.

You know what I am saying, and everybody in this country knows who the judge is. *[Interruption]* Everybody knows. So that I made the point earlier that Parliament is not for everybody, and you cannot be a good anything unless you are first a good person. I am not attacking anybody, but I am just saying some of us have some histories and some track records, it may be too much to expect of us to ask otherwise. That is all I am saying.

*Administration of Justice Bill, 2012*  
[SEN. HINDS]

*Thursday September 13, 2012*

Madam Vice-President, Minister Volney, when he was approached by the media as to how did we end up in this, told the media, “doh ask him, ask the Attorney General”. So, he seemed to want to shine the light on the Attorney General, and I can go into other cases, but the same thing happened in the Seeromani Maraj-Naraynsingh case. All three cases had to be thrown out, the Privy Council having found that there were inexplicable misdirections to himself in law and here is where we are.

So, we provided support to the Government, once they came to the Parliament, as a responsible Opposition must. They came to the Parliament saying they want to clear up the backlog and they want to prevent further backlog, and it would be a very efficient and good thing and other countries have done it, to move from the system of preliminary enquiries to sufficiency hearings, and we participated fully in the discussions and gave the Government support as we did on their first budget, and on many other matters: the anti-gang legislation. This is a genuinely responsible Opposition of which I am proud to be a part. [*Desk thumping*]

But the *Express* is now telling us that this Government’s conduct has brought the people of this country simply down to a question of trust, and we are now in a position to say we never totally trusted you but now we cannot trust you at all. [*Desk thumping*] We gave the support on certain conditions, but these things were not done: they did not employ more masters; they did not get the requisite staff; they did not do all the things they were supposed to have done to make this thing happen. The bottom line is, the effect of this is, 47 persons, according to the DPP, should now be walking free and we are here today to try to fix this.

I met a lawyer in the precincts of the court this morning, and he gleefully told me that he alone made 15 applications since they went in the dead of night to proclaim this, and they are waiting on us, because their lawyers are waiting on us, as I say, to challenge the repeal on certain grounds and to argue that they had some rights which we are now attempting to take away. [*Interruption*]

Madam Vice-President, we secured assurances from the Government in the public interest, not for the PNM, the PNM does not need anything from the Government. We do not want anything, we do not need anything. What we do is in the public interest. [*Desk thumping*] We secured assurances on behalf of the public, and the Government broke every one of them, reminiscent of their conduct with the anti-gang.

I heard the Attorney General here this afternoon talking about the young people who are locked up and they cannot get bail and they are so poor. I wondered if that was the same Attorney General who was telling the police, go out there. I wondered if that was the same Attorney General—the little girl used obscene language on the phone, quite improperly, quite inappropriately, and he told her “hand yourself over to the police”—locked them up without bail during the state of emergency; he picked up over 8,000 people in this country; and this afternoon he is coming here with crocodile tears talking about they were concerned about people who could not get bail. You are the authors of locking up people with no bail. [*Desk thumping*] You are the authors of that!

We had certain options in a way in attempting to deal with this. Some of the lawyers in the society have made their voices heard, some say we could amend the schedule simply, some say that you could change the word “shall” to “may” and that would enhance the judges’ discretion. You heard some recommendations from Independent Sen. Prescott, but at the end of the day what we do know is that this will certainly be challenged, hence the reason for our concerns and the way we express ourselves even in this debate.

Madam Vice-President, I know it is a little late and I know that we want to get this done promptly, but a good lawyer in the city made contact with me and proposed that we should have said a little more in the Preamble. The Preamble in the Bill that is now before us carries three recitals: “Whereas it is enacted by section”—well, we have it before us so I would not detain us to read it. But it is proposed—and this is not a proposal for an amendment—I simply want the record to read because lawyers in the city have a view that what we are proposing may not stand the test of constitutional and legal scrutiny later.

So I really want, simply, to let my colleagues in the Senate know that people have difference in views, and although I know that what is before us is a distillation of sound legal advice from the state department, from the lawyers in the Parliament and from the good lawyers in the society who have caused their voices to be heard, but another paragraph in the recital is proposed, which should say—I just want to put it on the record: “Whereas by proclamation dated August 28, 2011—August 31, 2012 was appointed by the President of the Republic of Trinidad and Tobago as—

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

*Administration of Justice Bill, 2012*  
[SEN. HINDS]

*Thursday September 13, 2012*

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

*Question put and agreed to.*

**6.15 p.m.**

**Sen. F. Hinds:** Let me go to the top again:

*“And whereas* by proclamation dated August 28, 2011, the 31st day of August, 2012 was appointed by the President of the Republic of Trinidad and Tobago as the date on which section 34 and Schedule 6 of the Administration of Justice (Indictable Proceedings) Act, 2011, herein after referred to as “the Act” shall come into operation.

*And whereas* pursuant to the coming into operation of section 34 and Schedule 6 of the Act, any person against whom proceedings under the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 of the laws of Trinidad and Tobago has been instituted or who had been committed under the provisions of that law to stand trial, or against whom an order had been made to put such person to trial not being a matter listed in Schedule 6 of the Act, became entitled to apply to a judge pursuant to section 34 of the Act to be discharged and have a verdict of not guilty recorded against him, if the offence with which such person was charged was alleged to have been committed 10 years or more before the date of the application.

*And whereas* it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Which of course is in the one that we have.

So, Madam Vice-President, I simply—and basically, the other provisions of this draft, I think in the main cover those that are before us, but I simply wanted to put that in the record. [*Interruption*]

#### PROCEDURAL MOTION

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the business at hand.

*Question put and agreed to.*



**ADMINISTRATION OF JUSTICE  
(INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2012**

**Sen. F. Hinds:** So, Madam Vice-President, whatever we do here today, we must take note of the fact that the damage has already been done. [*Desk thumping*] And you do not have to say you are sorry for the wrongs that you have done. I do not want to hear your sad stories because the damage has already been done. [*Desk thumping*] You have dented the trust and the confidence, even the pride of the people of Trinidad and Tobago at 50.

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

**Sen. F. Hinds:** Yes, with all, but I did not participate in any scandal around Desalcott. The police never come to search my home—[*Interruption*]

**Sen. George:** They never came to search mine either.

**Sen. F. Hinds:** Right. And when the journalists called me, I speak to them; I did not have to duck, dive and hide and tell lies. [*Desk thumping*] Madam Vice-President, let me continue. The Cabinet was the unit in this country, the element in this country—[*Interruption*]

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

**Sen. F. Hinds:**—and we will come back to that you know. We will come back to that. The Cabinet in this country is who proclaimed the Act.

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

**Sen. F. Hinds:** I eat bread and salt butter “from de day ah born”.

**Sen. George:** Focus, focus.

**Hon. Senator:** Do not let him waste your time, you know.

**Sen. F. Hinds:** “I doh have no fancy taste, yuh know.” Madam Vice-President, it was the Cabinet that proclaimed this legislation. The Cabinet created the legal conundrum that we now face in Trinidad and Tobago, and it is the Cabinet to tell us why they did it. And instead of wasting time and making noise, Minister George, you have already been demoted from Leader of Government Business—[*Laughter*]—to a place beyond that. I would like you to get your leader’s permission, get your boss’s permission, and stand up in the debate and tell this country whether you were aware of what your Government did, and if so, tell us why. That is what I want you to do, instead of behaving in your usual manner. Madam Vice-President, you see we are here to clean up the mess and they are only making more.

**Sen. George:** Why are you getting upset? Cool “nah”.

**Sen. F. Hinds:** Yes. As we move to a conclusion, the Attorney General said that he felt bound. He could not sign the extradition warrant earlier. You remember there was a time when we were expecting that he would sign the extradition warrant? That was after changing the legal team. There was a legal team in place handling all the appeals, responding to all the applications for judicial review in the matters that we are conscious of. They were successful on every hurdle. They surmounted the challenges, a trail of success behind them. When this Government came into power, the Attorney General reorganized the team, got the rid of those lawyers and put in another team.

Mr. Justice Boodoosingh told us in his judgment that one of the grounds for finding against the signing of the extradition order, in that application for judicial review, was the fact that that legal team did not argue certain points as they should. They lost. The Attorney General did not appeal the matter, and before that, he took time, an inordinately long time to sign the extradition order. And he told us today that he did that because he felt bound. The Attorney General had already committed the Government and he could not sign it. I simply want to say for the record, before I close, that that PNM Attorney General had 17 requests for extraditions of persons in Trinidad and Tobago. And he responded and extradited all 17, a 100 per cent track record. [*Desk thumping*]

This Attorney General and this Government came to office—there are requests for two persons who we know and they have failed so far, causing the United States Government to make an intervention. I suspect, Madam Vice-President, it is the intervention of the United States Government and the seriousness of the circumstances that made the Attorney General forced the Prime Minister out of bed at 4.00 a.m. That is a task by itself. [*Desk thumping*] I want to commend him for that. He woke up the Prime Minister at 4.00 a.m. and then went to her at 7.00, and she was still up? I want to commend the Attorney General. [*Desk thumping*]

I suspect that it was the intervention of the United States Government that led to that. It is not because they have any good conscience or good heart for the people of Trinidad and Tobago. They did it in the dead of night. And it was the public outrage, the intervention of the DPP and more so, unusually and untypically, the United States Government saying two things: you are interfering with our legal processes in the United States; we still have an interest in those two

men, and we want to know what you are doing. Extradition proceedings are an integral part of the interstate relations between the United States and Trinidad and Tobago. They consider it to be very important in this international environment with international and cross border crimes. This Government has embarrassed Trinidad and Tobago yet again and put us in jeopardy.

I want to say before I conclude, Madam Vice-President, when the people of South Africa suffered sanctions in the 60s, 70s, 80s and up to the early 90s, it was the Government of South Africa's conduct that brought hardship upon the people of South Africa—In Iraq it was the conduct of the Government of Iraq under Saddam Hussein that led his people to be bombed in some cases—*[Interruption]*

**Hon. Senator:** Do not go there.

**Sen. F. Hinds:**—and also to have to suffer sanctions. In our country, if we do not maintain good wholesome relations with a major friend and partner, the United States, citizens could find themselves having difficulty getting visas to go into the United States and other difficulties, because of the conduct of the United National Congress as a Government. Therefore, we have to watch that. We call upon the Government to stop embarrassing and jeopardizing the welfare and well-being of the people of this country.

The Prime Minister announced the budget yesterday. It was a most cold—and nobody in the country is looking forward to it. When I came to the Parliament 15 years ago, a budget debate was an exciting thing; people in the society looked forward to it. But now—yesterday the Prime Minister announced it; it was just, so what, they do not look forward to it, especially in light of the fact that we have a new Minister of Finance and he has already told us that we could expect the next four or five years in deficit financing, an admission that he can do nothing to fix it. So we know it is economic horrors, and on top of that, you are embarrassing Trinidad and Tobago like this. People are calling on you to have the Minister of National Security go; you are not doing it and on top of that, you go in the dead of night and took action to cause persons who should have their day in court, to walk away without such a day, to the detriment of the public of Trinidad and Tobago.

So, Madam Vice-President, I think I have said enough. I want to conclude by saying that the People's National Movement in the public interest, in the other House and here, will again lend support to the legislation that is before us today. We will support it because we want the clause repealed; we want the section repealed and we want to bring it back in line with decency, common sense and good governance and good law, simply speaking.

We will therefore support the measures, but I will not mince words to say that this Government has put us in a very precarious, embarrassing, unwholesome situation. It is as if you cannot help it. I am calling on you as a Cabinet, since the Cabinet is responsible, I think you should vacate your offices and let the people of Trinidad and Tobago pass judgment upon you now, rather than 2015, and free themselves from the yoke and the burden of the worst Government that Trinidad and Tobago has had for decades, or perhaps forever.

Madam Vice-President, I thank you.

**Sen. Helen Drayton:** Thank you, Madam Vice-President. Thank you for the opportunity to speak on this Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011. Now, this amendment repeals section 34, but does not repeal Schedule 6 of the Act, by virtue of section 27, and I think it therefore leaves open the very mischief this amendment purports to correct.

Madam Vice-President, through you, as I speak in the Senate, I would like to take the opportunity to say to the citizens of Trinidad and Tobago that I am sorry. I feel a deep sense of responsibility for not re-scrutinizing thoroughly the amendments which were brought to the Senate during the debate, mainly clause 34, and not paying closer attention to the schedule. It is often said that no law can be perfect. That may or may not be so, but the reality is, it takes a word, a phrase or a small omission to derail a piece of legislation.

Let me say that it is noteworthy that the Government has brought this amendment to repeal section 34, and I do not hesitate to say that I am thankful for the opportunity, first to say sorry and also to make a few comments with respect to that section, as well as issues of trust and confidence.

I think it is also noteworthy and it is necessary to state that the Government knew of the proclamation on August 30 or 31, whatever day it was, and therefore, I want to take the opportunity to commend the media for bringing the issue to the public. [*Desk thumping*] Were it not for the media many of us would not have been any the wiser and the real mischief would have been perpetuated.

I am going to take the opportunity to make very quickly a few suggestions which I had previously made. Those suggestions were made when we were debating the Motion on Parliamentary Efficiency which was presented by Sen. Subhas Ramkhelawan. I am doing this in the spirit of my contribution, because I think that such situations undermine the confidence in Parliament, the highest law-making body, and consequently, major institutions of democracy.

**6.30 p.m.**

This is what I think we should be about, the citizens' goodwill. Citizens' trust and confidence in Parliament should be the paramount consideration, not defending the indefensible.

The next suggestion is that legislation, especially when it calls for a constitutional majority, should be accompanied by core rules. We have said this time and again. [*Desk thumping*] These are the rules which operationalize the law. It allows Parliament the opportunity to ascertain that the core rules are within the power of the law under which it was made. It also allows scrutiny, and the best time for that scrutiny is when the Bill has been sent to us for review and debate, and simply because the final Act and the rules are interdependent.

Bringing legislation which requires a constitutional majority or any legislation for that matter, without regulations, may very well provide an opportunity for manipulation, and in the least, operation of the law in a manner that was not intended by Parliament in the first instance, and especially when we delegate the making of rules or amendment to rules to the Executive and we do that by virtue of a negative resolution of Parliament.

So here we have a situation where the rules are deficient—very much deficient—and what the principal Act says, it gives the Minister—although it has not defined Minister—the authority to make the rules or to amend the rules; the very Executive that made commitments in the Parliament and did not honour the commitments.

I also want to ask that the Government seriously considers circulating a parliamentary agenda and bringing Bills well in advance before debate. This would serve several purposes, the first of which, it allows citizens an opportunity—and this will be civil society and interest groups—to review Bills and even make submissions to their parliamentary representative because that is what democracy is all about, and that is a core function of a parliamentary representative.

The way legislation comes to Parliament is very deficient. It is legislation on-the-go, so that you find yourself sometimes, 1.00 a.m., 2.00 a.m. in the morning, with 150 amendments to a Bill with 300 clauses. That cannot augur well for good legislation. It is not serving the public's interest.

I want to deal, very briefly, with the matter of trust and confidence. Unquestionably, the Government gave certain undertakings with respect to the Administration of Justice Act which it has not honoured. During the debate in this

*Administration of Justice Bill, 2012*  
[SEN. DRAYTON]

*Thursday September 13, 2012*

Senate, the hon. Minister of Justice had stated the tremendous amount of work that had to be done before this law could be implemented, and in so doing he said—and I quote his words:

“Accordingly, Mr. President, having said that, and having given the assurance to Senators opposite that we would not be rushing into implementing this legislation”—[*Desk thumping*]—“until everything is in place and we virtually have the green light from the stakeholders.”

Now, what stakeholders were consulted? Certainly not the DPP.

So, yes, it was a surprise to learn that a critical part of the legislation was proclaimed and we did not see any rules—rules which were promised and rules for the very core of that Bill—clause 34, the area of operations which would require the greatest amount of administrative work and manpower resources.

I think it is important to send a message to the Government in that regard because this is not the first time it has come to Parliament, made a serious commitment with respect to legislation and not honoured that commitment. At the time of debate of the Central Bank Bill, the Minister made a promise—and by Minister, I prefer to say Government because it is collective responsibility—that every quarter this Parliament would see a report on the restructure of Clico. And the reason it undertook that commitment was, one, to reassure us—yes, you were looking for a vote; and two, for basic reasons of accountability and transparency.

A year has passed and no such quarterly report has ever come to Parliament. If it has, it certainly has not been tabled in this Senate and this gives credence to the belief that promises made by Government could be wilfully broken. Either it cannot keep the promise in the first place, or it is making the promise, knowing full well that there is no intention of keeping that promise.

I have raised that matter on several occasions. Commitments made by the Government in Parliament—this is not a political platform—should be honoured, [*Desk thumping*] because that is what goes to the heart of trust and confidence. I am saying this, not because I am against Government or because I oppose Government, or I want to make Government look bad, but we, as Parliamentarians, cannot be here to make legislation for the good order of society and the Government that is tabling the very Bills—the very laws—makes promises and then does not keep the promise. [*Desk thumping*]

I would like now to deal with the actual amendments, and I would first make a few comments with respect to clause 3 of the amendment which says:

“In this Act, ‘the Act’ means the Administration of Justice (Indictable Proceedings) Act, 2011.”

So it is necessary to make reference to that Act, but that Act as the principal Act. In so doing, I want to draw attention to the provisions of section 27(4) of the principal Act which makes reference to the Minister, but the term “Minister” does not seem to be defined anywhere in the Act, so one has to assume it is the Minister of Justice. It could be the Minister of Legal Affairs, or whoever.

I believe that it should be specific to a Minister and that should be mentioned in the Bill. But under the very clause 3 of the amendment, nowhere does it make reference, as I said, to the principal Act, and I believe that should be amended to say:

In this Act, “the Act” means the Administration of Justice (Indictable Proceedings) (Amdt.) Act, 2012 and that the term “the principal Act” means the Administration of Justice (Indictable Proceedings) Act, 2011.

—because you are referring to these amendments and you are referring to the principal Act. And we should add a section 2 to that—3(2), so that in section 3(1) of the principal Act, insert that the Minister means whoever the Government meant to be the Minister here.

Under clause 2, it says:

“This Act is deemed to have come into force on 16th December, 2011.”

The date of December 16 is the date on which the Act was assented to by the President. The date on which the Bill was passed was December 09 when the Senate amendments were agreed to by the House of Representatives. And then there is the date on which the Act—or parts of the Act—came into force.

The Act did not come into force or into operation on December 16, 2011. That is the principal Act, as the amendment states. That was when the President, yes, gave his assent, but if we look at section 1(2) of the principal Act, it defines when the Act comes into force, and that is by proclamation. So the effect of the wording of the amendment is that it purports to have come into effect on December 16, 2011, which is the date before the Act came into force, partially, by proclamation, because the principal Act says that the Act comes into force by proclamation, and it was published in the *Gazette* on August 30.

So clause 2 should read:

This Act is deemed to have come into force on the passage of the principal Act.

So that I believe that these amendments here are flawed and it reminds me of what Sen. Prescott mentioned earlier on, whether we, in fact, are not compounding the errors that we made with the principal Act.

Now, clause 6(1) and (2), states that:

“...all proceedings under the repealed section 34 which were pending before any court immediately before the date of assent of this Act shall, on the coming into force of this Act, be void.”

I would just read that again.

“...pending before any court immediately before the date of assent of this Act shall, on the coming into force of this Act, be void.”

So the term “immediately before”—now, it may be argued that proceedings have been instituted but not necessarily under the repealed section 34. For instance, there is a difference between proceedings under section 34 and proceedings involving section 34. So, a judicial review would be a proceeding involving section 34, but not necessarily under section 34.

The term “immediately before”, is it that it is only proceedings enforced immediately before the date of assent? Now, bearing in mind the date of assent was December 16—Yes?

**Hon. Senator:** The date of the assent of this one.

**Sen. H. Drayton:** The date of assent of this one. So it is the date of assent of this Bill. So it is only the proceedings before the date of assent of this Bill. So one is assuming then that you are not dealing with any proceedings that are filed after. So that this is why it is necessary to make a distinction between—you know, with the principal Act, because if you are dealing with the immediate proceedings before assent, then it has to be before assent of this amended Act.

Now, the new clause 7 contained in the amendment, I think it needs to be strengthened, otherwise the loopholes are still there, if it is we are seeking the public good overall. I have circulated—or will be circulating—an amendment. I am fully aware of the Government’s position and the Opposition’s position, but as an Independent Senator, I have to do what I think is right and the best. So I would suggest that it reads:



Notwithstanding any law or rule of law to the contrary, no rights, privileges, obligations, liabilities or expectations shall be deemed to have been acquired, accrued, vested, incurred or created under section 34 of the Principal Act hereby repealed and no investigations, legal proceedings or remedies may be hereinafter continued, instituted, entertained or enforced in respect of any such rights, privileges, obligations, liabilities or expectations.

**6.45 p.m.**

Now, it is noted that the amendment does not repeal Schedule 6 by virtue of Section 27. Section 27 says:

“(2) Except in the case of any matter listed in Schedule 6, where the Director of Public Prosecutions does not prefer an indictment against...” et cetera.

It cannot be that we are repealing Schedule 6 if we are leaving section 27 as is. And therefore, if Schedule 6 is not repealed, as indicated, then it needs to be amended. I think that the Government should spell out those amendments, and let them be recorded in *Hansard*, given the fact that the principal Act gives the Minister the authority to amend the rules. Those rules should be amended retroactively, if we are to deal with the mischief that we said we came here to deal with. I think that, therefore, should include the conspiracy to commit any of the crimes in the schedule: serious fraud and larceny—and we can put in an amount here, maybe over \$100,000; offences under the Integrity in Public Life Act—that schedule is very deficient; money laundering offences under the Proceeds of Crime Act; misbehaviour in public office, offences under the Prevention of Corruption Act.

I listened to what my colleague, Sen. Prescott, said with respect to section 34. I hold a slightly different view. I think we both agree that it should be amended, but if we look at 34(1) it says:

“(b) where the accused has evaded the process of the Court,”—but it goes on to say—“after the expiration of ten years from the date on which an offence is alleged to have been committed—”

But, an offence may not come to light until 10, 15, 20 years hence. If a child was raped at six years that might not come to light until that child is 19 years old. A murder may not come to light for 15—20 years. So that section 34 unquestionably is flawed. It either needs to be repealed, as is recommended here, or amended.

We also need to amend Schedule 6. Madam Vice-President, I thank you for the opportunity to make this contribution. [*Desk thumping*]

**Sen. Terrence Deyalsingh:** Thank you very much, Madam Vice-President, as I rise to make what would be a short contribution as I am cognizant of the time limits that we have tonight, as I make a contribution on a Bill to amend The Administration of Justice (Indictable Proceedings) Act, 2011.

Madam Vice-President, there are many ways to approach the debate because of the issue or the troubles that we find ourselves in, collectively as a country and as a Parliament. Sen. Al-Rawi would have given the legal approach to it; so too, Sen. Prescott; and Sen. Fitzgerald Hinds would have given his own unique perspective. However, permit me to maybe take a totally different view on what has transpired and what has brought us to this sorry pass.

Madam Vice-President, in speaking to citizens of Trinidad and Tobago over the past couple of days, the degree of mistrust that ordinary citizens now have for this Parliament collectively—and by this Parliament collectively, I mean the Government, the Opposition and even the Independents, because to the population, it is looking like we were all asleep on the job, we were all reckless and/or we were in cahoots. That is the reality of the opinion outside there amongst 1.3 million people, regardless of political affiliation.

I have been speaking to many supporters of the Government, both UNC and COP. They have all expressed to me their total disgust with the way the Parliament has conducted itself over this matter. All 31 of us in the Upper House and 41 in the Lower House are being tarnished with the same broad brush. I cannot go around one by one talking to individuals to explain to them what the crux of the matter is.

In my humble opinion, as Sen. Prescott said, we are here to take good law and make it bad. The law that we would have passed was not necessarily bad law. We agreed to a legal framework in the context of a backlog of cases at the Magistrates' Court. But the context that we agreed to—and I will read the *Hansard*, which has already been read, but I think it needs repeating. We passed the legislation in the context of a promise, a solemn promise given to us by a Minister of Government. That is where the crux of my debate hinges on.

To illustrate my point if you would permit me to refer briefly to our Constitution. On page 107, the First Schedule has the Oath or Affirmation of Allegiance and of Office. This is the oath that Senators, Members of the House of Representatives or the Senate would recite. If you would permit me, Madam Vice-President, just to read, for the public to understand what we swear to.

“I A. B.”—meaning whoever name it is—“having been elected/appointed a member of Parliament do swear by...”—

and there is dot, dot, dot, that means you put in the name of your holy book—the holy Qur’an, the Bhagavad Gita, the Bible. So look at what we are swearing on. We are swearing on holy books. Religious principles!

“...that I will bear true faith and allegiance to Trinidad and Tobago...”

We are promising to be true to Trinidad and Tobago.

“...will uphold the Constitution and the law, and will conscientiously and impartially discharge the responsibilities to the people of Trinidad and Tobago upon which I am about to enter.”

We have two temporary Senators and one newly-appointed Senator today—congratulations, by the way Sen. Dr. Lennox Bernard.

That is the oath that is recited at almost every sitting of the Senate. Implied in that oath is a certain degree of honour, truthfulness, and that whatever the political persuasions are, forgetting the cut and thrust of politics, if we as parliamentarians—31 Senators and 41 Members of the Lower House—come to an agreement in the best interest of Trinidad and Tobago, and then we break that agreement, what does that say about that oath that we have taken? It says nothing.

This is where we always hear the refrain, “our institutions are being weakened”. I am pegging my arguments today on the weakening of Parliament due to a promise—a solemn promise—given by a Minister who would have sworn on a holy book to behave in a certain manner.

That is what, I think, Sen. Helen Drayton was speaking about: collective responsibility and ministerial responsibility. We have an Act before us, which was prematurely proclaimed, and that is the crux of the matter facing us. It has nothing to do with the law itself. It has to do with the premature proclamation.

In the debate, if I refer to page 126 and 127 of the *Hansard*, where the hon. Minister of Justice, Herbert Volney, who is not here, and who did not contribute today or yesterday—[*Interruption*]

**Sen. Al-Rawi:** He contributed yesterday.

**Sen. T. Deyalsingh:** He did. Sorry. But, he is not here today. If I refer to his contribution page, 126 of his *Hansard* of November 18, 2011. I would not read the entire thing, I would just synopsise.

He promised to bring civil criminal procedure rules. He spoke about the St. Lucia model; he spoke about Trinidad and Tobago's readiness; he spoke about the happiness of the Judiciary before he proclaimed this legislation; he spoke about when the rules are to be brought; and he gave us a solemn undertaking not to proclaim. I just want to read into *Hansard* that part alone.

“So while this measure can work without rules because it establishes the framework, I can assure Members opposite”—look at the words—“that nothing is going to be proclaimed before all necessary measures required to make it succeed happen.”

That is, a Minister who would have sworn on a holy book, taken an oath as prescribed by the Constitution, to bear true faith and allegiance on a holy book, made this declaration in the *Hansard*—it is there for all to see—and that is why we are here today, because a solemn oath was broken.

Madam Vice-President, it brings us to the crux of the matter now—the proclamation. How can an Act get its commencement date? Some Acts may be silent and the Government of the day can choose a date—that is fine—to be assented to. Some Acts may contain a commencement provision setting a date—that is, this Act would come into force on X, Y and Z date. Some Acts can have a commencement provision stipulating a date or you can have a proclamation clause. That Act that we debated in November of last year contained a proclamation clause.

What is the purpose of a proclamation clause? By the way, I welcome the hon. Leader of Government Business in the Lower House, Minister Roodal Moonilal, to our Senate. Welcome, Sir. A proclamation clause is normally inserted when there are certain procedural matters and resource matters to be addressed before the Bill becomes law and before you put that into operation. Therefore, the assent does not trigger, the proclamation does. Those were the undertakings. The undertakings were: masters of the Supreme Court to be recruited, trained and to amend the Supreme Court of Judicature Act. That was a promise.

Two: to bring the criminal procedure rules. Three: the resourcing of the high courts. The Minister would have spoken about six judicial centres: one in Trincity, Chaguanas, San Fernando and Sangre Grange. Unfortunately, the one in Sangre Grande became bogged down in charges of corruption, as to who owned the land, who got the contract to build it, and all that. That is how we are dealing with the issue. That is why I am saying, this issue before us reflects badly on the Parliament.

**7.00 p.m.**

When your population starts to lose faith in your Parliament, that is a slippery slope, and the public is holding all of us accountable for this, and in my view, rightly so, even though the six Senators here and the 12 MPs downstairs had nothing to do with this conundrum. Nothing! But we are part of a collective, so we cannot cop out because there are too many people in the Government now taking cop-out positions. They are “copping out” of serious matters—no pun intended. They cannot even come to one conclusion on one person, they will cop out on that. So that is how they address this issue. They have caused a problem and then they cop out and say, blame everybody else, but themselves. That is what we talk about, morality in public office.

If I, as a Member of Parliament, forgetting the cut and thrust of politics, cannot take a Member opposite at his word that he will or will not do something, then what are we doing? This is not the first time that the Government has broken a solemn promise given to this Senate. Just by way of example, Madam Vice-President, I will draw your attention to the FIU legislation, which we had to rush to come back to debate three weeks ago. That was promised to come back here within one month of April 2011. It took 16 months. Sen. Helen Drayton just spoke about the quarterly reports for Clico—never come. I refer to the anti-gang legislation where there were solemn promises in the committee stage, in the Joint Select Committee, that before this Act is proclaimed, there needs to be a serious education process throughout the police service as to how to administer the Act and for the public at large.

But, what did we see? The anti-gang legislation was hurriedly proclaimed and then people arrested. When the hon. Attorney General spoke about 8,000 people in the spotlight, he knew what he was speaking about, who cannot get bail, because the anti-gang legislation, again, was used just like this piece of legislation, in a manner never contemplated by the Parliament. [*Desk thumping*] That is why people hold the Parliament in contempt. Total contempt! By the Parliament, I mean all of us—Independents included—because they accuse all of us of sleeping at the wheel, and I do not intend to take the fall for that, for this Government. I do not intend to take that fall. [*Desk thumping*]

Madam Vice-President, it was never in the contemplation of this Parliament to have this Act, either a section proclaimed, or the entire Act. It was always the intention to do that after the criminal procedure rules have been drawn up. Right! And, just by way of reference, the UK Ministry of Justice, their Criminal Procedure Rules have 11 divisions and 76 parts. It is a big document; it would

take time to do that. That is what we contemplated as a Parliament. One state in the federal United States, the Ohio Rules of Criminal Procedure, 60 rules covering 134 pages. It is a lot of work. New South Wales, one state in Australia, their Criminal Procedure Rules, 1986, four parts, 352 sections. Ours will take time and that was the time frame contemplated, when proclamation was thought of happening around 2015. Otherwise, when we debate legislation, what we mean by the legislation or what we hope the legislation will bring, will not materialize.

Madam Vice-President, I heard one of the Government's spokespersons on Tuesday, after the emergency Cabinet meeting, trying to tell that us that this parliamentary session was already in the works, that yesterday's session was already in the pipeline and today's session was already in the pipeline, as if, you know, it was not a crisis. But this must be the only Government that plans to have Parliament, and on the same day—Thursday, September 13—having a reception at the Diplomatic Centre to which we are all invited. [*Desk thumping*] But, you know what? None of us is going.

So they planned to have Parliament and they planned to have a reception on the same day. "My lawd!"

**Sen. Karim:** But we here too!

**Sen. George:** We here too! What is your point?

**Sen. T. Deyalsingh:** The point I want to make is that you are apologists so you all planned this. So you had planned to have Parliament and planned to party on the same day. "Wah kinda ting is dat? Get real, nah."

**Sen. George:** That was planned before.

**Sen. T. Deyalsingh:** Coming back to the issue of ministerial responsibility, because that is what this issue is about; it is about somebody in Government taking responsibility for this early proclamation.

**Sen. Al-Rawi:** Who?

**Sen. T. Deyalsingh:** If you permit me to just briefly quote Sir Ivor Jennings, who said:

"the most elementary qualification demanded of a Minister is honesty and incorruptibility."

"Honesty", that word again, and we take our pledges on holy books.

“It is, however, necessary not only that he should possess this qualification but...he should appear to possess it.”

That is why the public has lost total confidence in the institution called Parliament. They think we come here—PNM, UNC—and make deals. That is the perception given by this premature proclamation.

But, I will tell you one thing, Madam Vice-President, I have to admire the Government on this one. Their PR spin on this has been magnificent. It has been magnificent! You all have managed to convince a whole population that the Parliament is entirely to blame.

**Sen. Al-Rawi:** Sizzle but no substance!

**Sen. T. Deyalsingh:** No, it is really, really phenomenal. The Attorney General, in moving the Bill today, said that “To err is human, to forgive is divine”. All the Government had to do was to say, “Forgive me, the premature proclamation was wrong”. This is the Attorney General’s words today, “To err is human, to forgive is divine”. We would have forgiven you.

**Sen. George:** Who? You? We “doh” trust you.

**Sen. T. Deyalsingh:** You “doh” trust—[*Laughter*]

**Sen. Al-Rawi:** I will forgive you.

**Sen. George:** “Is the PNM we talking about, yuh know.”

**Sen. T. Deyalsingh:** But here we are, demonizing all the Members of Parliament, of the Parliament of Trinidad and Tobago because they do not want to admit to a mistake. They do not want to admit to an error. They do not want to admit to a premature proclamation. But, the negative fallout—[*Interruption*]

**Sen. George:** “Is the PNM yuh asking meh to trust, yuh know.”

**Sen. T. Deyalsingh:**—is all this mistrust, and people say—two of your supporters who I spoke with yesterday, said, “Why did you all support this? Why?” My response is: this Opposition will support the Government when it has good legislation and when it is in the interest of Trinidad and Tobago to support it.

For example, we supported the 2010 Budget, we supported the Children Bill, we supported the Bail (Amdt.) Bill, we supported the anti-gang legislation, even though I have demonstrated it was used in a manner not contemplated by Parliament. We have supported the FIU legislation, although I have put on

*Administration of Justice Bill, 2012*  
[SEN. DEYALSINGH]

*Thursday September 13, 2012*

*Hansard* that there are serious reservations because that piece of legislation did not go through committee stage, and then we supported this current Bill. But, we supported this current Bill in a particular context, based on a promise which has been broken and that is why we are here. Just admit that you broke a promise. Just admit it!

**Sen. Al-Rawi:** And stand the consequences!

**Sen. T. Deyalsingh:** Madam Vice-President, as we try to tie this whole mess together, what are we left with?

**Hon. Senator:** The seagull.

**Sen. T. Deyalsingh:** We are left with public outrage, and as I said, we are left with loss of confidence by the people in their Parliament. We are here at the behest of 1.3 million people and they have lost confidence in us.

**Sen. George:** They have not.

**Sen. T. Deyalsingh:** They have lost confidence in us, in all of us.

**Sen. George:** That is not true!

**Sen. Karim:** On May 24!

**Sen. T. Deyalsingh:** We have had regional loss of face. We have had our major international trading partner—[*Interruption*]

**Sen. George:** Where is the evidence of that?

**Sen. T. Deyalsingh:**—issue a statement expressing concern.

Madam Vice-President, in the world of diplomacy, before a country like the United States issues a statement, there has to be something very smelly and something very bad beneath it. The United States of America would not take the step of issuing the statement that they have issued. Enough has been said about that; enough has been said about the statement issued by the DPP.

When you add that to the fact that certain Members of our Government are persona non grata in the United Kingdom and elsewhere, the international shame mounts. When you add that to our partners in parliamentary strengthening, who will read the *Hansard*, who will see the promises. This Parliament depends on the European Union, the UNDP, the UN DESA and the Commonwealth Parliamentary Association for help, for guidance, for resources, to strengthen the Parliament. Is this what we are doing with that resource?



**Sen. George:** Where are you going with that? That is a non-point. “Come on, man! Yuh going good all de time.”

**Sen. T. Deyalsingh:** The Government has its own idea of what a legislative agenda is, and it is simply ticking off boxes—done, done, done! They have always accused the PNM of taking long with legislation. Are you seeing why now, Madam Vice-President? It takes long to bring legislation.

**Sen. George:** Aww, that is the reason!

**Sen. T. Deyalsingh:** Look at the mess that we are now faced with this piece of legislation. No criminal procedure rules; nothing; it takes time.

**Sen. Al-Rawi:** No masters!

**Sen. T. Deyalsingh:** No masters of the High Court, but they just want to tick off boxes—done, done, done, done!

The most glaring example of a piece of legislation, Madam Vice-President, just by way of example, the most glaring abuse and misuse of the Parliament for PR purposes was the Children Bill, which we sat here until 4.00 a.m. in the morning, which we had no problem with. But, do you know what hurt us? When you opened the *Guardian* the following morning at 6.00 a.m., on the day that they had their anniversary celebrations. In the *Guardian*, it was stated “Children Bill passed” before it was passed here. They gave the *Guardian* a copy; print this; passed; done! We were here until 4.00 a.m., passing the legislation when the *Guardian* had already printed that since the night before. Where is the honour? Where is the trust?

**Sen. George:** “This Government doh operate like dat.” We did not give the *Guardian* anything.

**Sen. Al-Rawi:** And we voted into it.

**Sen. T. Deyalsingh:** So, Madam Vice-President—[*Interruption*]

**Sen. George:** You have no proof of that.

**Sen. T. Deyalsingh:**—I want to advise the Government, the same mistake that they are making, they have not addressed. Why the early proclamation? Address that!

**Hon. Senator:** Tedious!

**Sen. T. Deyalsingh:** It is a tedious question, hon. Sen. Ganga Singh. Do you know why? Because nobody has answered it today.

**Sen. George:** But the AG has answered that already.

**Sen. T. Deyalsingh:** Nobody has answered it today and we will keep on asking: why an early proclamation of one section? [*Crosstalk*] Well, we will continue asking and the country will continue asking it, and the media will continue asking it, and you have no answer. [*Crosstalk*] You have no answer.

**Sen. George:** But we have answered it already.

**Sen. T. Deyalsingh:** You have no answer! If anybody on that side gets up and gives us a good reason why section 34 was plucked out and prematurely proclaimed, we would love to hear it.

So, Madam Vice-President, I want this country to know that legislation is not like a fast-food, assembly line outfit—bun, hamburger, lettuce, cheese; you bring it out—with no new nutritional value. We have got to start to get this Government to treat the Parliament and to treat legislation with respect. [*Desk thumping*]

**7.15 p.m.**

Madam Vice-President, as I close, this mess we have found ourselves in, strikes at the very heart of our criminal justice system and all I can say, as I close, is one line and I will advise the Government to heed my words and let the population hear how I close. And I close like this: let justice be dispensed at the beat of a judge's gavel not by the beat of bottle and spoon. Thank you very much, Madam Vice-President. [*Desk thumping*]

**Sen. Corinne Baptiste-Mc Knight:** I thank you, Madam Vice-President, for allowing me this opportunity—[*Interruption*]

**Sen. George:** Faris was good.

**Sen. Deyalsingh:** I cannot be brilliant like you all the time.

**Sen. C. Baptiste-Mc Knight:** I want to explain. When this, the parent Bill, was debated on November 29, I participated in the Session but I did not speak in the debate and this is because I make a point in this Senate of not repeating what other Senators have said when I agree with what is said. If my points are made, I am satisfied. And this was largely the situation in which I found myself. Sen. Dr. Wheeler and Sen. Prescott had touched on matters that I was particularly interested in, particularly on clause 34.

I had followed this debate on November 18 in the House and I was aware that it had been—the point had been made and repeated that there had been extensive consultation and there was collaboration with all the stakeholders. In this Senate,

presenting the Bill, the hon. Justice Volney, Minister of Justice, again repeated the assurances he made in the other place. Now, I like to give people the benefit of the doubt. I had no good reason to accept his word but, somehow I felt sorry for him. [*Laughter*]

Then, I listened very carefully to Sen. Beckles, who explained the culture and the system of justice that we have, and I realized that it was important to go along with this change. There was a need, that is well recognized throughout the country, to accelerate the speed of the delivery of justice. And I became convinced that this Bill that we were doing at the time would go a long way to assist in this as part of a package of legislation, some of which we had already had, more of which is promised. And I felt that it was important to give the hon. Minister “ah bligh” to allow him the legislation, so that he could then get everything in place to have it implemented after all his ducks were lined up. This was how I thought the situation was supposed to unfold, so I voted for the Bill.

Now, if I knew then what I know now, there is no way—[*Desk thumping*] no way in heaven or hell I was saying yes to that. Why? Not because I do not believe that the system should be speeded up, not because I do not believe that the backlog must be dealt with, but because I now recognize that a half truth is half of the truth and what we got was a quarter of the truth. We were told that the Criminal Bar had agreed, they had no problem with the draft. The head of the Criminal Bar tells us that they had no problem with what they saw. What they saw did not include clauses 30 to 34. We were told that the DPP was on board. The DPP, in a very unusual occurrence has come out and explained his position that says in a nutshell he was not aware of clause 34. Now, it means that, as the country folks would say, “we get ah half pick duck”.

**Sen. Beckles:** “Ah six fuh ah nine.”

**Sen. C. Baptiste-Mc Knight:** No, it was not that. “Ah get three fuh nine.” [*Laughter*] Now, this was done. It was finished on December 09. Is it that sometime in July, although I certainly have not seen any draft legislation that would improve the number of masters, magistrates or otherwise? I have not seen or heard of any advertisements for staff, and I know these things take time. Are conditions of service for these masters already organized; conditions of service, accommodation, et cetera, for staff? What exactly is the situation of all of these measures that we were promised by the Minister to have in place before the proclamation of the Bill? We have heard nothing. At least I have heard nothing and I will say to the Minister’s credit, that he is not here to be embarrassed. I wonder if he would be embarrassed if he were here. But, I give him credit for that. [*Crosstalk*]

**Sen. Deyalsingh:** I do not think this Government knows that word.

**Sen. Corinne Baptiste-Mc Knight:** I am not going there.

**Hon. Senator:** You are using harsh words.

**Sen. Deyalsingh:** You all deserve it.

**Sen. C. Baptiste-Mc Knight:** But, you see, in a moment of indecent haste, the Cabinet—somebody took a Note to Cabinet to get this Bill proclaimed into law and compounded it by extracting one clause, one substantial clause, not the clause that deals with the preliminary enquiries, which was supposed to be the meat of the Bill. This is the clause that deals with the backlog.

Now, the backlog assumed an importance that was of a higher priority than the meat of the Bill. Why? I have heard this question asked in the House. I have heard no response there. [*Desk thumping*] The question has been asked here and I hear Sen. The Hon. Emmanuel George say it has been answered. I have not heard the answer. Now, there are 11 Members of the Cabinet sitting across there and all of them are talking only to each other and crosstalk, nothing that is making sense in terms of a response to this.

The country needs to know why it was important for this one particular section to be taken out of the whole Act and proclaimed in a great hurry on Independence Day. I think I am totally in agreement with Sen. Hinds, when he says that this was in fact for the prisoners, their little present. It was just that it was not for those who were in prison, which was what they have been led to believe.

I am not going to go into the fact that that is doubly unfair, but I want to know why it was important to do that then. There are 11 honourable ladies and gentlemen sitting across there who must know the answer because they were at the Cabinet meeting. I want a reply and I promise you, if I do not get a reply, I do not vote for this, because I would be voting for something that I do not understand. I do not understand why it was necessary.

The problem is not what we voted for here in November. The problem arises because of a little bit of haste. Why? That is the problem. And because the public, thanks to our independent press, got hold of it and have decided that they do not like the smell of it, there is a panic, nothing short of a panic, to come and compound the stupidity by putting in legislation that people “who not even finish” their qualification—first-year students at Hugh Wooding—telling you chances of it getting through the Privy Council not good. Something has got to be wrong.

**7.30 p.m.**

Unless I can have an explanation that would lead me to understand—because when I vote to repeal this—the hon. Attorney General pointed out to us today that there are little, poor black boys who are waiting in line to go and have their 10- and 12-year-old cases thrown out, but when we repeal this, their chances are nil because the whole backlog assistance is gutted. It is no more.

Look at me carefully. I cannot, will not be a party to having to explain to those mothers, those fatherless boys and girls, why they cannot go to a lawyer and have their cases thrown out. Cannot do it! If I have an explanation, something that I can understand and regurgitate, I might consider it. Might! But as of now, no way, no way, no way José. I cannot be a party to scuttling the hopes of my people.

The hon. Attorney General has said that these are people who, you did something when you were 18 and now that you are 40-something, you have lived a good life, you have your children and you are expecting to go and have your name cleared and I must sit here and scuttle those hopes and not be able to explain why. No.

When I arrived here this afternoon, I was conflicted. Do you know why? Because I feel very strongly that Schedule 6, since it does not include white-collar crime, is a crime; but, on the other hand, I felt that perhaps there was something that could be done that could save my people who are part of the backlog and, at the same time, allow those who rightfully need to meet their destiny so to do.

I wish to thank by colleagues on the Independent Bench for showing me the light because I really do feel that the suggestion of my colleague—true silk—has been able to show us a way to have both things done. Amend the legislation, maintain the possibility of helping the backlog through the court; but, at the same time, recognize the work that we have been doing here on kidnapping and money laundering and white-collar crime and make sure that we tell the world that we are against white-collar crime.

There was just another publication of the Corruption Perceptions Index. My God! We “gone down” again.

**Sen. Deyalsingh:** Again? Under this Government?

**Sen. C. Baptiste-Mc Knight:** No, we are not under the Government; we are under many more people in the Corruption Perceptions Index and with that we are going to sit down here and not ensure that part of what puts us where we are in the Corruption Perceptions Index, we miss an opportunity to deal with it.

No. I am willing and ready to support the amendment put forward by my colleague, Sen. Prescott, with a couple additions from my other colleague, Sen. Drayton. Because I feel that matters concerning integrity and all that are urgent. Let us deal with it. Let us show the world that somebody in this country—and it should be the Parliament—is finally willing to deal with these things properly. This is my plea.

Let me remind you of the question that I need to have answered: why was it necessary for Cabinet to ignore the promises that the Government made because every Member sitting in the Cabinet, whether a native of the House or the Senate, was aware of the promises, the undertakings that were given with respect to the proclamation. Why is it that everybody sits there, glum—I have to assume satisfied with what you all have done. Share the satisfaction! Explain to us why you did it; how you were able to do it; if you did it with tears in your eyes; if you had to have a couple drinks in order to get it down; whatever. Just tell me. Give me an example. I understand. There are times when I need a good, stiff drink in order to get through the night. [*Desk thumping and laughter*] I have no problem.

**Sen. Deyalsingh:** Bottle and spoon. Bottle and spoon.

**Sen. C. Baptiste-Mc Knight:** No. I am not into the dancing and thing. My vices are “other”, but I need to have a clear answer to that question. There are one, two, three, four, five, six, seven, eight, nine of you from Cabinet present here now. If none of you wants to answer, get one of the two absent ones to answer, but I want an answer tonight, otherwise I will yell a resounding “No” when the vote comes, like you have never heard before.

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

**Sen. Dr. Rolph Balgobin:** Thank you, Madam Vice-President, for allowing me to rise and to make a brief contribution on what is without question a matter of very grave concern, not just to us here as Senators, but, I think, to all of the people of Trinidad and Tobago who may have come to the view that there are aspects of this that appear to have been designed to assist certain members of the public in their effort to avoid more court and, presumably, some time in a confined space.

With that said, Madam Vice-President, I have some very grave concerns about what exactly has happened here. I say concerns simply because I am not exactly clear on what has transpired. I would like to come to that in a moment, but I am also not persuaded—at least not at this point—that the way to go would necessarily be to repeal section 34. I have formed the view that perhaps a more appropriate approach would be to amend section 34 as well as to amend Schedule 6 of the existing Act.

I have reviewed what has happened in the Parliament in relation to this matter, as well as to the debate on the parent Act and I find no cause for apology. I think that we understood, with reasonable certainty, what we were getting into. I think that the assurances that we had and the expectations that we formed out of those assurances encouraged us to support the Bill as it was piloted through.

I think that I would be concerned, if we were to pass this, what this means for our democracy. A standard understanding or principle of a parliamentary democracy is that it stands on three legs. There is an Executive, a Legislature and a Judiciary. If we interfere with this by way of repeal, to what extent are we crossing the line of demarcation established by the *ad hominem* principle and, if we are, in fact, crossing that line—if not skirting dangerously close to it—then certainly our efforts here may well lead to our embarrassment going forward in fora over which we have little or no control.

I think the Judiciary is well enough equipped to make a judgment or judgments on what matters can be or should be discharged given the passage of time and that if we are not careful, we would further undermine our democracy. I think our democracy has, over many years, been undermined in some form or the other. I certainly think that the Executive has far more power than the Parliament and the Judiciary. It is something that we need to be very careful about and so we certainly should not trample on the rights of the Judiciary as it pertains to its existing ability to address matters of this nature in whatever way it sees fit.

Aside from the Judiciary, I think that to repeal this, almost in as much haste as we proclaimed it—well, we did not proclaim it—might appear to a reasonable person to be an oppressive thing to do. I think that it is particularly oppressive to those acting on the rights that are afforded to them by the existing law because they have a legitimate expectation. They can rely on the law. That is why it is there. It is there, it is given; it was proclaimed for a reason.

A citizen of Trinidad and Tobago has a right to rely on proclaimed law. There is no higher authority in a democracy than the law. Now, if we have formed the view that we think that certain persons are going to access this law and thereby avoid justice, then I think that we are on a slippery slope. We are treading on dangerous waters.

**7.45 p.m.**

Section 53 of the Constitution and section 13 in particular are very clear. I am sure you will indulge me if I read the latter part of section 13(1) of the Constitution which really treats with setting aside sections 4 and 5, which we are

attempting to do with this legislation. It says that you should not do that “unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual”. If a person relies on existing law I think it is entirely reasonable for them to do so and I think we should be very careful about trying to make another law retroactive to deny them that right.

In any event, I think that in the mind of a reasonable person, even this law will not stand. I think that this will engineer appeal after appeal after appeal; 47 or so to be exact. We will pay a lot of money to find out what we suspect or our intuition may suggest to us which is, we are trying to close the barn door and lock it tight, but the horses have long bolted. Who has to get through that space, they have done so and now really we are only appearing to target these individuals. But in fact, to reach them, you may require a very, very long-range arm of the law, as it were.

It also sends to my mind, Madam Vice-President, a very serious concern, and that is there is one kind of justice for a man with money and another kind of justice for everybody else. I do not know if I share Sen. Deyalsingh’s point of view that people do not trust everybody and everybody has failed and all of this kind of thing. But it certainly must strike at the heart of the confidence that a common man has in the system when he can see people with obvious wealth using legal manoeuvres to delay, to hinder, obstruct, obfuscate matters in such a way and for such a time that they are eventually allowed to pass “go”. Perhaps, even collect \$200.

**Hon. Senator:** No jail.

**Hon. Senator:** Do not go to jail.

**Sen. Deyalsingh:** Collecting money.

**Sen. Dr. R. Balgobin:** These miscarriages of justice—because that is what they are—I think, weigh very heavily on the minds of the population. If it is that the impression that we have given is that a man with money can cheat the system, then I think that that is something that needs to be addressed and addressed as quickly as possible. I do not think that we will have done that by repealing section 34. I am not in favour of that. I am in favour of an amendment to the Schedule 6, and an amendment to section 34. Let us fix the legislation and address how it is we ensure that the persons who have accessed or try to access this narrow window can otherwise be caught up.



I think that a number of failures occurred in this particular case. It is interesting to hear people talk about the failures of Parliament and so on. I look at the global competitiveness report results for Trinidad and Tobago where we have sort of operated largely the same on a global sense. Public trust of politicians out of 145 countries, we are ranked 104th. Favoritism in the decisions of public officials we are ranked 109.

Now it is very easy for us to say that people do not have anything good to say about their country. These same messages have been sent for at least the last decade, and it is not improving. I do not think that it is a case of the people not trusting this Government. I do not think it is that at all. I think what we have here, Madam Vice-President, is a crisis of leadership and of governance, and it is a national problem.

People no longer trust any government. I think this has gone well beyond healthy scepticism now. I listened to the Minister of Energy and Energy Affairs say last week or the week before, do not panic-buy, we have gas. The man has an MBA, he has a very good track record in the energy sector. I say okay, a man with credibility has stood up and he has spoken. He is followed by the chairman of Petrotrin, Lindsay Gillette, a man with a long and distinguished business track record who stands up and says there is no need to panic-buy, we have gas. Ancil Roget “stand up and say, I doh know wha dem fellas saying you know,” you all better buy your gas and gridlock!

**Hon. Senator:** No MBA.

**Sen. Dr. R. Balgobin:** Gridlock! Someone was commenting to me that this sort of thing happens. I noted the CEO of the ODPM says we have a disaster plan. Well, nobody believes that because if a little of rain falls, I could tell you everybody think it is a disaster. If a hole forms in the roads it is a disaster. Everybody beats a hasty retreat out of Port of Spain. I wondered whether this was a new phenomenon, or whether this is something that speaks to the record of the current Government. The truth is it is not.

I remember post-1990 where there would be rumours that the Jamaat al Muslimeen would come out and take over Port of Spain, and Port of Spain would empty. The leader of the Jamaat al Muslimeen is another man who has very successfully used the judicial system. By all means a violent and dangerous man. He meets my definition of a terrorist. And where are they? No jail time for these people. I think that we have gone beyond healthy scepticism when we listen to our leaders speak. We do not believe them at all. There is always an inside story. They are never believed, no leader. I think that we have a crisis of public trust. This situation makes things worse.

This situation that we are dealing with right now makes things worst. You can call 47 cases or 37 or 25, everybody is fixated on Messrs. Galbaransingh and Ferguson. The argument is that you have a conspiracy to steal a billion dollars and these men somehow escaped justice. I have no idea if they are guilty or they are innocent. My view is that they ought to have their day in court. They should, they should have that right. If they are innocent then they should be proven to be innocent and freed because their characters would have endured the stain of a decade of allegations.

What instead do we have? I have gone through the *Hansard*. The Minister of Justice came here and he gave us assurances about the timeline. He told us that a number of things had to be put in place before this thing is proclaimed and I do not apologize, Madam Vice-President, with all due respect to everybody else; I do not apologize for taking him at his word. If I cannot trust what anybody else in here says well, you know we are in a bad place indeed.

We have had assurances from the Minister of Justice on two things. We have had assurances from him on consultation and assurances from him on the timeline for proclamation. On the matter of consultations what we have is a statement from the DPP who has issued a flat denial. The DPP has contradicted the position put forward by the hon. Minister. I think that such a flat contradiction is a very serious thing. [*Desk thumping*] You have two very senior men who are responsible for the administration of justice in this country having a very public position that is antagonistic towards each other. Not on an issue of law, not on an issue of intelligence, not on a technical issue, but on an issue of honesty which I suppose will be fundamental for the administration of justice.

I would be very concerned about that. I am also therefore constrained to feel a growing sense of concern about the timeline because the proclamation—to my view, Madam Vice-President—of part of the Act only was wholly unexpected given the tenor of the dialogue that we had when we were dealing with this piece of legislation. So I was quite surprised to see the haste in which this occurred.

Now what is interesting about this is that, unless I read the DPP's statement wrong, the DPP is suggesting at a conspiracy by people in the Government to have these legal matters fail. I think that is a very serious matter. If it is true, someone has to go. If it is false, someone also has to go. So either way someone has to go. The DPP did not hold back. This to my mind, if it is not an unprecedented statement, it certainly does not have rich precedent. The timeline looks like this:

“The Administration of Justice (Indictable Proceedings) Act 2011”—I am reading directly from his statement, Madam Vice-President—“received the assent of the President on the 16<sup>th</sup> of December 2011. Instructively, on the 19<sup>th</sup> December 2011 the Attorney General announced his decision not to appeal the judgment...”

He goes on to say:

“Doubtless, when he announced that decision, the Attorney General must have had in mind the provisions of section 34.”

To an uninformed reader one might pass that straight except that when you get down a little further it says:

“in February 2012 the Ministry of Justice made a request of me for an indication of the number of matters to which 34(3) of the Act would apply.”

### **8.00 p.m.**

Now, why that is interesting is that section 34(3) of the Act is the section that would expressly treat with matters related to Messrs. Ferguson and Galbaransingh, and so I would have found that to be an unusual request for information, but perhaps it is not. I am not acquainted with how this goes. So, no appeal in December, a request for information in February, and then on Independence Day, of course, the proclamation.

What the Director of Public Prosecutions is suggesting here or seems to be alluding very heavily to is that there is a concerted perspective, approach, plan by the Government to pass this Bill and proclaim this section of the Act with a view to allowing the Piarco matters to fail.

Now, what I do not know and cannot answer is the DPP also provides some explanation for why he has not acted yet. I do not know that I accept his explanation. I believe Piarco No. 1 has already been done, and his view is that it is oppressive to start the trial for that until Piarco No. 2 is finished. I do not understand that, and I am not sure that I necessarily agree. If it is that Piarco No. 1 finished a year or two ago, then the DPP and the Office of the DPP has no excuse for delay. But if it is that I am incorrect and that, in fact, waiting for Piarco No. 2 to finish before starting the work is a reasonable thing to do, then certainly the timeline that is suggested by the DPP appears to have the whiff of something untoward.

It may not be true, but he has come into the public domain and he has raised some very serious allegations, and if he is wrong I think he should resign. I think he should resign. If he is wrong, he should resign. He certainly cannot find it tenable after making a statement like this to stand there and say, “Well, boy ah accuse yuh wrongly, ah sorry”. He should resign, but if he is right, well that is a whole other matter because what we are dealing with, Madam Vice-President, is an issue of collective blame, selective gain. “So, all of us geh lash, two men get away.”

I cannot accept that that was in the mind or the intention of the Government. So, I am not inclined to believe the version of events that would suggest that there is some grand conspiracy. That would be fantastic in my mind, but it does appear somewhat difficult to reconcile what else would have happened.

So, I would be very grateful for some sort of explanation on how this thing came to be pulled out and proclaimed in this way. I say that because I looked at the debate on it in the other place and found myself still uninformed on that particular matter. I am hopeful that we can get some clarity on that because I think that would shed light, and we would just dispel any concerns and this would be very important for us to do.

As a society, as we deal with an obviously difficult and vexing problem presented by the cases of these two gentlemen and the issue of corruption that it revolves, if it is true that the Cabinet has approved this, then I would be quite concerned about that because it sort of—well not sort of—but it expressly flies in the face of the assurances that we were given in the Parliament. If it is not true, then I think that the Government is being unfairly pilloried and that should be made clear to all and sundry.

I do not see how, if this is true, any Government can stand for long. I think that would be difficult. So, it brings to my mind the question of who will pay. Who is going to pay? Well, if we pass this and I vote for it, I think that we should pay. We should pay for it to go up to the Privy Council. We should pay. We should bear the burden of the legal costs involved in carrying this to the Privy Council and finding out the truth of the matter. If we do this, we should pay. So, if I vote for it, I would vote for it and hand over a cheque. *[Interruption]* Well, I do not know. We will have to get some legal luminary here to tell me what they think the cost will be. That is how serious I think this is. It matters a little less to us because it is not our money, and it should bother us a great deal.

So, let me think. Mary King paid a high price; Collin Partap paid a high price, for what, I do not know because I do not think he failed any breathalyzer test. Maybe it was for putting on some blue lights and driving. I really have no idea. *[Interruption]* That is not what this debate is all about. *[Laughter]* I am merely pointing out that two people from the Government have paid a high price for different things. We have here a very serious issue—who is going to pay the piper? *[Crosstalk]* I will not make any reference to that matter. That is a diplomatic matter. I think we all watched that on YouTube with a certain degree of discomfort and I was not amused. My blood was crawling when I saw it actually. *[Crosstalk]*

I think that it would be better—I think that Sen. Karim, in crosstalk admittedly, makes a very powerful point. We have to be careful about what we say about each other and about people. There are all sorts of allegations with this thing floating all over the place. It has gripped this country like you would not believe. I do not think that the response necessarily should be by reflex or by “vaps”. I think that we should be very calm and considered about this. I do not know the extent to which we have erred. I do not feel that we have. I think that what we have to do is fix a problem of early proclamation of a part of the legislation, none of which we really agreed to do.

**Sen. Deyalsingh:** That is the issue.

**Sen. Dr. R. Balgobin:** So, now we have to fix that. That is an Executive error. That is not an error of the Parliament, but mistakes get made all the time. We have to accept that, accommodate that and move on. If there is a price to be paid, somebody should pay it.

I do not think that it is enough to say, therefore, that we should just repeal this and everything would be okay. I take entirely Sen. Prescott’s argument of let us amend it. Repealing it is not necessarily going to make anything better. There is a very significant and growing body of legal opinion that says that even if we do repeal it, the rights of those people should still stand and may yet.

So, whatever we do here, it may be that these people have already got away scot-free. And to what extent should the Parliament pursue an individual? I think that we have to be bigger than that. I think that we have to be bigger than that, Madam Vice-President.

And so in closing, I do not think that it is necessary that we should compound a mistake with another mistake. I would say that I do not accept as an explanation or a defence that something has gone wrong here and it is okay because we all

*Administration of Justice Bill, 2012*  
[SEN. DR. R. BALGOBIN]

*Thursday September 13, 2012*

voted for it. It is not enough to say that. It is not enough to say that we all voted for it. We all voted for it yes, but we did not all proclaim it and we did not proclaim one section of it.

So, I think that we need to be careful about that. I think that we should be more mindful of how do we fix this problem than fixated on who has caused it. I think if it is an error, let us fix the error and we should debate around how do we fix that, but we should fix that in a way that ensures that public trust in public officials is restored. [*Desk thumping*]

So, I would be very encouraged to learn what the internal process was. I am not aware of that and that would be very useful to my understanding and my deliberation, but from my perspective the section and the schedule should be amended and not repealed unless we want to take our chances with trampling on the powers of the Judiciary and oppressing the rights of individuals who may have already availed themselves of the opportunities presented in the proclaimed law. I thank you for the opportunity, Madam Vice-President. [*Desk thumping*]

**Madam Vice-President:** Hon. Senators, I just wish to indicate to you that dinner is available, but instead of taking a break, kindly stream out, but bear in mind the requirement for a quorum. Thank you.

**Sen. Dr. Victor Wheeler:** Thank you, Madam Vice-President for allowing me to say just a few words on this well-ventilated topic so far. Just briefly, we are here, again, to discuss this Bill, the Administration of Justice (Indictable Proceedings) (Amdt.) Bill which was last debated on November 29, 2011 and the intention of the Bill, which I agree with, was well meaning. It was a good Bill I thought, and the aim of it was to abolish preliminary enquiries which was part of the Government's strategy to fix the crime problem that is a scourge in this country. It was identified that the preliminary enquiry was contributing to the prolongation of the length in which justice was said to be taking.

Madam Vice-President, we are here today because of recent developments where part of this Act has been proclaimed and there has been much public uproar as well as concerns expressed by certain international agencies. I agree with the hon. Attorney General today when he says that the intention of the Bill was to put a cap on all those cases that were long-standing. If you want to fix the justice system and you want to clear up some of the backlog, the intention to create a cut-off at some point in time.

Now, even though the Bill was passed unanimously last year, some of us did in fact raise concerns about this contentious clause 34. So, it certainly was not a

case where we just debated the Bill and passed it wholeheartedly or as some might have said, the Parliament was hoodwinked—far from that.

Part of the reason this has become a big issue now is because it has been said that certain persons who will be benefiting from, or may be benefiting from, the proclamation of this section are persons related to an airport construction project, and I understand the matter is coming up for hearing very soon, and this may be the reason why we are being encouraged to get along and fix the problem.

Prior to hearing Sen. Prescott's contribution today, I had thought that simply repealing the Act would have dealt with it, but frankly I am not certain if that is the best way forward. I am actually yet to be convinced by the Government that this is the solution to this problem. We have heard of some alternatives rather than repealing it; maybe it can be amended and certain sections adjusted. Whatever is the decision we come to, I am hoping that it will be a decision in the best interest of all concerned, because it is something that we need to fix and fix fairly soon. I thank you. [*Desk thumping*]

**8.15 p.m.**

**Sen. Penelope Beckles:** Madam Vice-President, I join the debate on this amendment to the Administration of Justice (Indictable Proceedings) Act, 2011.

I attended court this morning in Arima, and this more or less is going to influence the contribution that I will make tonight. There are three courts in Arima, and in all the three courts I was asked by several of my colleagues, in a very blunt fashion, "Penny, did you actually vote for that section 34?" I was asked that question about four times this morning. Several of my colleagues could not understand why I would have voted for that particular clause, why I voted for the Bill as a matter of fact.

It is not just some of my colleagues, some of my attorneys, my friends, but I have had to answer that question over the last couple days. Therefore, it is really incumbent on me to give my own explanation and probably a bit of information as to why I supported the Bill at the time when it was debated in November of 2011.

Madam Vice-President, there are only two occasions since I have been in the Parliament—and I have been in the Parliament since 1995—on which I have been asked why I voted for particular pieces of legislation. I have had to defend voting for the anti-gang legislation and I have had to defend voting for this Administration of Justice Bill—and that is since I have been here in 1995. [*Desk thumping*]

I have realized over the last couple days that this particular piece of legislation seemed to have created a kind of interest in the society, as far as I know, that has not been created probably by any other piece of legislation that we have debated in the Parliament.

I say that because for this particular Bill that we are debating today and what transpired in November last year, everyone seemed to have been tuned in to the television, radio, reading the newspapers. The question I asked myself this morning after some of my colleagues spoke to me, is: why is it that people seem to be, in some instances, very angry about what transpired? Why is it that some people are so interested to know a lot more about the legislation and interested to know the consequences of us passing the legislation in November and the consequences of what would happen today? That is in essence what is happening. Whether people are from the market, the grocery or whether it is attorneys. That is what I have found, and I do not know if that is the experience of a lot of other people.

Sen. Baptiste-Mc Knight made the point that she voted for the legislation after listening to the contributions of many persons, and like myself, I listened to the contribution of the hon. Minister of Justice. He indicated that in passing this legislation—if you would allow me just to quote a bit:

“This significant piece of legislation, Mr. President, has been developed at the behest of our Government determined to transform our overburdened criminal justice system.”

Madam Vice-President, to be quite honest, as somebody who has practised in the Magistrates’ Court and listening to the reason given both by the hon. Attorney General and the Minister of Justice, I would say it was very difficult not to vote for this piece of legislation.

As a matter of fact, with the reason given by the hon. Minister of Justice, I do not think there is anybody in this Senate who disagreed with the fact that if you have 100,000 pending matters before the Magistrates’ Court—and we all recognize how people feel about going to court. If you were to ask the average Trinidadian or Tobagonian who has been through the court system and who has had the experience either as a witness, as an accused, even attorneys, they would tell you that it is not really a very nice experience. I mean, it is very difficult.

I would say that I stopped practising somewhere around 2002. I became a Minister, and I went back in practice maybe about a year ago. There were some matters that I had accepted briefs for then, in 2002, where the persons actually



were charged in the 1990s, and I have come back and the clients are basically still my clients. They have come back to me and said, “Well, you know, Miss Beckles, I would like you to continue representing me in the matter that you started 10 years ago, 12 years ago.” [*Laughter*]

My two colleagues, the hon. Minister of Public Utilities and the AG are saying they hope I charge fresh fees or fees consistent with the time that has passed. But the point I am making is that the fact you are experienced with this, one understands that when the Minister of Justice came before this Senate and said that was the objective of the legislation, someone like myself who has been in the system would find it extremely difficult to say that you are not going to vote for the Bill.

More importantly was the fact that the Minister of Justice gave us certain assurances. A number of persons who listened to my contribution at the time would realize I expressed grave reservation that this piece of legislation would, in truth and in fact, revolutionize the system in the way in which the Minister of Justice said. I was not quite convinced that this particular piece of legislation being implemented or being passed would mean that we would have this smooth transition as he suggested. The reason for that was the same promises he made in terms of the appointment of masters, amendment to the Supreme Court Rules, and all the other things that were necessary if it is that the legislation would make sense.

I was minded of course to agree because the Minister of Justice gave certain assurances that, in truth and in fact, that would happen. Madam Vice-President, if I recall correctly, you were actually in the Chamber and would probably remember exactly what it is I am saying. As a matter of fact, the Minister of Justice said, and I quote:

“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.”

The hon. Minister of Justice actually did say what clause 34 was intended to do, and it was sometime later in the night that the actual amendment was put before the Parliament.

This is what the hon. Minister indicated to us:

“This Bill decrees for a favourable intervention to alleviate the current pitfalls of the criminal justice system, without which a cataclysmic result would ensue.”

*Administration of Justice Bill, 2012*  
[SEN. BECKLES]

*Thursday September 13, 2012*

So he was saying that the Bill itself was designed to alleviate the current pitfalls of the 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.”

In terms of the persons that the hon. Minister consulted with, I must say that I took a certain measure of comfort that having spoken about clause 34, the hon. Minister two minutes later indicated to the Senate the persons that he or the Government consulted with. This is what the hon. Minister of Justice said to the Senate:

“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.”

He further went on to say that:

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

The person speaking and giving this statement was the Minister of Justice. I think that when we say that we created a Ministry of Justice and a Minister of Justice, the society naturally expected that that word has a particular significance.

I would say that as much as from time to time we have said that we do not trust the Government, I would find it very difficult for the Minister of Justice to stand here in the Senate and say to us that he has consulted with all these persons, and then later to find out that, in truth and in fact, those consultations took place in relation to the majority of the Bill, but left out a particular clause which is the contentious clause. [*Desk thumping*]

I say again that when the Minister of Justice referred to all these persons he consulted with, it was said a minute after he referred to clause 34. So therefore, in voting for the Bill I was quite convinced, and I had no other reason not to be convinced, that all these persons mentioned here were consulted, not just on the Bill, but that particular controversial clause 34, and that those persons had either given their blessings, expressed their concerns or were satisfied with the contents of clause 34.

Madam Vice-President, what has happened over the last couple days is that people are saying either we were asleep or it was an error. People are making all sorts of accusations as to what really transpired when we voted for that particular clause. Yes it is controversial, but the bottom line is that when we sit in this Parliament and the Government gives certain undertakings, especially an undertaking which convinces us that persons they have consulted with are comfortable with a particular piece of legislation, I think it is normally very difficult for the Opposition, or maybe the Independents—I cannot speak for them—to say no.

**8.30 p.m.**

To me that is where I have a serious concern and a serious difficulty, because I believe that if it is the DPP and all these persons mentioned here were, in truth and in fact, not consulted on that clause 34, then I think it was the responsibility of the Government to tell us that, whilst you are bringing this amendment, and whilst you would want to include it, that you have not had the benefit of the discussions or the opinions of those several persons.

It certainly would have caused us to take a whole different position, and maybe we may not have voted for the Bill. Maybe, I mean, I do not know, there is an urgency tonight as we speak, as it relates to the passage of the Bill. But when we debated it then, I do not know if it was as urgent then as it is urgent now because of what is happening, the climate that is taking place and certain issues that are taking place around the amendment.

So, Madam Vice-President, like many other persons who have spoken before me, I certainly would like to know why it is that the Government did not include that particular section when they consulted with all these persons, I have a serious concern about that.

Now, Madam Vice-President, you would hear me say from time to time in the Parliament that—and I join with Sen. Drayton in saying that we need to look at a whole different approach in terms of how we—the process and the processes that are used when certain critical pieces of legislation come before the Senate for debate. [*Desk thumping*]

Now, I am probably the lone voice in the wilderness that continues to complain about these hours that the Senate has been sitting. Two o'clock in the morning, three o'clock in the morning, four o'clock, five o'clock in the morning that we have been sitting.

Madam Vice-President, I think we need to be very honest with ourselves, that when one sits as we had started here, in relation to this particular piece of legislation; we started 11 o'clock in the morning, and if I recall correctly, when the amendment was tabled, it might have been somewhere—

**Sen. Al-Rawi:** Nine thirty—9.35.

**Sen. P. Beckles:**—well, I think 9.35 is when we completed the contributions, but the amendment was tabled sometime later.

The truth is, Madam Vice-President, we are not willing to accept, as adults, that it increases the chances of us making mistakes. It increases the chances of us ignoring very, very important pieces of legislation for all kinds of reasons.

**Hon. Senator:** Very true.

**Sen. P. Beckles:** I mean, if we were prepared to accept it, even my colleagues on the Government Benches who had to attend Cabinet today, I am sure some of them would have probably had to drop their children to school, some of them may have given a speech this morning, right, and the bottom line is that having done all of those activities, you come now here, and you sit from 1.30 p.m. until the wee hours of the morning. Are we going to accept, as persons who want to govern properly, and persons who want to make the best legislation, that it is not in our interest as parliamentarians to be sitting for 13, 14 and 15 hours, and then pat ourselves on the back and say, we have done an excellent job, and the newspapers and everybody report that the Senate met in a marathon session for 14, 15 hours and passed a piece of legislation.

Then lo and behold we have to come back here and either repeal, amend, okay, and then we find out that there have been serious errors, somebody did not see this. Very often you sit here and you see people sleeping on themselves, dribbling on themselves. You understand? People—fortunately, the Senate is differently configured. It is not like when we were in the Red House, and therefore, those—and they almost have instructions to avoid those—do not put the camera now on those who are sleeping.

Long ago you would see the pictures of people sleeping. Now, we have been very fortunate and that has not been happening. Also because a lot of the camera persons leave here by 4.30 p.m., so they have not been actually staying until the wee hours. The fact that Parliament is now carried live, it means to say they really do not have to come, and they do not really waste time to come and listen to most of us. They decide, well let us listen on television, probably go and sleep, get up

whenever, and so some of us are fortunate that whilst we are sleeping and dribbling and so, that they do not now take out those pictures, but that is the reality of it.

But I just want to make a plea, Madam Vice-President, and whilst I know that for the budget that is an exception to the rule, but we really ought to be a little more serious about the frequency with which we sit in the wee hours of the morning. [*Desk thumping*]

Madam Vice-President, I say that because when you look at the times that we have been sitting—we have been on holiday for quite some time, and in truth and in fact, when you look at the gaps, there have been many gaps. But then you come, and fortunately there is email—you get an email saying that, you know, you have this piece of legislation and most of the time we are debating legislation that we have seen the same day in the Parliament. Okay?

I can only try to impress upon the Government that really we should make an extra effort to avoid that because if we do it, the chances are we would not be here today trying to repeal a piece of legislation or repealing a piece of legislation.

You know, Madam Vice-President, as I said, this particular Bill was debated at the time when there was the state of emergency.

**Hon. Senator:** Oh yes.

**Sen. P. Beckles:** Okay? The state of emergency when a number of us who were going home in the night, it was not a very exciting experience to be driving home by yourself, and you are not seeing any cars or you are not seeing anybody on the road. But we in the Parliament, for some reason, you know, we are here debating legislation and the whole of Trinidad shut down. If you get a flat tyre in the night, and I think if I recall, Sen. Corinne Baptiste-Mc Knight got a flat tyre going home after one of the Parliament sessions.

**Hon. Senator:** Yep. [*Crosstalk*]

**Sen. P. Beckles:** I will ignore any comments that I am hearing. This is a very serious issue as far as I am concerned. Okay. But the point I am making is that, you know, some of us, you see, have the luxury of having drivers so that we could sleep in the back or sleep in the front, and others have the luxury of walking to the Hyatt after the Parliament is finished, so that they can sleep comfortably.

But then there are a number of people working here, in the Parliament, who are going to Blanchisseuse, going to Barrackpore, going to San Fernando, and there are drivers who have to take them home. Sometimes after the Lower House has sat 14 and 15 hours, and the same Hansard persons have to come the next day, the same

*Administration of Justice Bill, 2012*  
[SEN. BECKLES]

*Thursday September 13, 2012*

persons, the same drivers, and the same clerks have to come the next day. Okay? And they have to be awake. Not only do they have to be awake, but if it is—and I know the Attorney General and the Minister of the Environment and Water Resources, Sen. The Hon. Ganga Singh, know what I am talking about. The contributions of today, and many other times when we talk four and five o'clock in the morning, end up in the court. They end up in the court as evidence and, therefore, the Hansard reporters have to be extremely accurate in terms of what is written. And I mean, is it—and I am so happy that we have Sen. James Lambert in the Senate, maybe he will impress upon them about the rights of workers. [*Desk thumping*]

**Hon. Senator:** Yeah, yeah!

**Sen. P. Beckles:** If it is we do not care about ourselves—because certainly most of us do not—then at least we should care about the workers. And I really hope that in this term we are going to take a whole different approach, in terms of how we approach legislation.

And I take the point again of Sen. Drayton, that we may very well have come to a whole different conclusion if we approached the thing differently, by the Parliament having the benefit of the views of the DPP, the views of the Criminal Bar Association, the views of the Judiciary, and all those persons who actually contributed and who were part of the consultation. We as Members of the Senate have never seen any of those pieces of correspondence or what the concerns were or what the recommendations were.

I read where the President of the Criminal Bar Association, Pamela Elder SC indicated that they sent extensive comments on the Bill. Now, I think that would have been very helpful for us. She has expressed shock and she has said, “when was section 34 added, I never saw that section”, but she commented extensively. We have not seen one single part of the comments of the Criminal Bar Association, and those are the ones who are going to, more or less, be there operating and implementing this piece of legislation.

Now, I promised I was not going to be very long, so there are just one or two things I want to close with. You know, Madam Vice-President, we debated a piece of legislation called the Miscellaneous Provisions (Remand) Act, 2011, and therein we amended the Summary Courts Act by deleting “eight” and putting “twenty-eight”, and the indictable offences Act, deleting “ten” and putting “twenty-eight”.

Again, I expressed my concerns that that was not going to work. One of the things we need to do, from time to time, as a Parliament, is to find ways where we can certainly analyze, do some kind of research on the impact some of the legislation has actually had, and whether it is meeting the objectives and the intentions when those pieces of legislation are passed. All right? So that we will know really if we are working—not just hard but smart—because if you go to the courts now, as I went this morning, all that is happening is that, you now have some days on which you have 200 cases, and there are other days on which you have 40. So, I mean how have we really solved the problem?

We have not solved the problem. All we have done is made life difficult for some of the magistrates, and I agree wholeheartedly when the AG says—and he commended the magistrates because I mean they have been working very, very hard.

Madam Vice-President, I want to join with almost all of my colleagues in saying that sometimes it is not always what you do, but it is how you do it, that causes the problem. And when you listen to Trinidadians and Tobagonians and their concerns, people are saying, well, okay fine, you have a good objective, you have a good policy. When you look at many modern countries, many developed countries, this piece of legislation in truth and in fact is in place. It is absolutely necessary, but the perception is that when you take a particular clause from that legislation, on Independence Day, on a holiday, when most people are celebrating, and Trinidadians are doing other things, and that is proclaimed on that day, the question is, why would it have happened then? That is the real issue.

If you give undertakings as a Minister of Justice and you say to the country, look, this is the reason I am going to pass this legislation. Okay. And I am going to tell you that it will not be implemented until “x” is done and “y” is done, and I give you that assurance. And whilst everybody is celebrating, that you take out a particular clause and you have that clause proclaimed, the question then arises, is there some reason you are going to go contrary to what you promised the Senate, because that is what we voted for. And if we vote for something, and now you have everybody questioning and making a lot of us look foolish and people are saying, well—as somebody said to me today, did you vote for “section 34 Ish”? That is what they are calling the section now.

And the bottom line is we ought not to stand here having taken oaths as Members of Parliament and given assurances to the public and to our colleagues—

**Hon. Senator:** That is right!

**Sen. P. Beckles:**—and that we then operate and vote on those assurances, and later find out that we have to come now and defend our position.

Madam Vice-President, I hope that at some point in time the Government is going to give us that explanation which is very secret, as to why it is they found it necessary on August 31, Independence Day, when we were celebrating 50 years as an independent nation, to go and have this particular piece of legislation proclaimed. Thank you very much. [*Desk thumping*]

**8.45 p.m.**

**Sen. Dr. James Armstrong:** Thank you, Madam Vice-President. I am very honoured to contribute on this, the Administration of Justice (Indictable Proceedings) (Amdt.) Bill.

Madam Vice-President, I also voted for the Bill and, at the time that I did, I was quite satisfied that what we were doing was necessary. We were given certain information which indicated, one, that there was a serious backlog in the court system, that there was need to improve the system of justice, that there was a need to increase efficiency in the courts and that certain procedures and systems were going to be put in place: masters, judges and so on. It was on that basis that I really voted for the Bill, and I took the Minister of Justice at his word.

I am very saddened today, I must say, because this is the place where we make laws. This is the place where citizens look up to us. It is in this place that we are referred to as “honourable” and, therefore, it is a question of trust and, maybe I am naive, but I would like to think that I can trust everyone in here and that people can trust me. That is the feeling that I came in here with.

Therefore, we were given certain undertakings, certain indications that certain things would have been done. I must say that we were not given a time frame, but we were told that certain things were going to be done. What has happened really is that these things were not done. The problem that we seem to be having, in my view, is not with the legislation that we passed—which I am still in support of—but it really has to do with the fact that for some strange reason clause 34 was pulled out and proclaimed, and no explanation is being given as to why. That is the problem! That is what got us into this dilemma that we are in today.

Sometime ago, Madam Vice-President, I felt that I was in a similar situation in which we in the Legislature really were asked to clean up the act of people who were not really minding the shop, and it seemed that we are being asked to do the



same thing again today. I remember that we had to pass some legislation here in a bit of a hurry; legislation which had to do with an order of the court, a judgment of the court, and we were asked to pass legislation to stay that order—because somebody was not minding the shop—to infringe on the rights of the citizens, and we did it. And at the time what we were asked to consider was really benefits to a few in relation to benefits of the public good, and I did it, but I did it with a very heavy heart because we were really infringing on people's rights.

Today, we find ourselves in a similar situation where we are being asked to do a similar thing, because legislation was passed and that legislation that we passed created certain expectations, and I think that we are being put in a very, very embarrassing position and there are no consequences. I mean I could understand if somebody came and said, look, somebody came to Cabinet or whatever and there is a consequence, and we are dealing with that, but we want the Legislature to do a, b, c. Apparently there is no consequence and, as my colleague Sen. Mc Knight indicated, nobody is saying anything. Nobody is telling us anything! Why? That is really troubling me.

The other thing that is troubling me, Madam Vice-President, is that I supported the legislation because I also recognized that there are lots of people out there, really, who are caught in the system. We are talking about 100,000. Today I think I heard the Attorney General said 100,000, and I really would like to see some of these people getting some relief. And basically what I hear us saying and I think it is a very dangerous thing to come in here and be calling the names of one or two people. Yes, it is in the public domain, in the media and so on, but seeing that because of one or two people—what we are saying is somebody messed up somewhere, somebody is up to some kind of hanky-panky, and in order to stop that what we want you to do is something that would then also include in the net everybody else that we intended to help.

My inclination is that they will have to be on your conscience. Somebody messed up, and we, all of us are being asked to solve this problem without any consequence to anybody who is directly—somebody has to be responsible.

A Cabinet Note goes to Cabinet, somebody takes it there. Is it that the Cabinet was not paying attention as well? I do not understand that. And we are now being asked: "help us, clean this up".

I am of the view that perhaps we could have dealt with this by amending clause 34, as suggested by my colleague Sen. Prescott. In fact, I was not even so inclined until I heard his contribution, and I am still believing that that is the way

*Administration of Justice Bill, 2012*  
[SEN. DR. J. ARMSTRONG]

*Thursday September 13, 2012*

that we need to go. Unless there is something else that I hear between now and the wrapping-up by the AG that changes my mind, I do not see, really, how I can support that, simply because somebody made a boo-boo, and in a “police and thief game, the thief gonna get away”, and because those two people might get away, they say, well, nobody must get away; everybody else.

In a way it is also unfair to those people because, if you messed up, and you give me an opportunity, it is the Parliament of the country—some of the brightest people are in here. And if you make a boo-boo like that, and my lawyer called me and say, “hey, listen, so, so, so”—how do you then go a few days later and say, “Oh, oh, we gonna pass another piece of legislation”? That, really, does not give me any comfort at all.

Madam Vice-President, I am also mindful of the fact that we have just celebrated our 50<sup>th</sup> anniversary, and the question that I am asking myself is: what have we achieved? What progress have we made and where are we going? What do we want to be? Are we going downhill? What progress are we making? And not only that, this thing should have been coming into law on the 31st, the 50th anniversary of our independence and this is the sort of—I mean, this is a joke, and this seems to be a reflection of what we are about.

Another concern that I have is, the AG told us about 100 people in the system, in the backlog—

**Sen. Ramlogan SC:** One hundred thousand.

**Sen. Dr. J. Armstrong:** One hundred thousand—and every day, we have here about three or four murders, all kinds of crimes taking place and, therefore, what is also happening at a very rapid pace is that that number is expanding rapidly. And, again, it was the reason I supported the Bill in the first place, because I said, look, how many police do we have and how many police we have that can deal, let us say, with homicides and so on? Let us say we have—I do not know—100 specialists who can—and every day you add two, three additional cases to the backlog that they have. How are we really going to solve these crimes? How are we really going to have people committed and so on?

So, I really felt that the piece of legislation was a good piece of legislation, and I really think that it is something that I would still like to support, while I am very mindful of the concerns that I have heard expressed here today that some people might escape the net. And, as we talk about law and order and integrity, I would also like to mention that, as we speak, not only are crimes being committed every day, murders being committed every day, but I would also like to reiterate something that I have been saying over and over again, and this has to do with the extent to which the State itself is also involved in breaking the law.

**9.00 p.m.**

Here I refer to something that I have been saying for a long time: the whole business of all these contracts that we are giving out—and it is known that these are circumventing the Central Tenders Board Act. Who is going to bell the cat? So again, it is really the little guy the small people, who are escaping. And at this level, all kinds of things are happening that I really find it very difficult to support, and again it comes back to trust.

I remember when—just a slight diversion, Madam Vice-President. I lived in Sudan for a while and I was going to rent a house. I told the chap I wanted a contract, and he told me yes. We shook hands and I left. When I contacted him a week later and I wanted to go into the house, I sent a message by his daughter. He did not send me the contract, but he said you can move in. I said no, because I mean in this culture, when you have an agreement with someone—a piece of paper—so I told myself no, I want a contract. He said, but we shook hands. I could not understand what this fellow was telling me about. I am not from that culture. He said, but we shook hands. This was in Sudan and I think it is still under sharia law. I moved in and he gave me a contract, but he sat me down one day and he said, you know you are from a different culture. He said I shook your hand—and he was a bit chauvinistic as well. He said anytime two men shake hands in my culture, it is a deal and you can trust me.

I came into this Parliament with the same view, the same feeling, that I can trust anybody around here. Now, I understand the politics and I understand that you are back and forth. I appreciate that. I am not part of it, but I understand it. So when I hear time, you know, fine, but I am extremely disappointed, Mr. AG, with what has transpired here. Very, very disappointed, and I am really wondering where my allegiance should be. Is it to help out the Government, the Cabinet, or the people that this is going to affect?

The dilemma is that some big fish might escape. But I am concerned, as I have always said in this Senate, about the small man. They do not have the money, and whatever we do today—I will tell you something, whatever we do, the big fish that we are trying to catch now, they gone already; and if you feel you have them in a net, because of the resources that they have, 10 years from now that situation is not going to change. But if we pass this tonight, tomorrow a number of small people will get tied up.

Therefore, Madam Vice-President, I would like to appeal to this Senate, really, not only to the Senate, but also to persons in the Lower House, for us to try

to get serious about what we are doing because I figure it is kind of a pappyshow as well. I remembered somebody sang a calypso about “Kicksin in Parliament”.

**Sen. Singh:** Explainer.

**Sen. Dr. J. Armstrong:** Explainer. I do not think he was too far off because I really do not think we should be put in this situation. We should not have been in this situation. We are in this situation simply because somebody pulled out a part of something that should not have been done, and that the honesty, the integrity, the trust that we should share, the confidence that you should place in your people, and have someone else take responsibility and stand the consequences, rather than doing that, you say all right, let us deal with it through the Legislature. We did that some time ago, interfering with the business of the court.

Therefore, Madam Vice-President, I am not—at this point in time, my inclination is not to vote for this. Deal with Schedule 6, where I think it could also have been addressed there, or in the amendments that my colleagues on the Independent Bench advanced this evening. And that is my inclination, Madam Vice-President. So I would like to put the AG on notice that he has some convincing to do in the next few minutes to get my vote on this. Thank you very much, Madam Vice-President.

**Sen. Shamfa Cudjoe:** Thank you, Madam Vice-President, for the opportunity to make a very short contribution to this debate. I do not expect to speak more than 10 minutes for the most. I get a sense that at this time the people of our nation are experiencing a sense of disgruntlement and disappointment and a number of people are saddened. I do not know if “disgruntlement” is a word, but “disgruntled”; we are sickened. We are not pleased. We are very displeased, and I do not say that coming from a PNM Opposition Bench. If you go to the banks, if you go out in the streets, if you read the newspapers, you would hear some of the comments being made about what has happened, very unfortunate event. People feel tricked, we feel duped, we feel like we were fooled, we feel like we were used as tools in this UNC charade.

Now, Madam Vice-President, I want to point to the front page of today’s *Express* and the article is called: “A question of trust”. I was reading the comments on the Internet. Citizens would have made comments on the Trinidad *Express* website. I want to quote from a person, I do not know if it is a man or woman saying, the name is: “take back tnt”, and I quote:

“Throughout the brief history of this country we have had too many incidents of fraud, dishonesty, corruption and blatant greed. For such a small country our leaders are quite simply too dishonest. They continuously count on the people to not make noise and to swallow everything they throw at us without

question. Not this time. In all my 50 years here I have never ever seen this level of incompetence, blatant favoritism and outright lying and corruption. This is the blackest day in the history of this country. I am truly ashamed to be a part of this system for the first time in my life. I know I keep coming back to being ashamed but that is because I AM!! I don't know any more. I just don't know. This may just be the straw that breaks my back. For the first time I am contemplating leaving this bleak and corrupt place. This lawless hellhole where murders have become so common they no longer bother us. Where thievery at every level of leadership is so blatant that nobody even cares if they do it in front of our faces any more. Where the insult and injury to myself and the people of this nation has become sickening. I really don't know."

I chose this comment, one, because the person is 50 years old and would have been born in 1962 and celebrating 50 years just like we are celebrating 50 years of independence, and this one comment got the most likes throughout the whole day. I am seeing people just liking, liking this comment. So I guess that many people can share the same sentiments of this person that wrote this comment felt.

[MR. PRESIDING OFFICER *in the Chair*]

Mr. Presiding Officer, I just want to say as a Member of Parliament, I take my work very seriously as a young person. I just really believe that when we come to Parliament and we give certain assurances and make different commitments that we stand by our word. This is the highest forum of the land and if we are not telling the truth within these walls, then why do we get ready, get dressed and jump on a plane to come here. It just negates everything that we have been doing and it just puts a different feeling in my mind and rests very, very heavily on my heart as to why am I here, what am I doing here, why are we even coming here to debate, if what we say within these walls does not matter.

Mr. Presiding Officer, I want to raise just two issues here today. I recognize that partners within the partnership have sounded their voices of dissent. The MSJ, no longer a partner, has spoken out. They have lamented this treachery. The COP said that the Government is smelling.

Mr. Presiding Officer, I am yet to hear a comment coming from, or a position coming from the Tobago Organization of the People that has drawn the people of Tobago into this marriage of convenience.

**Hon. Senator:** Oh! Good point.

**Sen. S. Cudjoe:** Every time we get into some negative or unfortunate ordeal with this Government, I remember that it is the TOP that introduced us to these people in the first place.

**Hon. Senator:** These people? [*Laughter*]

**Sen. Ramlogan SC:** “Who is ‘these’ people?”

**Sen. S. Cudjoe:** To the people who are part of this Government, to this People’s Partnership. The people of the TOP joined the people—[*Interruption*]

**Sen. Ramlogan SC:** Are we not citizens of Trinidad and Tobago? You going back to “we” and “them”, an old PNM thing. “We” and “them”.

**Sen. S. Cudjoe:** When you have your time you will talk. This is my time, this is my 45 minutes.

**Sen. Ramlogan SC:** No, no, no. Talk sense “man”; do not go back to “us and them”—foolishness.

**Sen. S. Cudjoe:** The people of Tobago—I am going to say it again, Mr. Presiding Officer, anybody who has anything dissenting to say about it, will say that in their time, but in my 45, I am going to say what I am going to say, and I am going to say what I feel. [*Desk thumping*]

**Hon. Senator:** Yeah man.

**Sen. S. Cudjoe:** When the spotlight is on you, you say what you have to say. This is my time I am going to use it how I want and that is why I was sent here to say what I want. If you have a problem with that, you speak on your time.

Mr. Presiding Officer, I call on the TOP to hear its position because we the people of Tobago were brought into this marriage of convenience with this partnership through the TOP. We were introduced to them by the TOP. So I am asking the TOP for its position on this. The COP has spoken out, the MSJ has spoken out, and I just want to hear what the people of Tobago who have brought us into this have to say about this. As a right-thinking citizen of this nation, as a Tobagonian, I feel I have the right to come here and say that.

**Hon. Senator:** She is making an excellent point. [*Desk thumping*]

**9.15 p.m.**

So, again, I call on the TOP. And from a youth perspective—this is my second point—I had the chance the night before, or last night, to go and pick up a friend from the barbershop and the conversation in the barbershop, while some of the young people there did not know the details of what has happened, some of them just know something has gone terribly wrong, and the conversation among some of the young men within the barbershop was that, if the big men are getting involved in white-collar crime and are allowed to walk away free, “who is we”?

**Sen. Singh:** You talking about the Rahael transaction.

**Sen. S. Cudjoe:** If they are having criminal transactions and being endorsed by the Government, “who is we”?

**Sen. Ramlogan SC:** What were you doing in a barbershop?

**Sen. S. Cudjoe:** I have brothers and cousins—[*Desk thumping*]

**Sen. Al-Rawi:** “Doh take him on.” Tell them! Tobagonian brothers on the ground!

**Sen. Ramlogan SC:**—and loved ones.

**Sen. S. Cudjoe:** There you go. I live in Bethel Village. I live on the block. As I said before, I sit in my bedroom and I hear the conversations on the block, and a lot of times when I have to go get my brother inside, it is off the block I have to get him, and if I am roughing him up; if I am speaking to him, I am speaking to them too.

**Sen. Ramlogan SC:** Well said.

**Sen. Singh:** I prefer the diamond club.

**Sen. S. Cudjoe:** The diamond club is only for young ladies, no men. But anyway, Mr. Presiding Officer, that conversation raised some alarm within me and I am wondering if this is what the young people are thinking about us. We are the example setters. We are here debating in the highest forum of the land. People turn on their TV—young people. When I came here today, there was a class; I think some school—

**Hon. Senator:** The Youth Parliament—members of the Youth Parliament.

**Sen. S. Cudjoe:** The Youth Parliament. I was not here to hear who they were. But they are looking to us for example and if the people of Woodbrook and the people of Goodwood Park and Gulf View and Fairways are acting in this way,

what do you expect from Laventille and Morvant? What do you expect from Bethel Village? What do you expect? We are looking to you for example; we are looking to our leaders for example, and if our leaders are going to endorse criminal activity, what do you expect from young people?

I read a quote on the Internet from a famous Greek philosopher—I think he was a Greek slave. His name is spelt A-E-S-O-P. I do not know how it is pronounced.

**Sen. Al-Rawi:** Aesop.

**Sen. S. Cudjoe:** Aesop. He said, we hang petty criminals and the big ones we appoint them to high office. This cannot be the example that we are setting when we cry day after day, week after week, that we want to see crime go down in this country. What is the example that we are setting?

I must express my disappointment and total disapproval with the Minister coming here in Parliament—and if you go back and check my *Hansard* record, I kept saying, “I do not trust this move; we do not have procedures; we do not have the rules and regulations; we do not have the infrastructure, but Mr. Minister, I am holding you to your word.” In almost every paragraph I am saying, “I am agreeing to this because I am holding you to your word”.

One of the best pieces of advice I got—probably the only piece of advice I really got from my leader when I was appointed to the Senate, he said, “you go up in there and you speak the truth”. But when you come in here and you speak the truth and you make these assurances and you make these commitments, I expect all these people in here; all these honourable people to go ahead and fulfil that commitment.

I do not expect anybody to come to Parliament and say, “I am going to do this”, or “I am going to do that”, and then turn around and not do it. I do not expect that. There is some kind of level of camaraderie, some kind of level of trust. We take an oath when we start our duties here in Parliament. I do not expect to be betrayed.

As a young person I get myself ready and I come here and I am excited because I feel like I am getting the opportunity to really influence the process and to make a serious change, and if when we come here, what we say does not matter, then why are we coming here? Why are we wasting our time? Why are we wasting people’s time?



We have to be as good as our word. A woman in the bank yesterday evening said—an old Tobagonian woman—“What is causing this dismeanious behaviour?” I went home and I looked for the word, “dismeanious” and I could not find it, but I kept searching. I said I guess it is related to “demeaning” or something like that. But I have to ask, what is causing this “dismeanious” behaviour of parliamentarians?

We speak about “honourable this and honourable that”, but you would learn in the streets and you would learn anywhere that you go, that you earn honour. [*Desk thumping*] Nobody would just wake up and be honourable. You earn honour. Not because you are a Member of Parliament you are honourable this or you are honourable that; that is “play-play”. You earn honour, and that is what we have to do in here, earn honour.

We cannot speak about young people. That is why I hate to hear old people talk about young people because we are quick to “bad mouth” young people and we are setting no good example, and that bothers me! Because we are the first ones to say, “Look at them in Laventille; look at them here. These young people need to do this; these young people need to do that”, and we are here watching you and following your lead and you are messing us up. So, if you do not have your act together, take young people’s name out of our mouths. [*Desk thumping*] I feel very strongly about that.

My father taught me that a man could only be as good as his word. No matter how much money somebody offers you; no matter how much position somebody offers you, when you choose a man, know that he is only as good as the word he keeps. If he says he is going to do something, he must come through. Old people in Tobago would tell you that because, you see, when you do not follow your word in Tobago, an old person will tell you, “Yuh nuh wot ah pint ah piss”.

**Hon. Senator:** Tell them again. Tell *Hansard*.

**Sen. S. Cudjoe:** That is what I get from this Government. If I measure your actions according to that ruler of Tobagonians, “Yuh nuh wot ah pint ah piss”. If you never heard it before, it is a colloquial expression and old people will tell you that. When you do not fulfil your word, “Yuh nuh wot ah pint ah piss”. Find out what it means.

Mr. Presiding Officer, with those very few words, I call on all of us to buckle up our belts; pull up our socks and to play our positions; play our part; know your pedigree; know what you stand for; [*Desk thumping*] and set your example. Do not call on young people to do anything that you are not prepared to do. We continue resting this heavy burden on young people: you must do this; you must do that, and then we mess up the whole thing and we mess them up.

So with those few words, Mr. Presiding Officer, I thank you. [*Desk thumping*]

**Sen. Subhas Ramkhelawan:** Thank you, Mr. Presiding Officer. I welcome the opportunity to make a brief contribution to this, the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2012. Mr. Presiding Officer, I think that, from what we have heard from honourable colleagues in this Senate, there is deep concern about this matter regarding the proclaiming, among other things, of section 34, and I agree with most of my colleagues that when we passed this legislation, we were very hopeful. We were very hopeful of significant change that was anticipated in the justice system, significant change in the sense of the case management in the event of a new approach to managing the flow through the courts.

More particularly, I think we were all in favour—as we voted and the evidence shows—of this matter of, what I would like to call, the 10-year rule, where after 10 years matters would be dropped if they were not taken through the court system.

So I cannot fault the Parliament in supporting this particular aspect, which is now couched in section 34. I think where matters have gone astray is in the sequencing of the proclamation and mainly in the Executive action. I do agree that we have not gotten a fulsome explanation of what went wrong in terms of the Executive action, and that, to me, is a lacuna as we move to make a vote with regard to this particular amendment.

Really, what has had happened here, Mr. Presiding Officer, is that as far as the citizenry is concerned, what we have is a referendum, really, on whether the Government is to be trusted or not. That is what it comes down to because, at the end of the day in Parliament, we have made a lot of arguments.

I have heard my colleagues. Certainly, the fertile minds of the legal fraternity make very strong and pointed comments and from there, three or four contributions, we would have had five or six opinions, as is normally the case with lawyers, and I do apologize. It is not my intent to offend at this point in time, and for us, we now have to make decisions. We now have to decide how we are voting. It is clear how the Government Bench would vote with regard to this matter; it is seemingly clear to me how the Opposition Bench would vote on this matter, but it is also obvious to me that there are a lot of concerns amongst my colleagues—my honourable colleagues—on the Independent Bench and the question as to how to vote in this matter. Because, as you all know, there is no such thing as a consensus or a caucus on the Independent Bench, and you would see that in the vote as it comes forward.

There are several issues. What we are doing by the Executive action, or should I say Executive error maybe, is that our noble intentions about changing the backlog, those noble intentions now fall to the wayside. Why do they fall to the wayside? Because in our effort now to deal with a few, we are going to allow the many to suffer.

That has been part of our situation for many years, where the small man, essentially, bears the brunt of the weight for the mistakes and errors of judgment of the big boys, and so it is again that this is happening because, in an attempt, really, to seek to save face on this matter, what we are doing is 100,000 cases that are in backlog—and I do not know what proportion of that 100,000 would be over 10 years—those persons will now, with this particular repeal by amendment, go back to the grind of having to go through an inefficient court system. So it is something that weighs heavily on my mind as to how this matter itself should be resolved.

I do not want to add too much more, except to say, the question of a referendum on trusting Government is in the minds of the citizenry, and it must be on our minds as well since we are here to represent the citizens in some shape and form.

I do not think that we have to admit to any manifest error because that was not the intent of the legislation in its original form. I think there is need for an admission of error from the Executive side of the equation in terms of the sequencing of actions, or shall I say the mis-sequencing of actions.

One point that I would like to make: I have heard the discussion about adjustment to Schedule 6, and I have heard a lot of the discussions in terms of amendments that ought to be made, but what is clear is that our intent, as a Parliament, did not envisage that there would be an escape hatch for a few citizens by the insertion of this section 34 in the original Act. But, as it has happened now, what we are seeing is what is unfolding before us.

### **9.30 p.m.**

So, the conspiracies that have come about and the conspiracy theories that have come about, if I chose to believe that there was a conspiracy out there in the full glare of the public rather than an Executive error, then I would have to believe that we are approaching a failed State or we are a failing State. I choose not to believe that. I choose to believe that there has been some significant error on the part of Executive judgment, and that significant error is moving to be corrected. But, even if that error is corrected, what it means is that so many will suffer because of the intention to capture in the net so few.

So, it is a challenge for many of us in terms of how we interpret and decide, certainly on the Independent Bench, how to vote on this particular matter. As I said, and I want to reiterate, I believe it is an error. I do not believe it is a conspiracy, but conspiracy theories abound.

So, let me say, I wait to hear the explanation and the winding-up of the hon. Attorney General in addressing these particular matters which have been raised across the board by many of the Senators who have spoken and given a lot of coverage, and eloquently so, in terms of this matter, in particular, this amendment to section 34. So with that, I thank you, Mr. Presiding Officer.

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Thank you very much, Mr. Presiding Officer. [*Desk thumping*] Mr. Presiding Officer, this matter is obviously one of a rather delicate and sensitive constitution. It is one that has caused great consternation, a lot of emotion, a lot of passion even, a lot of patriotism, all of which is understandable.

I have listened patiently to the illuminating and erudite contributions that have emanated from Members opposite and indeed on this side as well. Without going into a rehash of all that has been said before, it boils down simply to the nature of the amendment or what do we now that we find ourselves at this critical juncture. Is it a case of “damned if you do, damned if you don’t”? Is it a case of—as the Independent Bench says—the law that we passed is not problematic and we intended to pass what we passed? If that is so, and we are clear in our mind that the law that we passed reflects and embodies what the intention and the will of Parliament was and is, then that begs the question as to what is all the furore about? What is all this sound and fury about?

Because if—I think on the outside the perception is that somebody “pull ah fast one”. The “fast one” is that in the transition of the Bill from the House of Representatives to the Senate some amendment was neatly tucked in. Today, the country has at least, at minimum—if one good thing has come out of the debate, it is that today the country is clear without any doubt that there was no amendment tucked in at the 11th hour or surreptitiously put into that Bill, but that that clause that has caused so much controversy reflected the deliberate will and intention of the Parliament. [*Desk thumping*]

Now, if it reflected the deliberate will and intention of the Parliament, the concern has been expressed with respect to the piecemeal, partial, proclamation of one section. I will come back to that. But, let us for the moment assume that the law that we passed, we were happy with it, and we are not therefore prepared to

repeal it and so on. I ask the question, let us say in January when all the infrastructural things that were meant to be put into place and so on, when that happens, and in January the entire Act was proclaimed, including section 34, when persons started to make applications under section 34—because the whole Act would be proclaimed including section 34—and be discharged and started to walk free, is it that there would be no public outcry, is it that we would stand up to the nation and say that is what we wanted as a Parliament, that it is in accordance with our wish and our intention?

One thing we do not seem to understand and get clear is this: whatever assurances the Minister of Justice gave to the Parliament, whatever infrastructure needed to be put in place, whatever rules needed to be made, none of that has anything to do with the creation of a substantive legal right, which is made in the Act of Parliament that we passed here.

Rules are subsidiary subordinate legislation. They can deal with matters of procedure—building a courthouse and having more masters. All of that is ancillary and in aid of the legal right you have created. But, nothing that you can do, can nullify or destroy that legal right you have created.

So, the point I am making is that all of the subsidiary things that we say needed to have been done and so on, that falls by the wayside because we created, with our eyes wide open, this legal right for persons who fall into that 10-year rule to have their matters dismissed.

The question I ask is, assuming all those things were put in place when the Act was proclaimed as a whole—in full—when persons started walking free because the offence was committed 10 years ago or because 10 years passed and they have not been put to face a judge and jury, then would we have been prepared to say to the nation that, look, that is what we wanted. I am not so sure, Mr. Presiding Officer, and I tell you why. You see, there are some options that I considered in this matter. The first thing is that the basic principle of the criminal justice system is that the public has a right and an interest in the prosecution of criminal offences.

In some countries like the United States of America the criminal cases are intitled as the People versus so and so, the defendant. In other countries it is the State versus so and so. Well, I like the one about the people because it embodies and reflects that when the wrong is done, and when the social contract and pact is breached—that sacrosanct social pact—when that is breached, the wrong is done to society. When a crime is committed, it is not done just to the individual, it is a crime against the people. That is why it is the People versus Mr. X, defendant.

*Administration of Justice Bill, 2012*  
[SEN. THE HON. A RAMLOGAN SC]

*Thursday September 13, 2012*

When one looks at that philosophically, one begins to understand why it is so dangerous for any Parliament to say that we will decide that certain criminal cases will be determined without a trial. It is not for us, the wrong is done to the people. The commission of a criminal offence is a wrong done to the society, and the society has a public interest in the prosecution of that criminal offence.

Therefore, we have to think very long and hard before we can say as a Parliament that we are going to prevent certain crimes from being prosecuted. Any notion of a crime that is committed against the people being dismissed without a trial is a very, very, serious matter. It gives rise to several considerations. Why some and not the others? Who dares to presume and arrogate unto themselves, the right to draw a qualitative distinction in a violation of the moral code of ethics in a society, to say one crime should be allowed and without prosecution—because “10 years pass, yuh could walk free”. But, for the other one, it cannot be so because we put it in the schedule.

There is an inherent sense of capriciousness and arbitrariness in having to decide as a Parliament that we think, and we say, that you, victim of crime X, 10 years passed and the State—not the victim—cannot put the accused to face a judge and jury. And we say to you, victim of the crime, “10 years pass, you humble up, shut up, go home,” and let the man walk free. Then we say to another person, “Well, no in your case ‘pardner’, Mr. Y, 10 years could pass, 15 years could pass, we go still prosecute you”. Because, that is what it is about.

[MADAM VICE-PRESIDENT *in the Chair*]

Who is going to say and who is to make that decision that one victim’s anguish, hurt and pain, and distress should be valued less or more than another person’s. That strikes at the very root and core of why the Government’s position is to repeal rather than to retain. [*Interruption*]

**Hon. Senator:** Bias!

**Sen. The Hon. A. Ramlogan SC:** You are right, there is a certain inherent, inbuilt bias in retaining and saying, look put this in the schedule.

So the first thing is philosophically, as the matter of policy, the Government does not support the notion that Parliament should take a decision to say certain crimes after 10 years, people could walk free, without reference to the victims feelings and in other cases you cannot. So that is the first point.

The second point is with respect to the point made by my learned friend, Sen. Prescott—could we not retain and amend the law? I was initially of that view, and at first blush it is a rather attractive argument, but it can also be a very deceptive and

dangerous one for the following reasons: if we amend it and we say that we give the Judiciary a discretion to say, instead of you “shall” discharge, you “may” discharge, several questions arise. The first thing is, we would have preserved a new avenue and escape route for criminals that did not exist before in our legal system, which is to make an application after 10 years and you could get off. That is the first point. We preserve that avenue, that escape route that we have created.

The second point is this, when we say the judge “may” discharge, without telling in the legislation, on what basis is the judge to make up his mind, how is judicial discretion to be exercised if I change the word “shall” to “may”? It is going to be uncharted, virgin territory for the Judiciary to tread with great caution. But, judges are only human beings. We come with all our human fallacies, foibles, idiosyncrasies, natural biases. So the point is this, if we change “shall” to “may” what are the principles that the judge will base his decision on? What would be the single most important criteria that he should put and place the greatest amount of weight to influence his judgment on? We leave that on a case-by-case basis to be decided.

#### **9.45 p.m.**

When you leave that on a case-by-case basis to be decided—because you have now created a new playing field, and you do not know how the grass will grow on it—every person will want to appeal that decision. Every person, knowing that Parliament did not say in the legislation how the judge should exercise his discretion or what are the factors he or she should take into account, every person will now know that if you decide against them because “it eh have nothing in the law to guide de judge, I appealing yuh tail”!

When they appeal from the High Court to the Court of Appeal, that is a three-year period, and then from the Court of Appeal to the Privy Council, another three-year period. “Yuh know wha’ happen dey?” That is, in addition to the 10—remember the minimum is that you have to be 10 years in the system, “yuh adding six to that 10, trial cyah start”; application pending; that is 10 and six, 16. When the Privy Council rules, “No, the judge right. Go back and face the court,” do you know what happens then? They make a fresh application. Where does that fresh application come from? I will tell you.

This country has always had as part of its legal system at common law the right to make an application to stay a prosecution on the ground that it would be an abuse of the process to continue with the prosecution on the ground of unreasonable delay. Unreasonable delay is different to a straight, fixed 10-year rule because in some cases, 10 years may be reasonable.

When you take 10 years and you put it in there, you are saying that is a limitation period almost; that is a limitation period; you are saying 10 years is the cut-off point. At common law, what amounts to unreasonable delay is a different set of principles that guide and will apply. But, when you come back, 10 plus six is 16—16 years. Let us say that you were 20 when you committed the offence, you are 36; and 16 years later, “Yuh coming to tell ah judge, ‘Well, due to no fault of my own, 16 years has elapsed since they charge meh with this offence, and I want to tell you, Sir, that I do not think I should be tried, it will be an abuse of the process. Listen, ah cyah remember nutten. Two ah de witness dead. One ah de prosecution witness migrate,’” et cetera, et cetera, et cetera.

So, I do not think that changing “shall” to “may” and retaining that provision and giving judicial discretion is a practical solution because what it does in reality is to create yet another layer of delay that can only serve the interest of the accused person.

The other point is this—you can well see arguments cropping up. We see it even now in the newspaper—one magistrate sentences a man for five years and \$3,000 compensation. For a similar offence with similar facts, another magistrate gave him a \$1,000 fine and that is all. Inconsistencies in sentencing have been with us for a long time, but the point is that inconsistencies in the exercise of judicial discretion, which comes from human beings who are judges, are also part and parcel of our legal system.

So, what then happens to the defendant who is similarly circumstanced and a judge says, “You will face trial”, but a judge in the next courtroom, because there are no principles to guide them, telling the next man who is similarly circumstanced and so on, “You, go home and walk free, man, yuh good to go, 10 years pass”. There is a certain inherent sense of arbitrariness and a certain amount of capriciousness, and also, it can lead to perceptions of bias and discrimination because Parliament will not be saying to them: “How is it that you could exercise your discretion? What is it we think should guide you?”

I come now to the amendment of the schedule. I also thought about that. I thought it was a good idea to simply amend the schedule because it can be done by ministerial order. I want to point out that if the Government had anything to hide in this matter, we could have simply amended the schedule, and we would not have to be facing this “licks” and “jamming” today. Because, by amending that schedule, you do not have to come to Parliament; it is subject to negative resolution, but it takes effect when the order is made. The negative resolution can negative but until it negatives it, it is good law, so I considered that. But, the



Prime Minister in her wisdom said that this matter is one that should go back to the Parliament in the interest of a functioning democratic society so that people can have their say, and let us be frank and candid about it.

So, we came back to Parliament, instead of doing a ministerial order, to amend the schedule to put these criminal offences there and we could have avoided all of this. Why did we do that? One, it is the correct and proper thing to do; it is the right thing to do. Secondly, amending the schedule gives rise to the very same problems; I can cut and paste my learned friend, Sen. Prescott arguments. I can lift it, cut it and paste it, and say if I amend the schedule, the same arguments will apply. Why?

How is it when I made my application and I made it in respect of a non-scheduled offence, you are now going to make it a scheduled offence and tell me, I am no longer subject to the 10-year rule? When I made the application, I was subject to the 10-year rule—10 years and I could make my application and I could be discharged. After I have made my application, you come and amend the schedule and put these offences there, and now telling me suddenly, “de 10-year rule doh apply to me again”. All the arguments that we have made about a substantive right, having vested, they resurfaced, so I did not favour that.

But, there is another reason and it is this. If we have made a mistake, or, in retrospect, upon reflection, we feel that we have passed a law that will not serve the public interest well, then we have a duty and responsibility to come back and do what is right; and from the Government’s standpoint, we think that is what we are doing. Why do we say that? Why are we on the side of the retentionist as opposed to the abolitionist? Sorry, I mean on the side of the abolitionist instead of the retentionist. It is this.

When you pass a law that says 10 years after the commission of an offence, “yuh cyar charge ah man again and yuh cyah try him”, that is a very dangerous thing. We recently passed amendments to the Proceeds of Crime Act, the Financial Intelligence Unit, you have the Larceny Act—you have many, many other Acts. How many crimes are discovered after the passage of 10 years? How many crimes that were committed that evidence to substantiate and justify the prosecution’s case going forward remained cold, gathering dust on some shelf, until some piece of evidence coughs up and surfaces and then they say “ah”? In fact, on cable TV, there is a show—what is it called? Cold storage?

**Hon. Senator:** Cold Cases!

**Sen. The Hon. A. Ramlogan SC:** Cold Cases, and the whole show is predicated on cases that were closed, that had gone cold, that they had put on ice, and 20, 25 years later, evidence surfaces. What are they doing? They are charging and prosecuting and securing conviction.

We passed in this Parliament a DNA law. We do not have a proper DNA database; we are building one. What should happen pray tell if “yuh take ah fella DNA because he want to join the army, and it test and matched with a DNA sample found at the scene of a brutal rape of a girl who was kidnapped 20 years ago?” What about the child who is unable to understand what is happening to her and who is being raped? But later on, 15 years later, understands it and wants to cry and say, “Well look, I was a victim of a crime.” I mean, I just use this by the way of illustration.

What is to happen in the Commission of Enquiry that we have lodged, that we have initiated as a Government, into the financial fiasco and collapse of Clico and the Hindu Credit Union? What is to happen? What is to happen in the Petrotrin World GTL Project where almost \$1 billion was sunk, and we find evidence of misconduct in public office? What is to happen in the case of Calder Hart if we find evidence of misconduct in public office, and an administration that retained, nurtured and kept within their bosom for the eight years that they were in power—“yuh talking’ bout 10; dats eight and two, is 10”. So, if the offence was committed, what do we do? What is to happen with US \$6 million investment into Bamboo by e TecK? US \$6 million; TT \$30 million that simply—the minute they paid the money, Bamboo simply disappeared off the books in Hong Kong and the money—US \$6 million—just vanished into thin air.

What is to happen with the misconduct at UTT where we leased an entire Aripo Guest House, spent a fortune to renovate it, only to find out that the person who we were paying did not actually own it in the first place? When evidence comes up and more than 10 years have passed, what are we to do? So if a Government gets two terms, what that means is that any wrongdoing that occurred during the tenure of that administration for misconduct in public office, or anything else, it means that because you have served for 10 years, when that administration changed, “yuh cyar charge dem! Ten years pass, whey yuh go do?” [*Interruption*] “Yeah, sure.”

**Sen. Drayton:** May I just ask one question? In the light of that, because all the situations that you have just mentioned there pertain to white-collar crime, fraud, which are not on the schedule, are we going to have another commitment from the Government that the schedule will be amended to include the list of crimes that we have tabled here? [*Desk thumping*]

**Sen. The Hon. A. Ramlogan SC:** I am grateful, Senator, for your intervention. I want to say that the Government is committed to these ideals and principles [*Laughter*] and we will go one step further. I will not amend that schedule, I will repeal that schedule in its entirety. That means that not a single crime, none, will be subject to the 10-year limitation. That means whether it is fraud, embezzlement, larceny, anti-money laundering—whatever the criminal offence, it will no longer be subject to the 10-year rule. So, we have upped the ante and by repealing that schedule in its entirety, it means that your point is not just answered, but it is actually bettered. That is the reality.

**10.00 p.m.**

**Sen. Drayton:** Could we compound that betterment and say that within the next month we would have that Bill repealing—[*Interruption*]

**Hon. Senator:** This evening.

**Sen. Drayton:**—or this evening, that you would repeal that? Because you can do it this evening. It is not going to affect the material amendment Bill.

**Sen. The Hon. A. Ramlogan SC:** Sure. But Ma'am, the repeal Bill which is before you does precisely that. The repeal Bill which is before you does and achieves precisely that, because when you repeal that section, the 10-year goes.

**Sen. Drayton:** So, what would happen to section 27?

**Sen. The Hon. A. Ramlogan SC:** Ma'am, when this section 34 goes, there is no longer any basis for that application under section 34, none. I think the—you are happy now. You are clear.

**Sen. Drayton:** Well, after the experience, I could never really be happy with a government commitment.

**Sen. The Hon. A. Ramlogan SC:** On this particular question.

**Sen. Drayton:** But, in good faith, once again—

**Sen. Baptiste-Mc Knight:** Good what?

**Sen. Drayton:**—I would accept that you will repeal.

**Sen. The Hon. A. Ramlogan SC:** Sure. Thank you very much. That is the point. The point I am making is that we are actually doing more than you are asking. You are saying amend the schedule and put these additional fraud, and so on. I am saying get rid of the schedule in its entirety. Not a single criminal offence

must be subject to the 10-year rule. Do you know why I said that? Do you know why I do not want to amend that schedule, Senator? When we create new offences in this Parliament, the schedule will not contain those offences because they are new offences.

So, when we debate cybercrime legislation and child pornography on the Internet and a host of other new offences are created, it will not be in the schedule. So, what do we do then? We leave out those? That is why we have to say repeal it in its entirety so that it will not be subject to any 10-year rule. That is the strongest possible position for a government to take in the interest of the public. [*Desk thumping*]

You know, in my practice, many times, one of the most interesting areas in the practice of law is actually estates and wills and administration of estates. “Yuh know why? Is only when people dead yuh does find out whey dey have.” And many times, when you are doing the probate of the will, you suddenly realize that there may be evidence there that could be relevant to the commission of a crime.

The Proceeds of Crime Act, anti-money laundering and a range of things, but it only comes apparent when the person is dead. “Yuh know how many people have things in safety deposit box? Yuh know how much people commit robberies and because dey cannot sell it, dey cannot even sell what dey tief, dat dey have it in safety deposit box? So when dey dead and you actually probate the will and yuh go and pull de safety box then yuh get de evidence? By dat time, if de man live 20 years since he tief, wha happen?”

So, I think we favour not amending the schedule but getting rid of it. We think that the better thing to do is to repeal it in its entirety. Now, that is not to say that I do not think that the Senators on the Independent Bench did not make a solid point with respect to the need for us to have some form of limitation, having regard to the balancing act that is required to protect, on the one hand, the rights of the citizens and, the public interest in the right to prosecute crimes. I think it is a good point. But, that is a discussion that the Parliament needs to have on a frontal basis and in the full glare and scrutiny of the public, so that it does not come and creep up like a thief in the night for the public. That is a discussion.

In Canada, when they have discussions like that, they have something called VIA, victim impact assessment statements. The victims of crime should have a say in that. Who are we to sit here to determine that we should tell some victims their perpetrators who infringed and violated their rights could walk free after 10 years in some cases but they cannot in others? I think that is legislative arrogance, if we can do that without telling the population that this is a measure that we want to debate in the public interest.

So, what I will say is, that because I share the view expressed by the Independent Bench that this is a matter that is worthy of consideration by the country's Parliament, I give a commitment today that that issue of a limitation on criminal offences is a matter we will bring a Bill to the House on so that we can debate it after public consultation on the matter, so we can decide how to approach that question.

**Sen. Baptiste-Mc Knight:** That is equal to never.

**Sen. The Hon. A. Ramlogan SC:** I beg your pardon Ma'am.

**Sen. Baptiste-Mc Knight:** That is equal to never.

**Sen. The Hon. A. Ramlogan SC:** Well, you know Ma'am, I noticed that during your contribution you made a—you could not resist making a snide reference to people who got true silk and all sorts of silk and I could not help but notice your murmurings from there. What I will tell you Ma'am is that the commitment I give is a very firm one and we have gone beyond what you have asked by repealing the schedule. The repeal of the schedule accomplishes much more than you have even asked for. And I think it is rather uncharitable to make such snide references under the cloak of parliamentary cover as an Independent Senator. It is unfortunate and it is wrong.

**Sen. Baptiste-Mc Knight:** Can I?

**Sen. The Hon. A. Ramlogan SC:** Madam Vice-President, the Government—  
[*Interruption*]

**Sen. Deyalsingh:** AG, before you close, please, may I? At the start of your contribution you did give an undertaking to tell us why clause 34 was pulled for early proclamation. You have not done that as yet, thank you.

**Sen. The Hon. A. Ramlogan SC:** The *Hansard* will reflect that I did that when I piloted the amendment.

**Sen. Deyalsingh:** We are talking about now. You said so.

**Sen. The Hon. A. Ramlogan SC:** If my learned friend wants to re-read my contribution to see where I said trim the fat, I said it is truncating the backlog. I said it was a necessary, logical and rational precursor and it is there in the *Hansard*. I even used the colourful analogy of a lady cooking and trimming the fat from the meat before putting it in the pot to “chunkay” it. Maybe my learned friend did not understand because he does not know what the word “chunkay” means. I do not know, but I did give that explanation and the *Hansard* will reflect that I did give that explanation.

To get back to the issue at hand, the Government's position is—and whatever we do—one thing I agree with Sen. Prescott is that whatever we do, there will be a challenge and whichever way we go, we are not God to predict what will happen. But what I can tell you, Senator, as I have shared with you in private, the State has taken the benefit of legal advice from a wide range and cross section in the legal profession.

I want to pay tribute to those attorneys from the legal profession who have really volunteered to give advice on this matter to the State. It is consistent with the very noble traditions of the Bar and it augurs well for the future of the Bar. They have given freely of their advice. Some have written in the newspapers and I have taken on board all that they have said and the decision to go with the repeal has been informed by all that they have said and I am grateful to them for that.

But, suffice it to say, this is a situation where you can have legitimate criticism either way, whichever way you go. I am not even prepared to say that we shall agree to disagree because I am not even going to engage to say we would reach the stage of a disagreement. All I am saying is that there are arguments on either side of the fence and I respect the views enunciated by your good self and, of course, the contrary view expressed which is that, obviously, it would be a procedural right.

All that section did, the contrary position is, was to give you a right to make an application. It did not give you a right to freedom. If it gave you a right to freedom then you did not need to make the application. So, it gave you a procedural right, not a substantive right, to make an application which a judge had to adjudicate upon, and the subsection that dealt with whether or not the person was evading the jurisdiction of the court, that is something the judge has to be satisfied about. And, it is very well, as my learned friend, Sen. Prescott reminded me, we here as non-lawyers would read the word "shall" and we think it means mandatory.

Case law is replete with examples where the courts have interpreted the word "shall" to mean "may". And there is one school of thought that a purposive construction of this legislation, in the scheme and context of the legislation, is such that the word "shall" there can correctly be interpreted to mean "may". I see my learned friend Sen. Al-Rawi agrees with me on that and I am happy about that.

And further, even if it did not mean "may", it is not that the judge does not have a discretion. That section that speaks to where the accused has evaded the process of the court, that is a very wide provision. Evasion of the process of the court can encompass many things, including satellite litigation that you yourself have filed, to delay facing the very court. So, it is a complex matter. It is not without

complications. But, in my respectful view I share the position taken in the Lower House which I advocate here to this Senate that we repeal in its entirety, with retrospective effect, taking into account special consideration being given to legitimate expectations that may have been created and that is the better, practical option for us at this time.

If we have to impose a limitation in the criminal law by statute, for the first time in our country's history, that is not a matter that should be dealt with by way of a subsection to an Act. Let us come back to the Parliament and let us tell the population that what we want to do is to impose a statute of limitation on criminal matters and let them have their say as well, through their elected representatives in the Lower House and, indeed, through the Upper House in this honourable Chamber and that is what I think should happen.

Madam Vice-President, this is a matter that has attracted much widespread criticism, lively and colourful debate at times, and I think that the compromised position reached and passed unanimously in the Lower House is one that I advocate today on behalf of the Government. I ask that Senators give it their careful consideration and let us rise to the occasion, accept the responsibility in the public interest and I ask for their support in this legislation.

I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed:* That clause 2 stand part of the Bill.

**Sen. Drayton:** Madam Chairman, could I just seek some clarification here? This refers to the Act of 2012, yes?

**Sen. Al-Rawi:** No.

**Sen. Drayton:** No? Clause 2, this Act is deemed to have come into effect on December 16—

**Sen. Ramlogan SC:** The amendment Act.

**Sen. Drayton:** The amendment Act, so is it the 2012 Act?

**Sen. Ramlogan SC:** Yes. No, no, no. It is deemed to have come into—  
[*Interruption*]

**10.15 p.m.**

**Sen. Prescott SC:** She is asking him if it is the 2012 Act we are talking about, and the answer is yes.

**Sen. Singh:** The 2012 Act comes into force in 2011.

**Sen. Prescott SC:** I am inclined to ask you to defer consideration of clause 2 to the end of the day because if we do not support the repeal, then this may become ineffective. I am thinking that they may not get the support. That is all. I am just suggesting that we defer.

**Madam Chairman:** Consideration of clause 2 is deferred.

**Sen. Al-Rawi:** [*Inaudible*]

**Sen. Drayton:** There seems to be a little confusion here. If you look at clause 1, it says:

“This Act may be cited as the Administration of Justice (Indictable Proceedings, (Amdt.) Act, 2012.”

Then clause 2 says:

“This Act is deemed to have come into force on 16th December, 2011.”

So you are saying that the amended Act, 2012 has a retroactive effect to—

**Sen. Ramlogan SC:** That is correct.

**Madam Chairman:** This is simply the date that it was assented to, December 16, 2011.

The question is that clause 2 now stand part of the Bill. Those in favour say “aye”.

**Sen. Prescott SC:** I gather you had agreed that we should defer it. Did we? Or rather that you had put two stars there? Have I lost my chance?

**Madam Chairman:** We did defer it.

*Question put and agreed to.*

*Clause 2, by leave, deferred.*



*Clause 3.*

*Question proposed:* That clause 3 stand part of the Bill.

**Madam Chairman:** There are proposed amendments.

**Sen. Drayton:** Madam Chairman, I beg to move that clause 3 be amended as follows:

In section 3(1) of the Principal Act, insert in alphabetical order:

“the Minister” means The Minister of Justice.

**Sen. Ramlogan SC:** It is a matter of drafting style. It is okay. The Chief Parliamentary Counsel advised on it yesterday and it was felt that this is normally how they do it.

*Question put and agreed to.*

*Clause 3 ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed:* That clause 5 stand part of the Bill.

**Sen. Prescott SC:** Madam Chairman, I beg to move that clause 5 be amended as follows:

Delete and substitute the following clause:

Section 34(2) of the Act is amended by deleting the word “shall” in line 1 and substituting the words “may, if he is satisfied that in all the circumstances of the case it would be just to do so.”

Add new subsection:

3. The Judge shall have regard, in particular, to the length of and the reasons for, the delay in commencing the trial on indictment.
4. The Judge may exclude the or any period or periods between the institution of proceedings against the accused and the date when the Director of Public Prosecutions has preferred and filed an indictment against the accused in computing the time prescribed in this Section.

**Sen. Ramlogan SC:** This issue was canvassed during the course of the debate as to whether or not we should change the word “shall” to “may” to introduce judicial discretion with some guidelines as the Senators proposed. We favour, as a matter of policy, an outright repeal so that we eliminate this as an escape route at all, rather than that have it so that it can be exercised.

**Sen. Prescott SC:** Madam Chairman, I differ from the Attorney General slightly in that it is not simply the change of the word “shall” and “may”. I have urged that what we should say instead is that the judge may, if he is satisfied that in all the circumstances of the case it would be just to do so, discharge. Then I sought to add two further subsections which permit him some platforms on which to act.

The new subsection (4) would say that:

He shall have regard, in particular, to the length of and the reasons for, the delay in commencing the trial on indictment.

And a new subsection (5) would say:

That he may exclude periods between the institution of proceedings against the accused and the date when the DPP has preferred his indictment when he is computing the time.

It is not dissimilar from what you see in section 27 of the principal Act which allows the judge the same discretion in a case where the DPP has failed to prefer an indictment after 12 months after the trial has been ordered.

It says here in 27(2):

He 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.

**Madam Chairman:** AG, if your intention in the deletion of 34 altogether there is, as you say in common law, a discretionary option by the judge anyway, then your inclusion Senator, of (4) and (5) defeats the purpose of repealing 34 anyway.

**Sen. Prescott SC:** I am saying do not repeal 34. If we are repealing 34, then I have nothing to say. I am saying we are not repealing 34 and instead we are saying to the judge, not only are we ensuring that your discretion can be exercised, but we are providing you platforms from which to act so that no capricious appeals from your order will get any place.

**Sen. Ramlogan SC:** This is an attractive proposal because it makes provision for some minimum level of guidance for the judge. As I indicated, the whole question of whether or not there should be some form of limitation by statute on criminal offences is a matter we feel is worthy and deserving of a separate frontal debate in the Parliament with full public consultation and full public scrutiny.

I do not think Senator, with respect, that this is a matter that is such a fundamental and radical change to criminal law that it should be done by way of insertion to a subsection. I think it is a matter that we need to treat with and I think that these are worthwhile suggestions that will obviously be relevant in that debate and it could inform the criteria that we will put to guide the judge. However, the policy position is that we think, for now, that the section should be repealed in its entirety and we will revisit this when we get to some form of limitation statute to deal with criminal matters.

**Sen. Prescott SC:** We had asked the hon. Attorney General to tell us why he had considered the principal Act, section 34, to be bad law so that we could repeal it. We did not hear that it was because we had sought to introduce a limitation period. This entire Parliament was happy to have a limitation period of 10 years in certain circumstances; hence my suggestion that we maintain that position until we are told that this is a better piece of law for good governance and in order to make it strong we say to the judge, you have a discretion, just like you have in section 27, and you may exercise it in cases where you see fit. I do not think that the hon. Attorney General can do justice to his case by coming to us now and saying that one of the platforms on which they are seeking the repeal is to avoid introducing limitation periods by a side road.

I am hoping that I am not discounting what he is saying or misrepresenting it, but it appears that he is saying that the reason we are here tonight is to avoid introducing limitation periods by a side road and I am quite certain that is not the reason.

**Sen. Ramlogan SC:** What I am saying, Madam Chairman, is that is part of the reason why we would prefer not to retain the clause. Whilst my learned friend says that the Parliament seems quite comfortable with the concept of a limitation in the criminal law, the point is that whereas we are not here for our own happiness, we are here to do the business of the public and it is abundantly clear, subsequent to the passage of this, when the spotlight was focused on this particular section, that there is grave public disquiet and concern about it and upon mature reflection the Government feels that the issue of a limitation in criminal cases is a matter that should be frontally tackled by the Parliament after full public consultation, in the full glare and scrutiny of the public in the light of day.

That is part of the reason; but I did advance all of the other reasons in my reply as to why we felt this should not be retained at all, the primary one being that it creates an escape route that can be exploited by criminals, which would lead to further delay because they will appeal all the way to the Privy Council.

The fundamental difficulty with the proposal, Senator, is that it is predicated on the retention of this right after 10 years to go to a judge and make an application.

Once you preserve that right, you preserve all the corollary, ancillary rights that it carries, including the right of appeal. Once the man can make that application, then he has a right of appeal to the Court of Appeal and then to the Privy Council and that delay is going to add to the 10 years.

We feel that the interest of justice may better be served by perhaps allowing the system to concentrate on its limited resources on bringing him to trial rather than to have this diversion down the side road.

**Sen. Prescott SC:** May I ask you to consider: is not section 27 allowing the accused person the same opportunity to go before a judge and seek to have it discharged and within a certain period he does not have that right? Is there not a limitation embedded in 27?

**Sen. Ramlogan SC:** There is and it is in different circumstances where the DPP takes over a year to prefer the indictment, but that is a completely different matter.

**Sen. Prescott SC:** [*Inaudible*]

**Sen. Ramlogan SC:** Not necessarily. One has to do with 10 years from the date of the commission of the offence or 10 years after you are charged. In that case, the limitation is specific, that is, where the DPP takes over a year to prefer the indictment. Now that one has been the subject of much discussion. There is a Privy Council judgment on it in *Seeromani Naraynsingh v the DPP* and I think that is what informed that; but the administrative right of simply preferring a one-page indictment cannot take more than a year and if we cannot get that right, then in those limited circumstances that is there to take care of that. It is couched differently.

**Sen. Prescott SC:** Limitation in principle is not anathema to the Government.

**Sen. Ramlogan SC:** It is a limitation that is all-embracing that goes to the date of the commission of the offence or post the trial. The reason for that is because the experience in the criminal justice system has been that the delays occur in those situations, that is, from the date of the commission of the offence or, in the alternative, from the date that the person has been charged and the charge is read, they are brought before the court and they plead guilty or not guilty. That is where the delay is; that one-year provision. The DPP's office has a system in place now, I am advised, where the chances of that occurring would be in a situation where the DPP is not interested in prosecuting.

**Sen. Prescott SC:** I would leave the amendment to the collective wisdom of the Senators here.

**Sen. Ramlogan SC:** I am obliged.

*Question put and agreed to.*

*Clause 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed:* That clause 6 stand part of the Bill.

**Sen. Drayton:** The question I want to pose here is that I have submitted an amendment for the strengthening of section 7.

**Madam Chairman:** Sen. Drayton, you had proposed an amendment to clause 7. We are on clause 6. Sen. Prescott, you had requested a deletion.

**Sen. Prescott SC:** Yes, and I am satisfied that the decision on clause 5 does not affect it. I think it is bad law and I am recommending that it be treated in the way that I have proposed.

**Sen. Ramlogan SC:** Madam Chairman, we will have to agree to disagree on that one. The Government's position is that clause 6 is necessary. It relates to the voiding of proceedings that are pending. Insofar as there was a window of opportunity, and applications may have been filed, we feel that if the legislation is silent on what is to happen to those pending applications, then that might leave it open to doubt as to whether the court has the jurisdiction to entertain those applications. We felt that we should err on the side of caution by Parliament providing specifically as to those applications and what should become of them so that the Judiciary can have some guidance from Parliament as to what should happen to pending applications.

**10.30 p.m.**

**Sen. Prescott SC:** Madam Chairman, just for the record. The reason why I say it is going to be bad law is the point that we have been making about ad hominem legislation. Clause 6 is directed at persons who have legal proceedings pending before the court, and two things flow from that. Firstly, ad hominem legislation is repugnant to all the principles that we know; and secondly, it affects the separation of powers. It is for those reasons why I say that even if we are inclined to repeal section 34, we ought not to be heard to be saying that pending proceedings have become void. Allow the judge to deal with it. That is all I wish to say.

**Sen. Ramlogan SC:** Again, Chair, we will have to agree to disagree on that. If you repeal the provision, one of the implications of the repeal is that it nullifies existing proceedings. If we take the view that the existing proceedings should be dealt with by the judge, then we run ourselves into a very strange place. We prefer to err on the side of caution and rather than be caught by legislative omission, we prefer to address it. If it is found to offend the principle of legislation ad hominem, then what the court can do is to sever that part of it and deal with it under the ordinary principles of law in terms of what would be the consequences of the repeal itself. But I did consider this point. I think at minimum it can be severed and they can deal with the applications as part and parcel of the general principles and consequences that will flow from the repeal itself.

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed:* That clause 7 stand part of the Bill.

**Madam Chairman:** We have Sen. Prescott SC—

**Sen. Prescott SC:** Madam Chairman, the observations are virtually the same as with respect to clause 6. I think it is bad law.

**Madam Chairman:** We then have a proposed amendment by Sen. Drayton.

**Sen. Drayton:** This was just a proposal to strengthen the current clause 7.

**Sen. Ramlogan SC:** You backing out? We have the unusual historic event of Sen. Al-Rawi refusing to speak. *[Laughter]* We have created yet an additional precedent tonight. Madam Chairman, we feel clause 7 is necessary because one of the concerns raised is that in repealing law insofar as the law was valid, whilst it was valid it may have engendered legitimate expectations, and we felt, again, we would like to err on the side of caution to say specifically in the law that notwithstanding any law to the contrary, no such expectations and privileges and rights would have been created.

Sen. Prescott I understand your point, again, whether this is severed out or not. Those normal principles would apply in any event as to whether one could have acquired any rights under a repealed law which in itself will determine whether the law which was repealed conferred a procedural or substantive right. I wish to say for the record, Madam Chairman, that this legislation insofar as we speak about pending applications, there are many pending applications I

understand and I am not privy because I do not have direct control over the Judiciary. No one does. It is an independent arm of the State. So when we legislate here, we are not legislating in relation to any particular application or any particular case. The fact of the matter is that whatever applications have been filed, the effect of the repeal we are providing for it in the legislation.

**Sen. Prescott SC:** Well AG, no. I would rather it appear on the record. It appears that the maximum is 47. It says over 47 persons or less than we are addressing. It may not be prudent to suggest that it is a larger number.

**Sen. Ramlogan SC:** If you know the number, that is fine, but I do not and—  
[*Interruption*] Sorry?

**Sen. Prescott SC:** The DPP has told us 47.

**Sen. Ramlogan SC:** When was this?

**Sen. Prescott SC:** In his press release.

**Sen. Ramlogan SC:** I know, but that was yesterday.

**Sen. Prescott SC:** [*Inaudible*]

**Sen. Ramlogan SC:** Well it may be more or less, I do not know, but the point is that the window of opportunity for that 24-hour period a lot of persons may have exercised the option you see. Sorry?

**Sen. Prescott SC:** I have made my point. Thank you.

**Sen. Ramlogan SC:** Yes! The point is that it is a running ticker tape and we do not know. So the point I wish to make, Madam Chairman, is that insofar as during the course of the debate, references may have been made to the identity of persons who have cases pending before the courts. That is obviously a response to the fact that in the media, the media has focused attention on certain cases. Insofar as we pass legislation, references to that is simply to provide a response to what has been raised in the public domain, but it does not inform or influence or shape the legislation and our thinking and policy on the legislation because we do so by reference to what the policy of the Government is in relation to all matters and all persons.

**Sen. Drayton:** The recommendation and the amendment that I have put forward, do you think that the clause as it stands now in your amendment, in this amended Bill, is sufficiently strong to put all matters beyond doubt?

**Sen. Ramlogan SC:** Yes, we do. We do. Your amendment is fine as well. It has extra words, but I take it that you support the concept because it is your amendment. So, I would expect your support under this clause at minimum.

**Sen. Al-Rawi:** Madam Chairman, I think I will break my silence for a moment. [*Laughter*]

**Sen. Ramlogan SC:** Oh Lord.

**Sen. Al-Rawi:** I think it is very important to put on the record the endorsement that the Attorney General is making, that the purpose of this amending clause is for general purport.

**Sen. Ramlogan SC:** General application.

**Sen. Al-Rawi:** The purpose is to take us back to the original purposive construction of the original Act. The consequence of a repeal of this particular section is to restore the law as it was prior and there is always—and this Parliament intends that the common law right still continues alongside which allows all persons the ability to approach a court at any moment in time for discharge or discontinuance or stay of proceedings.

So the important thing on the record is to put that the right is still there in law and that no one would be prejudiced as a result, therefore, of the removal of this particular clause. Even though there may have been some form of legitimate expectation, we still are restoring them to the position where they can still approach the courts and ask for a stay of discontinuance of proceedings on particular grounds. It is important to know, with that in mind, there is legitimate aim in the repeal. So I just wanted to add that to the commentary so far offered.

**Sen. Ramlogan SC:** I am grateful. Thank you.

**Sen. Dr. Armstrong:** I just wanted the AG to assist me a bit and I am not clear on it. Let us say that there are 47 cases and we are saying that this is not aimed at anyone or any group in particular, what is the issue then with the 47 going ahead?

**Sen. Ramlogan SC:** Well, the issue is that—

**Sen. Dr. Armstrong:** What is the concern really? What are you trying to do here?

**Sen. Ramlogan SC:** The concern is that we feel that the law that we had passed in retrospect ought not to have been passed. We are repealing that law with retroactive effect. When you repeal a law with retroactive effect it means that the



rug, the legal foundation upon which the applications would have been filed is now being withdrawn. If you withdraw that then it cannot stand and it cannot stand as a matter of normal ordinary legal principles, but we felt that out of an abundance of caution we will simply spell it out in the legislation so that there leaves no room for doubt.

As to why do we feel that way? We come back to the same point. We simply do not think it is right to create an avenue for criminals to apply, to be discharged on a simple 10-year basis, because the multitude of applications that are possible could do a grave injustice to the victims of those crimes and also to the justice system itself as a whole.

**Sen. Al-Rawi:** Can I add please, from the Opposition's perspective, the reason for repealing the law retrospectively in the manner that we intend to support is simple? In our point of view there ought not to have been an early proclamation of this particular section 34 and, therefore, by repealing section 34 and leaving standing section 32—so you will have 1, 2, 3(i) and section 32 of the Act still proclaimed—those would be short title sections 4 and 5, exception, definition section, as it relates to clause 1.

More particularly, most importantly, the rules committee allowing, therefore, the Parliament to return to the position where the rules committee can now go about in compliance with the undertakings by the Minister of Justice, that the system would be developed first and then the preliminary enquiries would be abolished and the sufficiency hearings moved and the concept of guillotine would be applied, which as I understand the hon. Attorney General to be saying, “will be the subject of a better form of consideration by the Parliament”, as he puts it in a more frontal piece of legislation.

So it takes us to the line of argument that I had offered in my contribution that the purpose of this amending legislation is to get rid of the difficulty of an early proclamation of one section which ought not to have been proclaimed, therefore putting us in a position where the country can now witness the development of the rules in line with the original debates and original intention. It can then see the development of the infrastructure, the amendment of the Supreme Courts of Judicature Act, the appointment of masters, the CPO's activities, et cetera, taking us squarely in line with the original intention of Act No. 20 of 2011. Those are safe parameters within which to operate, particularly because there would be a proportionate and legitimate aim demonstrated which can withstand a section 13 scrutiny and that is the reason.

**Sen. Ramlogan SC:** “I geh yuh ah lil chance, doh overdo it nah man.”  
[Laughter]

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 2 recommitted.*

*Question again proposed:* That clause 2 stand part of the Bill.

*Question put and agreed to.*

*Clause 2 again ordered to stand part of the Bill.*

*New clause 8, Schedule 6 amended.*

*Question proposed:* That the new clause 8, Schedule 6 stand part of the Bill.

- i. Conspiracy to commit any of the crimes in the Schedule;
- ii. Fraud;
- iii. Any offences under the present Larceny Act to the value from \$100,000.00;
- iv. Offences under the Integrity in Public Life Act;
- v. Money laundering;
- vi. Offences under the Proceeds of Crime Act;
- vii. Misbehaviour in public office;
- viii Offences under the Prevention of Corruption Act.

**Madam Chairman:** Hon. Senators, because the Bill has no schedule, amendments to the schedule would be now contained in a new clause 8. In your Bill there are proposed amendments from both Sen. Prescott and Sen. Drayton. So we will have to consider that as clause 8.

**Sen. Ramlogan SC:** I do not think they are pursuing that matter.

**Hon. Senator:** No!

**Sen. Drayton:** Well, I take it from you that the schedule is in fact repealed.

**Sen. Ramlogan SC:** Yes!

**Sen. Drayton:** It is repealed?

**Sen. Ramlogan SC:** Well no. They say for the purpose of section 34 it is—

**Sen. Drayton:** What about section 27?

**Sen. Ramlogan SC:** It remains. I had that discussion with—

**Sen. Drayton:** Yes, but then—okay. If you say it is remaining for 27, then the white-collar crime and other serious crimes of fraud and the Proceeds of Crime Act are not in that, so what will become of that? I do not think I can accept that schedule as it is.

**Sen. Al-Rawi:** As I understand it, one, clause 27 is not yet proclaimed;—

**Sen. Ramlogan SC:** That is right.

**Sen. Al-Rawi:**—two, prior to proclamation there can be adjustment to the schedule by way of amendment; and three, in the event that it was proclaimed, 27(3) permits the Minister the power to amend the schedule by order.

**Sen. Ramlogan SC:** That is right.

**Sen. Al-Rawi:** So it is covered whether proclaimed or not proclaimed, and in any event it is not yet proclaimed.

**10.45 p.m.**

**Sen. Drayton:** So, for record purposes, would Schedule 6 be amended to include the serious crimes as recommended on the amendments circulated?

**Sen. Ramlogan SC:** Those are certainly matters that we can give consideration to at the appropriate time.

**Sen. Drayton:** But I am not getting an undertaking that white-collar crime is going to be included in this.

**Sen. Ramlogan SC:** Because that section is not before us, but at the appropriate time, we will give consideration to that. We certainly will.

**Sen. Drayton:** I do not think that that is a satisfactory answer.

**Sen. Ramlogan SC:** Well, I am sorry I cannot do much better, but what I am saying Senator is, I take on board your comments, but that section is not before us. What is before us is that this amendment Bill addresses one specific section. We cannot amend other sections which have not yet been proclaimed.

**Sen. Drayton:** No, I am not asking you for an amendment. I understand that that is not before us now.

**Sen. Ramlogan SC:** You are asking for an undertaking.

**Sen. Drayton:** I am asking for an undertaking because we are going back to the same situation—

**Sen. Ramlogan SC:** Sure.

**Sen. Drayton:**—where it is not fair.

**Sen. Ramlogan SC:** What I am saying is, at the appropriate time, meaning that when we are ready to proclaim those sections, as Sen. Al-Rawi has outlined, we will give due consideration by way of an amendment, because it is not just those offences, there may be others. In fact, there are many others. [*Crosstalk*] Yes. So, we would want to include maybe a range of offences in addition to the ones you have mentioned.

**Sen. Hinds:** AG, I have observed that happily you have made a sufficiently clear statement to direct our focus on the intention of Parliament for the action we have taken this evening. This being the committee stage, and this being your last opportunity, would you like to take this opportunity to tell the nation and this committee, why the single section 34 was proclaimed, your last opportunity? [*Crosstalk*]

**Sen. Ramlogan SC:** I think you enjoyed the rather soporific experience—

**Sen. Hinds:** This is serious. Would you like to take this last opportunity to tell us why it was proclaimed?

**Sen. Ramlogan SC:** I would leave it for you to read the *Hansard* because I dealt with it twice.

**Sen. Hinds:** All right, thank you.

**Sen. Ramlogan SC:** You are welcome.

**Madam Chairman:** Sen. Drayton and Sen. Prescott SC, are you withdrawing the proposed amendments?

**Sen. Prescott SC:** In my case, yes.

**Madam Chairman:** Sen. Drayton, yes? Well, then we just proceed.

*Preamble approved.*

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

*Senate resumed.*

*Bill reported, without amendment.*

*Question put:* That the Bill be now read a third time.

*The Senate divided:* Ayes 25      Noes 5

AYES

Singh, Hon. G.

Coudray, Hon. M.

Ramlogan SC, Hon. A.

Howai, Hon. L.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Mohammed, Hon. J.

Moheni, Hon. E.

Maharaj, Hon. D.

Baynes, T.

Ramnarine, Hon. K.

Lambert, J.

Sylvester, D.

Beckles, Ms. P.

Hinds, F.

Henry, Dr. L.

Cudjoe, Miss S.

Al-Rawi, F.

Deyalsingh, T.

Ramkhelawan, S.

Drayton, Mrs. H.

*Administration of Justice Bill, 2012*

*Thursday September 13, 2012*

Wheeler, Dr. V.

Sydney, A.

NOES

Baptiste-Mc Knight, Mrs. C.

Balgobin, Dr. R.

Prescott SC, E.

Armstrong, Dr. J.

Bernard, Dr. L.

*Question agreed to.*

*Bill accordingly read a third time and passed.*

#### **ADJOURNMENT**

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, I beg to move that this Senate do now adjourn to a date to be fixed.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 10.53 p.m.*