SENATE

Tuesday, July 15, 2014

The Senate met at 10.30 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Dr. Bhoendradatt Tewarie, Sen. Diane Baldeo-Chadeesingh and Sen. Helen Drayton who are all out of the country.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency The President, Anthony Thomas Aquinas Carmona, S.C., O.R.T.T.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President and Commander-in-Chief of the Armed Forces of the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: MR. STUART YOUNG

WHEREAS Senator Diane Baldeo-Chadeesingh is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, STUART YOUNG, to be temporarily a member of the Senate, with effect from 10th July, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Diane Baldeo-Chadeesingh.

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 7th day of July, 2014."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President and Commander-in-Chief of the Armed Forces of the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: DR. SHARON BEVERLEY LE GALL

WHEREAS Senator Helen Drayton is incapable of performing her duties as a Senator by reason of her illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, Sharon Beverley Le Gall, to be temporarily a member of the Senate, with effect from 15th July, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Helen Drayton.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 14th day of July, 2014"

OATH OF ALLEGIANCE

Senators Stuart Young and Dr. Sharon Beverley Le Gall took and subscribed the Oath of Allegiance as required by law.

ARRANGEMENT OF BUSINESS

Mr. President: Hon. Senators, I propose that we will come back to the question of announcements later during the course of these proceedings.

LIFESPORT CONTRACT
(Re: Ashwin Creed)

Mr. President: Hon. Senators, I have received a request for a response to be placed on the parliamentary record and I have granted leave for this. The Clerk will now read the response.

The Clerk: "The Honourable Mr. Timothy Hamel-Smith

President of the Senate

Parliament of Trinidad and Tobago

Wrightson Road

Port of Spain

Dear Mr. President,

Re: Life Sport Contract

Ashwin Creed

Permit me to advise you of an issue that has arisen in Parliament and in which matter I am instructed by Ashwin Creed, Permanent Secretary, Ministry of Sport.

My client instructs me with regard to an article that appears at page 7 of the daily Express of Wednesday 2 July, 2014 where the Reporter Joel Julien sets out an averment by Senator Faris Al-Rawi in his contribution to the Senate that my client's wife is the recipient of a contract from Lifesport programme to provide daily lunches.

I am instructed that this averment is entirely false. My client's wife and in fact, no member of my client's family are the recipients of any contracts of any form or type under the Lifesport programme.

I therefore ask that this letter and my client's denial be read into Hansard.

Yours faithfully

Ravi Rajcoomar

INVICTUS CHAMBERS

35 Richmond Street, Port of Spain Trinidad and Tobago, West Indies"

ANSWERS TO QUESTIONS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President, we are prepared to answer question No. 78. Question No. 91, we were prepared to but on the last occasion the hon. Member was not here and we seek a deferral of 87 and 91, and a deferral of the written questions 54, 55 and 95 for one week.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper:

Atrius
(Details of)

87. With regard to Atrius, could the hon. Minister of Finance and the Economy inform the Senate:

(i) what is the status of Atrius;

(ii) what are the impediments to the transferring of the assets from CLICO to this new entity; and

(iii) what activities has the Board of Directors of Atrius been engaged in and are they being paid? [*Sen. Dr. L. Henry*]

VMCOTT
(Details of)

91. With respect to the Vehicle Management Corporation of Trinidad and Tobago, could the Minister of Transport please inform this Senate as to:

(a) whether the CEO contract at VMCOTT was terminated by the new Chairman of the Board;

(b) if the answer to (a) is in the affirmative, on what basis was it done;

(c) whether the Chief Operating Officer position at VMCOTT was an existing position prior to 2010;

(d) whether the Chairman of VMCOTT is an Executive Chairman; and

(e) have the Managers at VMCOTT met the minimum qualifications for their positions? [*Sen. A. Singh*]

Questions, by leave, deferred.

Colour Me Orange Programme
(Funds Expended)

78. Sen. Camille Robinson-Regis asked the hon. Minister of Housing and Urban Development:

A. Would the Minister indicate what amounts of the Government's figure of $73,568,637.50 expended on the now defunct "Colour Me Orange Programme" was specifically spent on (i) Equipment, (ii) Materials (iii) Security; and (iv) Salaries and Emoluments in both actual and percentage terms?

B. Would the Minister indicate what plans are in place to generate further employment in the communities from which the "Colour Me Orange" programme was withdrawn and discontinued?

C. Would the Minister explain why the Government's targets of this programme of a $300 million expenditure and the creation of 20,000 jobs, as outlined by the Prime Minister were not achieved?

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President. Expenditure as for the phases of the "Colour Me Orange" Programme. Phase one: the period March 08 to June 30, 2010. Materials $3,695,408.80; equipment $1,424,278.65; salaries $5,434,869.78; totalling $10,554,557.23; direct employment, 438 persons.

Phase two: November 03, 2010 to December 29, 2010. Materials $2,479,488.53; equipment expenditure $523,495.37; salaries $12,298,714.37; totalling $15,301,698.27; direct employment, 635 persons.

Phase three: November 23, 2011 to February 15, 2012. Materials $1,967,971.89; equipment $72,914.59; salaries $45,671,495.52; totalling $47,712,382; direct employment, 1,980.

In addition, Mr. President, phase three also provided equipment so that throughout phase one, phase two and phase three, total $8,142,869.22; equipment $2,020,688.61; salaries $63,405,079.67; giving a grand total altogether of $73,568,637.50

Part (b) of the question: the "Colour Me Orange" Programme provided employment and developmental opportunities for residents of the HDC's communities of Port of Spain East, Port of Spain West, Port of Spain Central, Morvant, Maloney, Couva and San Fernando, to assist in the upkeep and maintenance of buildings and properties in a meaningful and practical way. These initiatives boosted the corporations' workforce for the provision of maintenance works and community enhancement projects.

In addition, this immediate mandate as expressed above fell into the larger longer-term vision of the HDC, which is the rebuilding of East Port of Spain. It is expected that the CMO participants, having gained practical work experience coupled with training would find meaningful work in this period of activity. The HDC firmly believes that the cadre of skilled graduates of the "Colour Me Orange" participants are the future artisans, administrators, architects of this massive East Port of Spain project.

10.45 a.m.

The CMO programmes were replete with ambitious men and women who would have had the opportunity to start off as a labourer or a lower level categorization of skill, and it was envisioned that having undergone training in the CMO programme they would now be co-opted to any national training agency or institution, and eventually receive accreditation. These are the men and women who we foresee will assist in the rebuilding of east Port of Spain.

As the HDC continues to focus and work aggressively on infrastructure refurbishment and the maintenance of its estate at first world, best in class status, this would invariably necessitate the contribution of capable and experienced individuals and contractors from within these communities to partner with the HDC in the execution of these works which will see residents from within these communities predominantly recruited.

As an example, over 1,300 HDC residents in Harpe Place, St. Joseph Road, Charford Court, Canada, Plaisance, Laventille, Paradise Heights, Morvant, Dorata Street, John John, Beverly Hills, Mango Rose, Awai Lands, Belmont, Mathuen Street, Woodbook, Maloney, Mon Repos, Pleasantville, and Embacadere, St. Paul Street, Basilon Court, Lisas Gardens and Oropune were recruited in 2013/2014 to execute these refurbishment works.

> "Would the Minister explain why the government's targets of this programme of a $300 million expenditure and the creation of 20,000 jobs, as outlined by the Prime Minister were not achieved?"

Mr. President, I just want to indicate that the Prime Minister indicated that it was the Government's intention to inject $300 million into various social programmes to create 20,000 jobs in crime hotspots, and not confined to this programme.

Sen. Robinson-Regis: Thank you very much, Mr. President. Mr. President, could the Minister explain the expenditure of $47 million in salaries, where the employment was only 1,980 persons? Would he be able to indicate the salaries that were afforded these 1,980 persons—the salary levels?

Sen. The Hon. G. Singh: I wish I could, Mr. President, but unfortunately, I am not in a position to provide that information, but I can give the undertaking that I can get those answers provided for the next occasion.

Sen. Robinson-Regis: Thank you very much, Mr. President. Could the Minister indicate the level of training that was afforded the participants, and how many months of training they got?

Sen. The Hon. G. Singh: That too, I find myself in an invidious position, Mr. President, and I can also provide that information on the next occasion.

Sen. Robinson-Regis: Would the Minister indicate how soon the rebuilding of east Port of Spain will take place?

Sen. The Hon. G. Singh: The Minister of Planning and Sustainable Development, through the East Port of Spain Development Company, has a whole programme of activity for the east Port of Spain area, specifically I can provide that answer on another occasion.

Sen. Young: If I may? Thank you, Mr. President, further supplemental. Hon. Minister, the last phase you told us was from November 23, 2011 to February 15, 2012, which is just about a three to four month period, and the salaries were $45.6 million divided by 1,980 workers which works out to be about $23,000 per worker for that period of time. Could you tell us what sort of work was being performed to earn that salary during that period of time?

Sen. The Hon. G. Singh: I think that is consistent with the nature of the programme, it would be that type of work. However, specifically to answer your question, I would need to get the details that you request, and I will so do.

Sen. Young: And lastly. Further supplemental, hon. Minister. These salaries were being paid on a fortnightly, weekly, monthly basis, may I ask?

Sen. The Hon. G. Singh: Well, I do not want to surmise a guess in those circumstances, but I can provide that information.

Sen. Young: I am sorry, I did say "lastly" on the prior question, but this is indeed my last question. Further supplemental. I am looking at the periods in time, and I did not get the first phase as to when it started, but certainly second and third phases were the periods of November to December for the second phase, and November to February, is there any magic in that period in time? Why those months of the year?

Sen. The Hon. G. Singh: I think that for the first phase, to provide with the gap in your knowledge, is from March 08, 2010 to June 30, 2010. And I do not know if there is any magic in any period, notwithstanding that the programme provided those periods. I do not know if there is any magic in that time period.

Sen. Robinson-Regis: Thank you very much, Mr. President. Would the Minister be able to indicate the myriad other programmes that the $300 million was spent on?

Sen. The Hon. G. Singh: Well, I think that it is common knowledge, Mr. President, that the URP provides, I think, something like $300 million—close to $400 million a year. The CEPEP Programme another four to $500 million a year, in addition to—those are the big items that I can say offhand.

Sen. Robinson-Regis: If I may ask a question? I got the impression that the $300 million was outside of the regular programmes like the URP and the CEPEP, that this was a special allocation for special programmes in the so-called hotspot areas. Am I incorrect in that assumption?

Sen. The Hon. G. Singh: Mr. President, I cannot say if it is part of the urban legend, that $300 million was supposed to be appropriated to the "Colour Me Orange" programme, but what I can say is, in an interpretation of the Prime Minister's statement, that $300 million was going to be injected into the social programmes. I can confine my answer to that.

Students of St. Francois Girls' College (Welcome)

Mr. President: Hon. Senators, before we proceed, I just want to draw to your attention that we have with us today students from the St. Francois Girls' College. Therefore, students who are pursuing the World of Work programme, they will be with us for another two weeks. So, we want to welcome them here. [*Desk thumping*]

MISCELLANEOUS PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2014

Order for second reading read.

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you very much, Mr. President. [*Desk thumping*] Mr. President, I beg to move:

> That a Bill to amend the Administration of Justice (Deoxyribonucleic Acid) Act, 2012, the Jury Act, Chap. 6:53, the Criminal Offences Act, Chap. 11:01, the Dangerous Drugs Act, Chap. 11:25, the Indictable Offences (Preliminary Enquiry) Act, Chap. 12.01, the Young Offenders Detention Act, Chap. 13:05 and the Police Service Act, Chap. 15:01, be now read a second time.

Mr. President, this Bill seeks to amend seven pieces of existing legislation. It is a Bill that is composite in nature and attempts to redress several ambiguities that have existed in our legal system, some of which have caused procedural irregularities in the criminal justice system for quite some time. The removal of

some of the lacunas that exist in these laws will redound to the benefit of the criminal justice system, as it will remove some of the arid technicalities that have been holding back progress in the criminal justice system.

This is, of course, the by-product of much research and consultation through the auspices of the offices of the Ministry of the Attorney General, the Chief Parliamentary Counsel, and the Ministry of Justice. In fact, an implementation committee had been formed to look after, you may recall, the implementation of the DNA legislation. And on that committee served the representatives from the office of the Director of Public Prosecutions, the Ministry of National Security, the Trinidad and Tobago Forensic Science Centre, the Ministry of Justice, the Customs and Excise Division, the Ministry of Health, the Trinidad and Tobago Fire Service, the Trinidad and Tobago Prison Service, the Defence Force and the Police Service.

And what we have today is the collective wisdom and distillation of thoughts of all those who served on that implementation committee, they all being relevant stakeholders in the administration of that particular piece of legislation.

Suffice it to say, my colleague the hon. Minister of Justice, Sen. Emmanuel George, will no doubt elaborate further with respect to some of the matters I will raise as it pertains to that Ministry.

This Bill, of course, requires, Mr. President, a special majority. And the reason for that is because we are about to allow the police to take mandatory samples of DNA and fingerprints from citizens including high public officials in some cases. And apart from that, we will be permitting persons other than police officers, such as immigration officers, to take fingerprint impressions from persons who are citizens, children, incapable persons, detainees, deportees and matters of that like. So it is an Act that is inconsistent with sections 4 and 5 of the Constitution, but pursuant to section 13(1), though inconsistent, it can be passed with a special majority, which in this case is three-fifths requiring 19 Members of this House to vote for it.

I think, Mr. President, it behoves me to say something about the test that one uses to validate an act that interferes with constitutional rights, and the constitutional rights which are, in fact, in issue in this case, will be the right of the individual to respect his private and family life, the right to privacy, that will be the main right that is under contention here.

The test that is relevant is test of proportionality in determining whether the law satisfies the proportionate and legitimate aims and objectives which the Legislature has in mind. The case in point is the *Attorney General of Trinidad*

and Tobago v Northern Construction Limited, Civil Appeal No. 100 of 2002. And in that case an Act which should have been passed with a special majority which concerned a procedure for the issuing of warrants was challenged in court. And that was pursuant to section 33 of the Proceeds of Crime Act, POCA.

In that case the High Court Judge, the hon. Justice Jamadar, as he then was, had ruled that section 33 was unconstitutional, and that was in fact appealed to the Court of Appeal. That decision was overturned by the Court of Appeal, and the test outlined by the court was one, the legislative objective must be sufficiently important to justify the limitation on the fundamental right; two, that the measures designed to meet the legislative objective are rationally connected to it; and three, that the means used to impair the fundamental rights and freedoms are no more than are necessary to accomplish that objective.

Mr. President, the legislative objective here is to give the police service the legislative tools that they require to fight crime in this country. We are all terribly aware of the horrific crime situation in the country. We are also aware that the detection rate is abysmally low and totally unacceptable in Trinidad and Tobago. There is no gainsaying in that. But that cannot be viewed in a vacuum. The police have been saying for the past 10 years that we have been collecting fingerprint and DNA evidence from crime scenes, but that is of no use to improve the detection rate if we do not have a DNA database that we can get a match. And simply put, as a matter of common sense, the wider the DNA database, the greater the probability that you will get a match. And there is no point having a restricted database when the police are collecting all these samples, but they cannot, in fact, feed it into the nodes of the system to get a realistic and feasible result that can assist them to solve the crime.

Now in many respects therefore, I think we satisfy this test because the legislative objective—to assist in the fight against crime, harnessing available technology—is one that is sufficiently important to justify the limitation of the fundamental right. The measures are rationally connected to it because we will be fingerprinting deportees. We will be fingerprinting those who are involved in the practical administration and implementation of the laws, like for example, police officers, members of the defence force, members of the protective services as a whole.

11.00 a.m.

And the simple reason for that is, you cannot be part of the solution if you are part of the problem. And by a process of elimination one ought not to have a problem giving a DNA sample to generate a DNA profile, if it is you are not going

to be involved in criminal activity. And the means used to impair the fundamental rights, I think it is not more than is necessary, and one has to take it in the context, not in terms of what obtains in First World countries that have in existence the necessary administrative critical infrastructure and the legislative tools that are underpinned by that infrastructure to fight crime, but one must take it in this context of Trinidad and Tobago.

Mr. President, we are behind, and we are playing catch-up. And there is no shame in admitting that, because we do not intend to bury our heads in the sand on this critical issue of fighting crime. Mr. President, the tail cannot continue to wag the dog. There is a tiny handful of minority dissidents in our society, and these criminal elements are hell-bent on holding us hostage and holding us out to ransom.

I have lived in this country and seen from the times when you would have no fence, lock your doors, leave your windows open for fresh breeze and now we have seen where we have retreated into our homes, barricaded ourselves into our homes, and we gingerly move in and around, understanding that the streets belong, after six, to the criminal elements, and we should not be up and about. We have breached the social pact that forms part of that sacrosanct guarantee between the State and its citizenry that forms the very foundation and bedrock of the fundamental rights and freedoms guaranteed to each and every citizen in this country. When that social pact is breached by the State because of its inability to provide a safe and secure environment for citizens to go about their daily activities, then, Mr. President, the very fulcrum upon which the rule of law rests is in jeopardy and under threat.

Mr. President, in looking at it from the telescope of the constitutional rights, the time has come for us to not only look after the rights of those who seek to break the law and terrorize us; the time has come for us not only to look after the rights of the bandits, but the time has come for us to also look at the other side of the scale of justice and think about the rights of the decent, hard-working, law-abiding citizens in this country, who go about their daily lives, working eight to four trying to eke out a living in this country.

And we need to rebalance the scales of justice, or else the cruel irony is that whilst we speak about a society that has reasonably justifiable grounds and with a proper respect for the rights and freedoms of the individual, whilst we speak about that as an incursion, as a test to apply to determine the constitutionality of legislation, whilst we speak about that, the cruel irony is if we do not pass laws like this, then we will be a society that does not have respect for the rights and freedoms of citizens from the other side of the coin, and that is where we turn a

blind eye to what is taking place on the ground. We ignore the unvarnished truth, the raw and harsh reality that faces us when we read the headlines that confront us on a daily basis.

I saw only yesterday, or is it this morning in the newspaper, three young men "hire a taxi driver and they throw him over a precipice; he fall into a river, he swims and he manages to survive; farmers find him and they take him to the police station". Three young men, still teenagers, are capable of such brutality. So we need to understand that it is one thing to cry down the police service, it is one thing to say that the police officers who risk life, limb and property to protect and serve this country, that they are not doing well because the detection rate is low. But it is another thing to stop complaining and instead of cursing the dark, light a candle. [*Desk thumping*] And today, this Government says, this legislation is not about cursing the dark, but lighting a candle, because if we give them the tools that they need, such as this, DNA legislation, then they stand a better chance in fighting the criminal enterprise in this country.

Now, in another case of *Inshan Ismael v The Attorney General*, a case which I had done in the High Court and went on to the Court of Appeal, the court made the point that there are two different tests that are being applied and this is a matter that remains to be clarified by the court, but either way we look at it, we have satisfied the test. It is either you go with the proportionality test or you go with the special majority based on the infringement of the rights test. But whichever way we look at it, we are very comfortable that we have satisfied the test beyond the shadow of a doubt with respect to this legislation.

In the even more recent case of *Barry Francis, Roger Hinds v The State*, the Court of Appeal reiterated that although fundamental rights are guaranteed in the Constitution, it is in fact the very same Constitution that gives Parliament the power to pass laws which may conflict with those fundamental rights and the court said, in coming to any decision under section 13 of the Constitution, the court is duty-bound to pay due deference to the intention of Parliament when passing these laws in the context of the overall objective and scheme of the Act.

Now, Mr. President, why is DNA legislation so important? DNA legislation is a double-edged sword. Not only can it increase the detection and conviction rate, but it can also free innocent persons by providing evidence beyond the shadow of a doubt as to whether or not you may be guilty of the criminal offence for which you are charged. This is necessary to streamline the "operationalization" of the DNA legislation in a way that will allow us to create a DNA database that is meaningful and helpful to the police in the fight against crime.

One must take this DNA amendment in the context of the package of legislation that we have brought. I mean, there is a clear partnership and synergistic effect on the criminal justice system when one takes a holistic approach, which is what we are doing, by virtue of a series of laws that we have brought to this Parliament.

The onus therefore is on the Parliament to ensure that we respect and restore the rights to our citizens and we understand the seriousness and gravitas of the situation. We have therefore brought about a wide range of strategic and intricately interlinked legislative measures which create a network with the ultimate aim of improving the administration of justice.

Now, DNA evidence has proven to be not just helpful in terms of the administration of criminal justice, but, Mr. President, it has also proven to be a very potent deterrent. In many countries in the world once the DNA legislation gets going, once it bites, the teeth bites deep into the flesh of the criminal layers, and it acts as a very strong deterrent. In fact, there is a multiplier effect on all the legislation that we have passed, whether it is the one strike and you are out policy, which I might say for the record, the one strike and you are out policy has proven to be a phenomenal success.

The feedback from the police service has been that they are very happy with it and we have seen a number of persons who would otherwise have been on the outside committing further crimes, probably. Today they are behind bars as a result of the Government's one strike and you are out policy which we passed in this Parliament. The list of persons who are inside, because of that one strike and you are out policy, when you look at the nature of the crimes for which they have been charged and you look at the facts that are alleged for the present instant matter for which they are before the court, you know that Parliament took a strong step, but in the right direction, Mr. President.

We also feel that the DNA legislation has a direct link with legislation that we are about to bring concerning plea bargaining. In the United States of America, 95 per cent of the cases do not go to trial in the criminal courts. And that is because 90 to 95 per cent of criminal cases are dealt with and resolved at the stage of plea bargaining. And part of the reason for that is, because the evidence from a properly functioning police detection and investigative system is such that it acts as a strong persuasive authority in its own right for lawyers to advise their clients to take a plea, and plea-bargain with the state. And it is my hope that this will have the same effect and assist us in revolutionizing the criminal justice system because it will have a direct relationship with the plea bargaining legislation.

The famous forensic scientist, Paul Kirk in 1953, in his book, *Crime Investigation*: *Physical Evidence and the Police Laboratory* said the following about DNA evidence and its role in the fight against crime. And I quote:

> "Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as…a silent witness"—against him. "Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen that he deposits or collects—all these and more bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is"—factual—"evidence. Physical evidence cannot be wrong; it cannot perjure itself; it cannot be wholly absent…Only human failure to find it, study and understand it, can diminish its value."

Mr. President, I dare say, this legislation is a dynamite, that if we light it in the right place, at the right time, at this critical juncture it is bound to revolutionize the criminal justice system. [*Desk thumping*]

Sen. Robinson-Regis: How many times you would say every piece of legislation is dynamite?

Sen. The Hon. A. Ramlogan SC: Every time it is dynamite. [*Crosstalk*] I think my learned friend has an issue, she will have a chance to speak, no doubt, but this is bound to have a very strong impact on the criminal justice system. In some countries in the world where they have, in fact, implemented proper DNA labs and functioning legislation, it has also had an impact on anti-gang legislation and the ability to deal with the gang-related criminal activity. And it is my hope that this would have a radiating, illuminating effect on all other pieces of laws that must work, that the police must use in the fight against crime.

Permit me to take you now to the Bill which contains nine parts and 11 clauses. The short title is clause 1, and clause 2 is the usual clause with respect to the inconsistency with the Constitution. Part I amends the DNA Act and I will take you to that now, Mr. President.

The Bill introduces a new regime of DNA sampling and testing and it is aimed at building an electronic DNA database of profiles which will be searchable, user-friendly and easy to identify perpetrators of criminal offences with a high degree of certainty. The Bill also requires certain law enforcement officers to mandatorily provide samples for the database so that they can be excluded as potential suspects in any case.

There are certain internal inconsistencies in the law which we are about to regularize, to make its implementation a smooth one, and it is clear that there is need for clear and stringent administrative and operational guidelines. This is going to be one of the major platforms that will assist the police in the fight against crime, Mr. President, and therefore, today, I take you to the amendments. Clause 4 is the definition section. We have included a definition of "DNA record" which will allow for it to be kept in textual or electronic format.

11.15 a.m.

We have included the definition of "private security officer" who would qualify for mandatory DNA testing because of the nature of the jobs that they perform. We have amended the definition of "qualified person" to allow for persons other than doctors who are registered under the Regional Health Authorities Act and work with the RHAs, so that it would be consistent with the amendment to the Nurses and Midwives Registration Act.

We have defined "intimate" and "non-intimate sample" to allow authorized persons a greater potential for being able to obtain DNA samples even in uncommon and extraordinary cases. We have removed "prick of the finger" because it was pointed out to us in some—it allows you the opportunity to prick somewhere else. In some cases, we have had defendants who do not, in fact, have fingers, and that might pose a challenge in its own right. So we have removed that to say, simply, a "pin prick" instead of "prick of the finger"; to include a definition of "exonerated" which will now include someone who is not found guilty at trial where the matter has been dismissed or where they may have been otherwise discharged of criminal liability. As you know, in the Magistrates' Court you have the concept of "reprimand and discharge", and in other cases you may have other permutations of orders the court can make.

In section 5 of the Act we deal with forensic DNA labs and we amend that section to ensure that the custodian is, in fact, someone who is independent—as an independent functionary—independent of the Trinidad and Tobago Forensic Science Centre.

Section 10 of the Act deals with the functions and duties of the custodian. And what we are trying to do, in the interest of transparency to protect the integrity of the DNA database, we are making it abundantly clear where the boundary line lies between the Trinidad and Tobago Forensic Science Centre as the tester, and the custodian, who is the keeper of the results. So you have the sample and the profile that is generated from that DNA sample, and we are

making a clear demarcation between the tester and the keeper to ensure that the custodian, as an independent functionary—there is no blurring of the lines between both of them.

We have amended section 10 to say:

> "The Custodian or any person acting…in accordance with his general or special instructions..."

That way you will not have to tie up the custodian in administrative matters. If he is summoned to come to court, for example, to give evidence, he can authorize one of his officers to come.

Section 15 deals with the requirement for certain persons to give a non-intimate sample, and instead of relying on the Commissioner of Police alone to make the arrangements for the mandatory sampling, we have indicated it will be the person who is the relevant head. So it might be the Chief of Defence Staff, in the case of the army and coast guard; it might be the Chief Fire Officer or Chief Immigration Officer, as the case may be.

Section 16 of the Act deals with the non-intimate samples to be taken from deported citizens and detained persons. Now, this will allow immigration officials to take a sample from a deportee as soon as practicable, but no more than 12 hours after his arrival. That 12-hour window of opportunity is necessary because it allows the immigration department the opportunity to check the relevant records to verify if what people are presenting are, in fact, bona fides. Oftentimes you find that deportees come—they either come with no records, and if they come with records, sometimes they come with bogus records, and we have to be careful in this country. We have had a spike in criminal activity for quite some time, and one of the identifiable contributing factors has, in fact, been deportees.

Deportees have contributed in no small measure to the gang-related violence. They have brought with them, not only a different culture, but an uplift in the criminal enterprise which they learnt from those countries from which they were deported, and they have transplanted that into Trinidad and Tobago where there is fertile soil for it to grow, and that is what, in no small way, has led to the escalation in criminal activity that we have witnessed over the past decade.

Mr. President, the Government makes no apologies, whatsoever, for saying that all deportees will now be subject to mandatory DNA sampling. If you are being deported into Trinidad and Tobago, regardless of whether you have been

found guilty of a criminal offence or not, you have been deported, you will be fingerprinted and you will have to submit a DNA sample. There are many deportees who come—they are deported and they are not convicted of a criminal offence but they got off on a technicality. The witness was shot dead. Sometimes the court itself, and the country itself, is so happy to deport that person because they see the cloud of suspicion, but they do not have the evidence, that they sometimes say, "Well, you know, we will find some form of sentence", and they fashion a remedy that is geared towards leading you down the garden path of a "go back home".

But we have been liaising, through the Ministry of National Security and the Ministry of the People and Social Development, with the relevant foreign governments to say, "Look, doh jes deport people and drop them here on our lap. Give us some advance notice. Let us partner in this. Let us collaborate so that we can properly receive them, treat them with some dignity and also insist on our security."

In terms of the mandatory testing for the persons who are involved in law enforcement, that has generated some concern, but again, the Government makes no apology for saying that those involved in enforcing the law must themselves be subject to the law and not above the law. Police officers, soldiers, coastguardsmen, everyone who is involved in the administration and implementation of the law, must give a DNA sample or a fingerprint. There is nothing wrong in that.

You know, people talk about all the interference with rights and all the prejudice. Mr. President, what is the prejudice that is going to be caused for someone giving a DNA sample? What is the prejudice? People talk in all these airy-fairy, esoteric ways about the fundamental rights—your right to privacy; your right not to have your finger pricked by someone—but you know, no one is weighing up that against the gains, and no one is actually saying, "Well, how is this incursion on your rights so dramatic and drastic that the Parliament should weigh it in the balance by putting 10 ounces on the other side"?

In the other place, one person gave the example to say, "Well, you could use it to discriminate against persons". I mean, really? So the idea is what? If you want to discriminate against someone by not giving them a job, you will dress up one night, and in the dead of night sneak into the Forensic Science Centre, bypass the guards, get a shears, cut a hole in the roof, drop down, "tief" somebody's DNA sample and say, "Aha, I have it here now. When this person comes for the interview, I am going to discriminate against them, I will not give them the job"? Really? But when the person comes for the interview, when you see them, if you do not like them, you would not give them the job anyway.

Hon. Senator: That is a dynamite point.

Sen. The Hon. A. Ramlogan SC: Yes, it is.

Sen. Robinson-Regis: It sounds like a plot.

Sen. The Hon. A. Ramlogan SC: But these are the kinds of absurd suggestions you have, without any empirical data or evidence to substantiate them. They are very tendentious arguments that do not hold water. There is no empirical data whatsoever to support them.

During the course of the debate, apart from the intellectual fact that there is going to be a violation of the fundamental right, which is justifiable in the context of the aims and the scheme of the legislation—apart from that simpliciter—where is the prejudice? This is about your DNA being on a database so that the police could see if you are committing crime. In the other place, people said, "Well, yuh know, it go chase away tourist. It could affect foreign investment". Really?

Which foreign investor coming into Trinidad and Tobago that you ask to give their fingerprint will say, "Oh ho ho, well, yuh know, I comin tuh build a methanol plant for $1 billion here buh all yuh want tuh take my fingerprint? Nah, nah, nah, nah, nah. I going back home"? Really? If that were so, the United States of America would be bankrupt by now because the minute you land in the United States of America, before you could enter, the first thing Uncle Sam, "make yuh" do is put your five fingers on the green light and get your fingerprint.

I make no apologies for involving the police service either. I mean, if we—look, Tuesday, March 25, 2014: "Policeman Arrested", *Newsday*.

> "Anti Kidnapping"—squad held—"officers in connection with the kidnapping of DHL Courier Devindra Siewdass..."

Two million dollars ransom. The father called; phone was answered. They demanded a $2 million ransom. On Sunday at about 5.00 a.m. police went to a forested area in Hindustan, they found the charred remains of a man burnt beyond recognition.

March 25, 2009: "Cop held for Rape". April 24, 2013: "Rape charges for two cops." Two weeks ago the woman reported to the Chaguanas police, officers took turns raping her. "Five policemen facing charges" in connection with the setting on fire of someone in the police station, which, by the way, Mr. President,

is not the first time that happened. I remember doing a case for a man called Rabindranath Choon, and a similar thing happened, where they stuffed paper soaked with kerosene and they lit it afire.

Then you have: "Cop to be charged with human trafficking", April 04, *Express* newspaper. In that case, a police officer with 23 years' service was expected to be charged with rape and human trafficking. Seventeen Colombian women were arrested; three in Princes Town and 14 in Marabella, one of whom claimed she was raped. And we all know, the brothels and the drug blocks, if they sometimes do not have the protection of those who are there to enforce the law, they cannot flourish and prosper in the manner that they do. And that is why, allowing them to give their fingerprint evidence and submit a DNA sample is something that will assist in the fight against crime because if you are a part of the problem, you cannot be part of the solution.

Newsday, August 14, 2009:

> "Days after drug and guns were found hidden in the ceiling of an office in the St. Joseph Police Station"—38 officers transferred.

But look at what the article says:

> "…several of the transferred officers said yesterday that they would not subject themselves to a DNA test and fingerprinting which the investigators"—had asked for.

They pointed out:

> "'They can't take somebody's fingerprint or DNA in this country unless that person has been charged and taken to court', the officer said, adding that the transferred officers were very concerned that the Commissioner of Police…at a press conference, said investigators will use these methods of evidence gathering..."

They are concerned that the police want to use that as a method to gather evidence in the investigation of a criminal offence where drugs and arms are found hidden in the ceiling inside a police station. Let me quote further:

> "'They are making us feel like we are criminals. I have nothing to hide because I did nothing wrong. Taking DNA and fingerprints without charges, is against the law'… 'I have no cocoa in the sun, but we shouldn't have to subject ourselves to that'."

"Subject ourselves to that"—but we must think about what the citizens outside have to be subjected to on a daily basis in this country. We must think about Uttam-Deo Maharaj, a young engineer who was shot to death in Palo Seco

when he bravely and manfully stood in front of the bandits that were trying to kidnap his sister, and took the bullet and died for her. And in Palo Seco, the ballistics evidence showed that the bullet and the gun, "yuh know where it came from"? A police station in Arima. A police station in Arima—in Palo Seco. You know what the theory is? Police renting out the gun to the gang that went to do the kidnapping. And that is hard, cold, chilling facts, from real examples.

So we make no apology, whatsoever, for taking, as a Government, a very strong stance. If you want to be an enforcer of the law and you are duty bound to uphold and protect the Constitution and the law, then you should have no problem complying with the law. Give your fingerprint, submit your sample and let us get on with it. [*Desk thumping*]

Section 17 deals with missing persons, deceased persons and crime scenes. It allows appropriately trained staff from the Forensic Science Centre and the first responders to a crime scene to actually be the ones who can retrieve a sample and send it for analysis.

Section 23 deals with storage and delivery of the package and it allows for qualified persons to cause such samples to be submitted to the Forensic Science Centre instead of just having a restrictive approach. It also allows for DNA logs to be maintained to ensure there is optimal record-keeping. By allowing the first responders to be able to take the samples, we are consistent with other countries. The jurisdictions in the United Kingdom: the Police and Criminal Evidence Act; in Canada, the DNA Identification Act; in Australia, Police Powers and Responsibilities Act, 2000, Crimes (Forensic Procedures) Act, 2000; New Zealand, Criminal Investigations (Bodily Samples) Act, 1995, and the United States, DNA Identification Act, 1994. All of those pieces of legislation, Mr. President, all adopt a very similar practical approach to the implementation of the Act.

Section 24 deals with the duties of the DNA analyst, and we have amended it and replaced the Forensic Science Centre Director with custodian to ensure we have that boundary line between the two.

11.30 a.m.

Section 25 deals with the "Retention of"—the—"sample", and it states:

> "…where a sample is not destroyed during the Forensic DNA analysis, the…Forensic…Centre"—is required—"to keep the sample for a minimum period of five years from the date on which the analysis was completed and thereafter"—it—"may be destroyed."—subject only to a court ordering otherwise.

The Commissioner of Police and the DPP, of course, will consult with each other before there is any actual destruction that takes place, and there is a three-month grace period to allow for that to occur.

The retention policy in this Act is 20 years, Mr. President, and one must bear in mind why 20 years. Given the fact that we have had a low detection rate in this country for over 20 years, from Akiel Chambers come up, there are crimes that remain unsolved in this country, that the police have advised us if they get a proper DNA database cold cases may come to life, and we must, therefore, take the 20-year retention policy for this amendment in the context of our own backlog of unsolved cases. I mean, for those of us who are somewhat nocturnal and look at cable TV in the night, you see all the American programmes where they use DNA evidence and solve cold cases dating back to more than 20 years in some cases. But we feel a period of 20 years is reasonable, legitimate and justifiable, having regard to what confronts us in Trinidad and Tobago, and the amount of unsolved cases, particularly murders in this country.

The police have also advised that in many cases they have intelligence, but there is a big difference between intelligence and admissible evidence. To convert intelligence into admissible evidence, it takes a quantum leap in police investigation work and sometimes they do not have the legislative tools to make that leap. But oftentimes, the police suspect that one man—if you have 100 murders, it does not mean you have 100 murderers, Mr. President. It could be that you have five murderers, each of whom murdered 20 people, and therefore, if we have a retention policy for 20 years, it may very well be that it might have a multiplier effect in terms of solving cases if and when you catch someone by virtue of a match on the DNA database.

Section 29 deals with disclosure and confidentially and says that you can only:

"…disclose findings"—in the—"certificates of analysis"—to the court—"pursuant to—

(a) an Order of the Court;"

You can volunteer to give your DNA sample and, of course, we have the usual forms in the Schedule to allow for, when a child or an incapable person is giving their sample, for the witness to be present so that they can look after the interest of the child or incapable person.

My colleague, the hon. Minister of Justice, will speak more to the improvements at the Forensic Science Centre. However, in the meantime, I will just mention that we are aware of the fact that the Forensic Science Centre, and

the necessary upgrade for infrastructure to support and facilitate the implementation of this, is a critical success factor. That is not lost upon us and, in fact, to that end, we have already taken steps to upgrade the Forensic Science Centre.

An additional pathologist has already been recruited. Eight new contract positions have been created: evidence technician, health and safety officer, two forensic biologists, two scientific examiners, two forensic exhibit clerks. There has been an increase in the professional staff with the creation of firearms and tool mark examiners. Two nationals are going to be trained in the discipline of firearms and tool mark examination, and we are already partnering with the United States and the United Kingdom to get that kind of international technical assistance we require to get the necessary training and certification.

The centre has been upgraded. There has been a refurbishment of the pathology section at a cost of $4 million. There has been a refurbishment of the shooting range and we have also purchased equipment, a new genetic analyzer, at the cost of $1.6 million. Other major pieces of equipment include an ultraviolet spectrometer, DNA extraction system, drug detection system, a laboratory information management system to replace the current paper manual system with an electronic and more user-friendly one consistent with technology. My colleague, the hon. Minister of Justice, will elaborate and flesh out on what we are doing, understanding the critical link and role of the forensic lab in this legislation—what are the plans for it.

There is a case that was cited. It is the case of *Marper v the United Kingdom*, and in that case the Strasbourg human rights jurisprudence did in fact indicate that the indefinite retention of someone's DNA sample or profile would infringe the fundamental rights and freedoms of those persons. I want to make the point that it is very easy to distinguish that case from ours for two reasons:

1. We do not propose here an indefinite retention policy. We are proposing 20 years.

2. Trinidad and Tobago has been cultivating its own human rights jurisprudence that is rooted in our own social conditions here, and we have a crime situation that First World countries that pass those judgments and legislation do not have. The geopolitical positioning of Trinidad and Tobago makes it a major trans-shipment point for the illegal drug and arms trade.

We have problems that are unique and peculiar to Trinidad and Tobago. As the most southerly of all the Caribbean islands, with our closest next door neighbour being Venezuela, we have unique problems that we must pass laws for, based on our problems, our challenges and our experience, Mr. President.

So, with the greatest of respect, I think the case is one that does not bear any relevance to the instant legislation because we do not in fact propose indefinite retention. But in any event, lest it be said that we are crossing the line in terms of being draconian, let me tell you what the retention policy is, Mr. President, in some other countries.

In Australia, Australia's Department of Immigration and Border Protection, they keep biometric data for 80 years. Eight-zero. In other words, "you could born and dead", but they want to keep it. They are not letting go of it. Eight-zero, 80 years. In Canada, it is 15 years; in New Zealand, it is 14 years; in the United States of America, I think it is 75 years. Yes. In the United States of America they keep biometric data for a whopping 75 years. So 80, 75 years, we are at the lower end of the spectrum with 20 years.

So I do not think, by any stretch, it can be said that we are being disproportionate in how we strike the right balance between the protection of our citizenry and the safeguarding of their rights, their liberties, and on the other hand, those who run afoul of the law.

I take you now to the Jury Act. Trial by jury was introduced originally by Ordinance No. 11 in 1844, and our current Jury Act is some 92 years old. It was in fact passed in 1922 and there are a number of obsolete provisions in that Act that we are about to address, Mr. President. The first is, the revision of the qualification for jurors; the second, the abolition of peremptory challenges, jury misconduct, limiting information contained in the jury list for electronic publication, the granting of permission for a jury to separate after retirement and, most importantly, the introduction of special juries and a significant increase in the fine with a term of imprisonment for those employers who try to dissuade persons from serving on the jury.

I take you now to the qualifications to serve as a juror. They are archaic and discriminatory in nature, Mr. President. You had to be:

"4(1)(e)(i) seised or possessed of freehold or leasehold interest …"—with a—"clear annual value of seven hundred and twenty dollars;…

(ii) in occupation of a house which is rated or assessed to some general or local tax on an annual value of…six hundred dollars;..."

"(iii)" You must be the recipient—"of…income not less than three thousand dollars."

And interestingly, a married women shall only qualify to be a juror if her husband was himself qualified to be a juror. Clearly, sexist and discriminatory. In fact, some married women earn more than their husbands, so I do not know where that test is going. The last graduation I went to was the Hugh Wooding Law School graduation. It was almost 80 per cent of the lawyers who were entering the legal profession were women.

So, Mr. President, we are raising the age limit to serve as a juror from 65 to 70 years. We feel that, given the fact that life expectancy has increased in our country and these are the persons who have the benefit of life experience and all the lessons that life teaches us, they are best able to harness that vast knowledge and we would like to have those persons serve on the jury. If they are serving on the jury, it frees up those who have to take time off from work, so that it would allow for those who are best able to serve, with the time and the inclination to serve between the age of 65 to 70, to actually perform their civic duty and serve as jurors. This is consistent with the United Kingdom where the age limit is 70. In Australia, it is 75. The Bahamas Jury Act does not have any age limit whatsoever; and New Zealand, Canada and the United States of America simply say, "Anyone eligible to vote, can serve as a juror". So, we are well within the international norms.

The qualification for special jurors. Under the current law, Mr. President, the only distinguishing feature of a special jury to that of a common jury is that the special jury needed to have superior property ownership. We are now changing that in section 8 to provide for the qualifications of special jurors in such fields as:

"finance;

banking;

accounting or forensic accounting;

business;

economics;

management;

securities; or

investment."

This will have, no doubt, a significant impact on the criminal justice system in dealing with white-collar crime, fraud and financial fraud trials. It will allow for a jury with an increased level of juror competence, so that the judge will have an easier time and the prosecution of that case will be one that is more efficient.

The registration card of a special juror is being amended in section 9. Limitations will be placed on the information about a juror that will be published in the *Gazette*. We are going to exclude from the electronic publication personal information of the juror, such as their address, sex, business and occupation, and this will, of course, limit the possibility of jury tampering or harassment and intimidation of jurors.

I have removed references to the word "criminal" because there are no civil jury trials and we simply need to say the word "trial". I have removed the archaic and discriminatory provision that allowed a judge to convene a jury of men alone. I think the historical thinking was that women may not be suitable as jurors because they may not be able to withstand the rigours of the evidence in particular kinds of cases. But truth be told, in the United States of America, when they were debating whether to allow women to serve in the army, it was pointed out in the psychometric testing and psychological evaluation the women performed better under stress than men, and anyone who has witnessed a woman giving birth to a child can testify that that is in fact so. Women are emotionally stronger and, in fact, can withstand much, much more pain than a man.

Sen. Robinson-Regis: That is dynamite.

Mr. President: You have 10 more minutes.

Sen. The Hon. A. Ramlogan SC: Yes.

Sen. Robinson-Regis: That is a dynamite statement.

Sen. The Hon. A. Ramlogan SC: Yes. Thank you very much. [*Laughter*] We will allow the jury to separate after retirement. We will increase the period from three hours to four hours in the first instance, and we allow them to retire so that they can come back afresh. They can go to a hotel, they can come back afresh, consider the evidence, and make an informed decision and one that will allow the jury time to think through things properly and carefully. Rather than to have the situation now, where in three hours if it is unreasonable, you send them for another three hours, and then you abort the whole trial, jury unable to reach a verdict. Such a colossal waste of time and money is something that we ought properly to protect and avoid.

In section 42, we have increased from $1,000—employers, if they are found guilty, they will be liable to a fine of $50,000 and one year imprisonment, if they either dismiss an employee or try to dissuade or prevent an employee from serving.

I take you next to the Criminal Offences Act, and in this part of it we have taken account of the fact that there are so many examples with the impunity and audacity with which criminals interfere with witnesses and persons involved in the administration of the law. Mr. President, we are passing firm and robust legislation to combat this evil, and therefore, we have created many offences which are on par with what obtains in other countries such as New Zealand, United Kingdom, Barbados, Guyana and others.

11.45 a.m.

Having identifiable offences will make it easier to charge persons, so we have threatening, forcing or bribing or intimidating a juror. We have defined the "officer of the Court" and the "victim". Interference with the witness where a person knows or reasonably believes that another person has assisted in the investigation of an offence, given evidence in any judicial proceedings, and does any act which injures or intended to injure or cause the other person fear because only of his role in the justice system, then that would be an offence. Threatening, forcing, bribing or intimidating a judicial officer of the court; in threatening, forcing or intimidating a victim, $100,000 and imprisonment for 20 long years. We take a very strong position on this.

The amendment in Part IV to the Dangerous Drugs Act, it is to do away with an irregularity and anomaly that did not allow for the DPP to have a summary trial in certain situations because there was a disproportionate sentencing level between trial on indictment and a summary trial. So what we have done is to level the playing field. That will now allow for summary trial to take place and the penalty has been lifted to bring it on par. You have foreigners, sometimes, who are caught with drug trafficking offences, they want to plead guilty but the DPP does not allow it sometimes because it is five years in the Magistrates' Court. So they, instead, have to wait in jail for many long years to have their day before a judge and jury and that is unfortunate. This will assist in those kind of cases and it would also allow for the DPP to have trials done summarily.

We have corrected a lacuna which Justice Mark Mohammed, as he then was, in the case of *The State v Lewis, Dane*, High Court Action No. 10 of 2008, had pointed out, which the judge deemed a legislative slip. This was really to allow for when the transcription of evidence is taken to have it certified and be admissible.

Part VI deals with the Young Offenders Detention Act. In my view, this ought never to have been in the law but, in any event, a sentence imposed required the approval of the hon. Minister, in this case, the Minister of Justice. In some cases, the bureaucracy was such, you had to wait two to three years to get that approval and, in the meantime, the young offender awaiting sentence could not be allowed to participate in the vocational training courses and the educational rehabilitative programmes that existed in the prison facilities because he fell into a twilight zone. By removing that, we have also removed; what I consider to be, an interference with the separation of powers. No sentence should require the approval from any Government Minister.

Part VII, we deal with fingerprint, and the fingerprinting changes are on par with the changes we have made to the DNA legislation. Essentially, we have put in procedural safeguards but the proposed amendments will enable a police officer to fingerprint the same categories of persons in the DNA legislation including suspects, detainees, deportees, illegal immigrants and persons against whom criminal proceedings are initiated via summons. We will be able to take their fingerprint without consent where you have reasonable—where a fingerprint impression is derived from a crime scene. You can retake it without their consent if the quality is not such that you can get a good view of it. We do not need the consent of deportees. We have created a category of exemption to allow the Minister to exempt certain categories of persons, or persons from even a country, to cater for the concern raised about any violation of our Caricom Treaty obligations and matters of the like.

Having regard to the issue raised with respect to any potential violation of the Caricom Treaty, I sought legal advice on this matter independently of my own views. I went to Lord Michael Beloff, Queen's Counsel and Mr. Timothy Straker, Queen's Counsel. They both shared my view that the legislation does not in any way offend the Treaty of Chaguaramas or indeed the free movement of skilled labour, and the reason for that is obvious. By saying you need to give me your fingerprint to enter my country, I am not debarring you. This is a part of the procedure for my immigration process similar to saying "Give me your passport". In the Bahamas, they require a yellow fever shot. No one says they are violating the Treaty of Chaguaramas. So, in both cases, the legal opinion was such, permit me to quote. Mr. Timothy Straker said and I quote:

> "…I do not consider that a requirement for identification as set out in section 50C offends against the treaty in the sense of impeding free movement. First, it, the section, can be supported on the national interest and security grounds mentioned. Second, in any event it does not disable any right of entry."

It is therefore:

"…consistent…rather than in conflict with the Treaty…"

And it can be used and relied upon by the Government.

Lord Beloff said and I quote:

"I am instructed that the Provision is thought necessary in the interest of national security and the fight against crime as the Republic is a major trans-shipment point in the international drugs and arms trade."

If that is so:

"…in my view the provision is generally 'in the public interest' in the sense that it has a legitimate aim."

And it is, therefore, constitutionally valid and proper.

Mr. President, there are many countries that fingerprint persons upon entry. Trinidad and Tobago will not be alone in this regard. In fact, we know in the United States of America, they do it; in Australia, they do it; in Brazil, they do it; in Canada, all the European Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Sweden and, of course, in the United Kingdom, the USA and Gambia.

So that this is not something that is so radical that the world does not know of it. It is an accepted right of a sovereign State in the interest of national security about which my colleague, the distinguished Senator, Gary Griffith, the hon. Minister of National Security, will speak more, but the need to fingerprint persons at ports of entry is absolutely critical and vital to the fight against crime. [*Desk thumping*]

And to those who say that this is going to have an impact on tourism or business, I say that "kind ah businessman" and that "kind ah tourist, we doh bong for them". If you are coming here to enjoy the beach and coming here to enjoy investment and have business meetings and so on, I am sorry, but if you have a problem with giving your fingerprint upon entry, then you know, you probably have ulterior motives. So I fail to see how that is something that can be objectionable by any stretch of the imagination.

Mr. President, this legislation is one that is both futuristic and retrospective. It looks back at laws that we have inherited. In some cases, a 92-year-old legislation as in the case of the Jury Act. In other cases, laws that were passed

that with the passage of time upon reflection required improvements in light of the shortcomings that revealed themselves. And it is also futuristic in that it takes into account the advances in technological development that we can now utilize to better implement and reinforce those laws that were passed but are clearly in dire need of improvement in terms of practical administration.

We stand tall and proud today to give and deliver to the Police Service of Trinidad and Tobago the legislative tools they require to improve the detection rate so that they can better protect and serve our citizenry. The Government is proud to be partnering in this respect in this Parliament with our law enforcement agencies to ensure that we give them the essential, vital tools in their toolkit so that when they go on crime scenes to investigate crimes, and when they confront the enterprising, innovative bandits that try to bob and weave out, in and around the police, while they dance around them, the police will now have some tough laws on their side to say, "No, I can use reasonable force to take your fingerprint and get a DNA sample if I have reasonable grounds to suspect you are involved in the commission of this offence". The police service will now be a position to say that we can check this deportee's antecedents in the United States of America to see what he was involved in.

So that, Mr. President, this is legislation that has been much needed, long overdue and we are very proud to be part of it. I beg to move. Thank you. [*Desk thumping*]

Question proposed.

Sen. Faris Al-Rawi: Thank you, Mr. President. Thank you, hon. Senators. I rise to make my contribution in respect of this omnibus piece of proposed legislation which is to amend seven Acts of the laws of Trinidad and Tobago via 11 clauses.

Mr. President, if I may throw out an immediate caution and the immediate caution is that I encourage in particular the Independent Senators to make sure that they have read the parent laws that are going to be amended. That being the case, I can say this is the size of the parent laws, and I really hope that hon. Senators present will have done their homework and would have referenced the laws of Trinidad and Tobago which we are now seeking to amend. I say so because one can be enticed by the micro perspective of amending laws, and one ought to be cautious about the micro perspective in terms of the minutiae and the detail required when we make amendments to the laws.

Mr. President, I rise also to say that the People's National Movement, of which I am very proud to be a member, has distinguished itself as an Opposition, beyond all Oppositions ever present in this Parliament, in supporting legislation

brought by a sitting Government. This Government has, to date, brought 64 Acts of Parliament, and we have as an Opposition made historical note, broken every record, by supporting 57 out of the 64 Acts of Parliament. We have supported, therefore, with an 89 per cent support rate because we have done a lot of work. We have sat as an Opposition and debate after debate, we have sat down, in detail, in the dead of night, 16 hours at a time, 15 hours at a time, notwithstanding the pressures we take from those such as the persons that populate the SRC—as I have made a commitment to hit them a lash on every debate—[*Desk thumping*] notwithstanding their position, we, as an Opposition, have sat down here and supported Bill after Bill, Act after Act.

I heard a UNC propaganda gentleman this morning on the television. He looked rather dashing, I must say, he had a little pocket square in his pocket. I was happy for the sublime compliment that he paid but, nonetheless, I heard him say that this Government has brought record number of Bills to Parliament, record Acts and they have done a lot of work. I just want to set the record straight in terms of support for legislation because we are dealing with support for this Bill. The PNM in its tenure brought, in the same five-year comparator period—four-year to five-year comparator period, we brought 141 Acts of Parliament to the floor. [*Desk thumping*] This Government has brought 64. We are in the fifth year. And I want to say, as a hard-working Opposition supporting 89 per cent of the laws brought here, that this Bill causes me great concern. [*Desk thumping*]

It causes me great concern because if you listen to the hon. Attorney General, you would swear that we never had laws to deal with, for instance, DNA. His words included, we are giving the police the tools to fight crime, detection rates are statistically terrible. The fact is, detection and conviction rates fell, my learned friend did not say it, from 36 per cent to 3 per cent for murder, 36 per cent to 3 per cent. But the fact is that—[*Interruption*]

Sen. Ramlogan SC: What is the source of that?

Sen. F. Al-Rawi: The source of that is the website of the TTPS and doing the comparative figures in the period 2009, 2010 in particular, with the introduction of the Homicide Investigation Task Force of SAUTT in particular as compared to the conviction and detection rates now at 3 per cent. [*Desk thumping*]

12.00 noon

I am answering the hon. Attorney General, because this Government will not come with statistics. Proof number one, obscene publication, number whatever, by this Government. This horrible publication by the Minister of Planning and

Sustainable Development, [*Sen. Al-Rawi holds up a booklet*] achievements aligned to Government. I will bring it out every time. I mean, the indicator number one, that it should be disregarded is the fact that it is in bold, brazen yellow, let us start with that. Detection rates for 2010, blank; detection rates for 2012, 15.4 per cent; detection rates for 2013, 11 per cent, but they are not telling you what, by subcategory. I am telling you, Mr. President, 3 per cent.

In the climate as the hon. Attorney General says in dealing with a Bill like this, we are at an all-time low for the detection. But, Mr. President, the language of my learned colleague, the hon. Attorney General suggests it is the first time the police are getting the tools in particular by way of the DNA legislation. But, Mr. President, I want the hon. Attorney General to explain for me, I want him to tell me what happened in particular in relation to the Act of Parliament which became law as Act No. 5 of 2012, and that is, an Act to repeal and replace the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34. What happened to this particular Act, called the Administration of Justice (Deoxyribonucleic Acid) Act, 2012? What happened? It was assented to, Mr. President, on May10, 2012. We as an Opposition, together with the Independents sat here on successive days: November 09, 2011, it was introduced; November 09, we debated; November 15, November 15, and then I believe another date just after that—sat in a marathon session to deal with this, to come up with the laws of Trinidad and Tobago. We are being invited today in this particular forerunner of the laws which is receiving the most treatment by way of amendment as is proposed. We have had not a statistical point put on the table. We have not even had the hon. Attorney General tell us in relation to section 34, I believe it is, of the law that is the current legislation. He has not even told us where the regulations for this law sit. Section 34 of the existing law says:

> "The Minister may make Regulations for the purpose of giving effect to this Act.
>
> Regulations made under subsection (1) are subject to affirmative resolution of Parliament."

Where are the regulations? Yet, the argument that the hon. Attorney General posits is, we need this, the police have to have this law. Well, why? What is it that they have considered to be disastrous in terms of the operationalization of this law, when we know it could not have been operationalized because the regulations have never been laid on the Parliament floor for debate? [*Desk thumping*] So where does this evidence of the need for amendment come, Mr. President? Where?

Let me correct something that the hon. Attorney General said. It is not, Mr. President, that it is only principally the right to privacy, the right to private life as our Constitution sets out, that is being infringed. Far from that being the case, because the proposed amendments, Mr. President, in fact, deal with much broader issues. They deal, not only with the right to private and family life, they deal with the right to avoid self-incrimination, they deal with the right to equality, they deal with the right to counsel, they deal with the right to due process, they deal with the rights of the child, they deal with the rights of minority interest groups—[*Interruption*]

Sen. Ramlogan SC: Tell us how.

Sen. F. Al-Rawi:—and they deal with the comparison of the rule of law. My learned colleague, the hon. Attorney General, who spent no time on the law of any substance, wants me to tell him how, now.

Sen. Ramlogan SC: Because it is irrelevant.

Sen. F. Al-Rawi: Mr. President, it is far from irrelevant. We are in this Bill proposing as it relates, if I summarize the omnibus provisions, if I take the proposed amendments to the immigration laws, I take the amendments to the Criminal Offences Act, I take the amendments to the DNA legislation, I take the amendments that are consequentially required in considering all of the aspects of this Bill, we are in essence saying, DNA profiles may be created from DNA samples. Those samples can be taken from a broad range of people, including persons who are on mere suspicion of crime; those samples can be taken with force; those samples, if you are to take them with force and there is resistance to take the samples, you may be locked up and fined, if you do not cooperate. Those samples may be taken from persons who are deportees, within the meaning of any airline that bounces you back to Trinidad, whether you are guilty of a criminal offence or not. Fingerprinting, Mr. President—[*Interruption*]

Sen. Ramlogan SC:—[*Inaudible*]—in America they are taking—[*Interruption*]

Sen. F. Al-Rawi: I am not concerned with the United States of America. [*Interruption*] I am Trinidadian. I am looking at the laws of Trinidad and Tobago, Mr. President. [*Desk thumping*] [*Interruption*] So, Mr. President, I will come back to the American argument, and what my learned colleague, the Attorney General referred [*Interruption*] to as the comparison of First World status countries. I will come to that in a moment. I will address that issue.

The retention of fingerprinting material, of photographs, as we are seeking to amend section 50 of the Police Service Act as we do and the Immigration Act, Mr. President, those things are to be done such as to create an offence if you do not cooperate. It includes deportees who may not have committed a crime. It includes children and incapable persons within those definitions of the law, Mr. President, and all of those things require proportionate measure, they require proportionality within the context of section 13 of the Constitution of the Republic of Trinidad and Tobago.

I disagree with the hon. Attorney General's position, that the Inshan Ishmael case may necessarily say, just a three-fifths majority is good enough. I defer instead on the originating principles coming out of the law set down in the De Freitas case in particular.

Sen. Ramlogan SC: Just one second, Faris. Just to correct something, I did not say the Inshan Ishmael case requires a three-fifths majority. In fact—

Sen. F. Al-Rawi: I do not recall giving way, you know.

Sen. Ramlogan SC: No, no, but I just want to—[*Interruption*]

Sen. F. Al-Rawi: So, I do not know why you are saying it just yet.

Sen. Ramlogan SC: No, but you cannot quote me incorrectly.

Sen. F. Al-Rawi: But you can move a Standing Order. So anyway, Mr. President—[*Interruption*]

Sen. Ramlogan SC: Go ahead then. Go ahead.

Sen. F. Al-Rawi:—the fact is that—the position is that you require proportionality, Mr. President. The proportionality that is required at law, I agree with the hon. Attorney General's position that proportionality is, if you wanted to put it in its barest minimum context, a three-limb position of legitimate aim: that is, the legislative objective must be sufficiently important to justify limiting the fundamental right, that the measures designed to meet the objective must be rationally connected to it, and that the least injurious means used to impair the right must be applied, that you must not go any further than you require.

I want to address the hon. Attorney General's point about First World countries, and the crosstalk that has come about by way of the United States of America. Mr. President, my fundamental objection to a bare, naked proposal as this is, to amend the laws without any statistical information, without the operationalization information for this Act is, Mr. President, because our systems of laws do not—[*Interruption*]

Sen. Ramlogan SC: Statistic information?

Sen. F. Al-Rawi: We have nothing, hon. Attorney General, nothing.

Sen. Ramlogan SC: Did you not cite the detection rate before, boy?

Sen. F. Al-Rawi: We have nothing in terms of the DNA Act, hon. Attorney General. And when you look to the positions, the laws that articulate in the United States of America, the laws that articulate in the United Kingdom, have the benefit of support of other limbs of operation. They include, for instance, the intersection with the Data Protection Laws that exist in other countries, the freedom of information laws that exist in other countries.

Sen. Ramlogan SC: And we have those too.

Sen. F. Al-Rawi: But—the hon. Attorney General says we have it. We have a Data Protection Act that cannot be proclaimed yet. We have an Electronic Transactions Act that cannot be proclaimed in full, reality to the core sections yet. We have a host of laws in the 57 Acts of Parliament, 64 Acts of Parliament that this Government has passed, that cannot by operationalized, and one of them includes the Children Act. And here we are dealing with children's rights, because children are affected, they can be jailed, their fingerprints when taken, and they say, no, their DNA—if they have a problem with it, and they say, no—only requires an adult to have witnessed the event, not even consent; rights of the child.

But, Mr. President, I was on the point about the First World countries having the support of institutions. And I note, the hon. Attorney General sought in very small measure to try to give distinction between Trinidad and Tobago and the UK Marper case. I want to spend a moment on that, and I ask hon. Independents in particular to pay attention.

We know, Mr. President, that the leading authority coming out of the European Court of Human Rights is the judgment in the Marper case. In that case we were dealing with a domestic violence applicant. We were dealing with a child at 11 years old who had been arrested and then released, and his conviction quashed or not proceeded with. And in that, the European court was dealing with the right to private life in almost similar terms to what our Constitution says in section 4, Article VIII of the European Convention, has a similar rights basis. In dealing with that, there is a method in the UK law that existed then, the PACE Act, as they called it, to actually apply to the Commissioner of Police to have destruction of the profiles and the samples.

So it is not true to say that the Marper case can be distinguished because we have a 20-year limitation and the Marper case had none. That is not the truth. The truth is that it was an application for destruction which was met with opposition by the Commissioner of Police in England, the equivalent of that, that led to the challenge asking the court to make it an order of the court, that the profile and the sample be destroyed. So that is not a correct distinction on the hon. Attorney General's part.

But what I note with great concern, as the hon. Attorney General sometimes falls into a very serious trap, he had nothing to say, absolutely nothing to say in relation to the Protection of Freedoms Act 2012—which was made law in the United Kingdom—a serious piece of law enacted by the British Parliament as a direct result of the Marper decision in the European Court of Justice, as a direct result of the Supreme Court of England's similar holding to the Marper decision in the European Court of Justice that it was an infringement of rights. And the UK Parliament, hon. Attorney General, enacted the Protection of Freedoms Act 2012. What does that Act do, Mr. President? I will tell you.

Sen. Ramlogan SC: "Why yuh eh say something 'bout Trinidad?" [*Laughter*]

Sen. F. Al-Rawi: The hon. Attorney General likes to dance you know, Mr. President. Good dancer he is, you know. He said what about America? What about England? What about the First World countries? I am answering the First World country argument. Now he tells me, what about Trinidad?

So, Mr. President, the Protection of Freedoms Act 2012 in the United Kingdom is a critical perspective—[*Interruption*]—for Independent Senators who are interested in listening, if the Government is not—in dealing with—why it is Trinidad and Tobago does not have similar protections to the articulating support mechanisms that exist in the European context, in the United Kingdom and the United States of America, where they have an 80-year retention policy, as the Attorney General says. They do not have, Mr. President, as we do, a complete absence of protection for non-convictions, of protection for speculative searches by the police, of a requirement where you can, if you want to proceed with keeping samples and profiles applied by way of extensions through due process. They do not have a biometric commissioner, they do not have a suite of legislation which protects, Mr. President, by way of Government guarantee, and by way of creation of an office holder specifically designed to protect the rights of the individual. They do not have an absence as we do in Trinidad and Tobago from the excesses of the State.

12.15 p.m.

Mr. President, yesterday the *Guardian* news media centre, CNC3, the *Guardian* newspaper and nine radio stations were shut down. Today, I have received about 10 phone calls from the media asking me to comment on the fact that soldiers, as they say, went into the media centre and were conducting searches and looking for someone allegedly involved in the murder or killing of a soldier. They said that the soldiers came in with no police. They say that they sped in and soon after a bomb threat was issued and they cleared the house. Mr. President, I did not hear the fact of the defence force being allowed to conduct investigations of the kind that the police can. We have heard nothing from the hon. Attorney General about the now infamous "soldier/police" Bill, if I could call it that; the amendment to the Defence Act.

Sen. Ramlogan SC: What do you want to hear about it?

Sen. F. Al-Rawi: Mr. President, the excesses of the State must be managed, and this particular piece of law, the Protection of Freedoms Act 2012 in England, is a critical piece of legislation, Mr. President, because what it proposes is a graduated approach in respect of persons who find themselves having to give their DNA samples or give their fingerprints or give their photographs in the relative capacities that they do. They have a graduation approach for, that is, a lesser approach for lesser activities and a major approach for major activities. They have the ability to say for young people, we will treat you this way: we will keep samples for five years; profiles for five years; for serious offences, whether you are young or old, we will keep it for X number of years.

Our law proposes, if this becomes law, to just have a blanket approach or policy. [*Crosstalk*] Now, Mr. President, what concerns me in the Government's approach is to be found in the debates by which the current law became law. If you would permit me, Mr. President, to reflect upon Mr. Volney's contribution on 2012.02.07, the Administration of Justice (Deoxyribonucleic Acid) Bill, Minister of Justice. Mr. President, Mr. Volney came and said that he had seen:

> "…the politics in the Lower House is not the same as the defining moments in the Senate, and where the Independents are really the safeguard against arbitrary governance, when it comes to infringing basic human rights of persons declared…."

And then he went on to give a set of praise to Sen. Prescott—the mind of Sen. Prescott, Sen. Drayton, et cetera—and in all of that, whilst pleading that he had a young wife that he needed to go home to and that crime is for no "soft man

thing" and chastising Sen. Maharaj for saying that people were being killed like cows, that crime was a serious approach—he said, Mr. President, that the Government had allowed him, his participation Government, a baptism of fire in dealing with this DNA Act, because he recognized from the opposition which the Independent Bench and Opposition Bench gave to him, that he was treading on very thin ice as it related, in particular, to the proposed amendments where deportees from planes would just be automatically fingerprinted; where children would be automatically fingerprinted and where you would no longer have the right to actually make an application for the destruction of your profile and for your DNA.

Mr. President, I note with great concern that we are removing in section 26 of the Act by virtue of clause 3(o) of the Bill, we are entirely removing the position where a DNA profile may be destroyed after five years, Mr. President, in the circumstance of someone who is exonerated. Exoneration has been amended to include dismissal, no charge volunteered, et cetera, but, Mr. President, how does that deal with someone who is a deportee: a deportee who is not brought before the court; a deportee who is not charged; a deportee who does not fit within the definition of exoneration? How is the deportee treated?

A deportee who arrives in the United States of America and just says, "Ah doh like yuh flag"—I saw in the United States of America, lining up in the line, a Frenchman come off a plane and he was grumbling aloud that the United States was guilty of all sorts of things and excesses, and I saw an immigration officer grab the man by his arm and march him back to the plane and send him back to France. He had committed no crime. He was rejected from the country. What are we saying there? You do not fit the definition of "exoneration" in section 26 of the Act if it is amended by clause 3(o) and you cannot have your sample or profile deleted after five years, upon request? Where is the treatment on a graduated basis for persons who are caught by this law?

The hon. Attorney General offers a utilitarian concept of law and says, "Well, yuh have nutten to hide. If yuh have nothing to hide, participate in the law." Mr. President, there are people that have a serious opposition to DNA profiles and samples being in existence for 20 years.

Sen. Ramlogan SC: But, why?

Sen. F. Al-Rawi: There is a concept of reverse engineering; there is a concept of contamination of crime scenes by mistake as has happened straight throughout as is evidenced in the literature. [*Crosstalk*] We have an under-resourced DNA department. We have no regulations to tell us what the state of play actually is.

The Ministry of Justice has received close to $3 billion worth of expenditure in the last few budgets put together; silence from the Minister of Justice in the successive persons that occupy that chair—nothing to be said, Mr. President but just so, just like that, with no statistical information, the Government tells us: "Doh worry bou that man, yuh ha nutten to hide." The Attorney General, when he slips into the vernacular, is very persuasive at times, you know. He thinks that he is reaching out to the so-called common man, but it is the common man who feels the excesses of the State at times who is required to achieve the attention of Parliament on a more serious basis.

Sen. Lambert: He commits the most crime.

Sen. F. Al-Rawi: Yeah, the common man commits the most crimes. Sure, sure. If that is the UNC attitude towards the common man, well then that is going to be a very interesting position.

So, Mr. President, we have a fundamental problem with a non-graduation of the approach towards the keeping of samples, of the approach towards profiles. You cannot lop children in the same category; you cannot lop deportees without any charge against them in the same category as a hard-nosed blood-crime criminal.

Mr. President, where is the rationale for telling the security services mechanisms of this country that they must give an intimate sample as opposed to a non-intimate sample? The Bill before us proposes that you are moving from a non-intimate sample to an intimate sample. Why? What is the rationale? What was the consultation? What is the need to amend this thing? What is the statistical fallout that has happened as a result of an operationalization of this Bill that has caused the Government to move this Parliament to amend this law in the fashion that it seeks to do, Mr. President?

Mr. President, there is a lot to say, clause by clause, in relation to this Bill, but this Bill actually has six other pieces of law to be amended and there are two amended by way of reference only. So, it is actually nine pieces of law to be amended, not, in fact, the seven that are quoted in the Bill because there is a consequential amendment to the Sexual Offences Act and there is a consequential amendment to the Immigration Act which finds itself in the clause—I think it is in the Criminal Offences Act, Mr. President.

So, permit me to reserve and mark the spot that there would be a lot to be said in relation to this DNA legislation, and the fact that I consider it to be disproportionate in its approach to the laws. If this, in fact, had a graduated

approach it would be something which the Opposition could happily support as we did on the last occasion. The Government has gone against its stated word in the last debate, but what surprises me, Mr. President, is that the hon. Attorney General seems to have no conscious reflection at all to what happened in 2007.

DNA laws have been on the books of Trinidad and Tobago, in start, since 1999. In 2007, Mrs. Persad-Bissessar included, Member of Siparia then and now, participated in a debate to deal with DNA legislation. A joint select committee was established—Adesh Nanan, Gillian Lucky, Tim Gopeesingh were the names mentioned, honourable persons as they are, sitting in a joint select committee—and the AG would not even tell us or tell the country—refresh their memory—that the UNC objected to every single provision in the 2007 legislation, [*Desk thumping*] making it impossible to operationalize. [*Crosstalk*]

Watch the position, Mr. President, of the PNM by way of comparison! We supported this Bill on the last occasion; we made amendments in the marathon session. Mr. Volney said, as he did, "Mea culpa, I am sorry."—begged an apology of Senators Drayton and Corrine Baptiste-Mc Knight, God rest her soul—but, Mr. President, he comes today as if nothing at all happened. This law never existed! The police have to have this!

Sen. Lambert: You were not prepared today at all. I always listen to you.

Sen. Ramlogan SC: Where are your statistics?

Sen. Lambert: You are fishing; you are fishing today.

Sen. F. Al-Rawi: The fact is, if you think that this is fishing, "Ah hope yuh read this over the weekend [*Books in hand*] and ah waiting for yuh at committee stage, so yuh could understand how long yuh going to spend here to deal with the laws of Trinidad and Tobago." [*Crosstalk*] Mr. President, let us deal with the other Acts before us—[*Interruption*]

Sen. Ramlogan SC: It is not about how much you read, you know, it is how much you understand.

Sen. F. Al-Rawi: Yeah, how much you understand. This hon. Attorney General, almost a stranger to this Senate, hardly ever sitting down in this Parliament to debate the laws of Trinidad and Tobago bothers to say, it is about understanding the law when he has presided over some of the worst drafted legislation in the history of the Parliament! [*Desk thumping*] The worst drafted! Mr. President, do you remember the amendments to the Defence Act, the "soldier/police" Bill?

Sen. Ramlogan SC: How much you challenged in court?

Sen. F. Al-Rawi: Do you remember the Attorney General coming to tell us that Jamaica had a law which was repealed? When we told him the law was repealed he was crestfallen? He started to shout at two people in the back. Two advisors, I understand, were fired from his Ministry after that. This is the worst prepared Attorney General in the history of Trinidad and Tobago who [*Desk thumping*] presided over a state of emergency which had no rationale. State of emergency called! The last time we debated this Bill—the Attorney General has the temerity to say is what you understand! Come on, Attorney General, come on!

Sen. Ramlogan SC: You were wrong then. I would deal with you. [*Crosstalk*]

Sen. F. Al-Rawi: I was wrong then he says in crosstalk, yet some of the amendments he brings today [*Crosstalk*] if he reads anything in the committee stage, he is bringing the very same amendments he railroaded me over in the committee stage. The same amendments that I proposed in committee stage in 2011 find themselves in the Bill. [*Desk thumping*] I am going to point it out to you in nauseating detail when we get to committee stage. [*Crosstalk*]

Sen. Ramlogan SC: "Just note for the record, you eh challenge no law in court eh." None! Talk cheap!

Sen. F. Al-Rawi: Mr. President, the Central Bank (Amdt.) Act was challenged and struck down, "So ketch yourself AG." Right? [*Desk thumping*] So, anyway, Mr. President, I should not take on the words of a stranger to this Senate at times, but anyway.

Mr. President, the Jury Act falls for consideration. It is true that this Act was created in 1922. It has been the subject of some 22 amendments, this is the 23rd. It does make for some improved positions in the Jury Act, and I dare say that the amendments that are proposed in here are laudable amendments. The Jury Act is something that I think could receive good support. I would have wished the Attorney General to reflect further on section 4 of the Act, in particular, section 4(2) of the Act and also with section 5 of the Act which are somewhat archaic provisions.

I also think, Mr. President, that the exception that has been created in section 7 of the Jury Act where we are excluding out members of the Medical Board, licensed druggists in actual practice, officers and servants of the post office or

customs, school teachers and pilots, I think, Mr. President, that we need to re-look at that, in particular. I do not think that the definition, by way of exceptions—persons who can be called for jury service—I do not think that they are as holistic as they ought to be there.

Mr. President, I also believe that the contemplated repeal and replace of section 12 of the Jury Act is in need of some better thought. I think that the revisers' operationality ought to come in there. I would hope that the hon. Attorney General could have reflected—he did not in this Bill—on the ancient language and procedure prescribed by section 13 of the Jury Act and also section 15(3) of the Jury Act which are a little too restrictive in terms of populating juries.

12.30 p.m.

Mr. President, the problem that we have with juries in Trinidad and Tobago is that nobody wants to serve on them. If you go for a session that is called for juries—and when Sen. Lalla is eventually sworn in today he would be able to say. He asks me all the time why it is I call his name, to acknowledge his presence I do, but anyway. The fact is that the number of people that sit in court asking to be excused from serving as a juror is a vast number. Often the numbers spill out of the courtroom, and they number in the hundreds. What you find is that some of your most intelligent people, some of your most capable thinkers, find themselves not willing to participate in juries because they are afraid of criminal trials, quite frankly. Some of them say they do not want to watch a convicted man or an accused man in his eyes and they do not want to suffer reprisals. Witness intimidation is a serious issue, and the hon. Attorney General is correct when he says that the prescriptive fines for intimidation of witnesses should be thought out.

Mr. President, I think that the language in clause 4(l)(i), which seeks to amend section 26 of the Jury Act, ought to be looked at again. I think that it is a little odd, just in terms of the linguistic position there. I wondered if the hon. Attorney General would spend some time on clause 4(n) which proposes the repeal and replace of section 29. There are some issues that arise there with respect to restrictive application there, and I think that clause 4(n) of the Bill which repeals section 29 of the Act should be looked at again.

I also invite the hon. Attorney General to reflect upon the qualification that we are introducing into special jurors. Special jurors are to be identified by way of qualification and experience, but the schedule which we prescribe does not

provide for a statement of qualification or experience, as the proposed repealing of the old schedule does. I wonder what marker will make muster in terms of a judicial perspective as to what meets with experience. How does the reviser of a jury list who coordinates with the Elections and Boundaries Commission to get its list, understand, if the form does not set out what experience is, who is to qualify as a special juror or not? I think we have missed an essential point when we seek to amend section 31 and the Schedule of this Act as well.

Mr. President, I would have thought that it would be interesting to look to section 36 of the Act, which is not reflected in the Bill, and that that may give us some degree of comfort in terms of a comprehensive revision of this law, as well as section 37, which only prescribes a fine of $400 for jurors failing to attend. If we want jurors to attend then $400 is not going to hack it. You need to prescribe a heftier penalty as we have done, in particular, in respect of the Motor Vehicle and Road Traffic Act where we prescribed fines for littering, et cetera, et cetera. But $400 is not going to encourage anybody to say, "I must attend to my duties as a juror under the laws of Trinidad and Tobago".

Mr. President, sections 41 and 42 of the Act also provide some degree of relief. If we are going as far as we are in clause 42 to prescribe $50,000 and one year for an employer, we cannot leave the back door of the juror not attending at $400. You are going to levy it against the employer at $50,000, but the juror gets $400. I think we can do a little bit better than that.

I turn to the Criminal Offences Act, and this one causes me some significant concern. The Criminal Offences Act is a piece of law, Act No.11 of 1844, a very short piece of legislation, but in the proposed amendments that this Bill prescribes, which I believe are in relation to the prescription for intimidation of witnesses, what concerns me in relation to that is that we are, without any form of rationale on the Parliament floor, automatically saying that witnesses in criminal and civil matters are to be protected in the same way. I am not so sure that we have a problem with the attendance of witnesses in civil trials. I am not so sure that that is the case.

From a macro perspective, it seems laudable to protect any witness, be it in a civil trial or a criminal trial, but my alarm bell rings when the law prescribes that intimidation as a charge to be volunteered against somebody, that you are intimidating a witness and running afoul of the Criminal Offences Act as is proposed to be amended. My alarm bells ring there particularly when you contemplate civil proceedings of the type including domestic violence applications or in the Family Court. If you have ever done a contentious

matrimonial matter or you have dealt with domestic violence applications, you will know that there is often charge and cross-charge, and I wonder whether we are inviting the Judiciary to become inundated with applications on the civil side of the law, as opposed to the criminal side of the law, where I think it is more desperately needed. I have concerns in relation to the Criminal Offences Act.

Mr. President, I hope somebody is taking notes. Hopefully, hon. Sen. Singh is, because the AG has disappeared yet again—never sits in Parliament, and I want to complain bitterly about it, because the rest of us have to sit here and do the work of the Parliament, and the AG is never here, [*Desk thumping*] as is his wont.

Hon. Leader of Government Business, you being one of two persons on the entire Bench there, may I say that I am deeply concerned—on the entire Front Bench, right-hand-side Bench—I am very concerned about the effect of clause 5 of the Bill, in particular 5(8)(b)(i) and (ii); this is on page 30 of the Bill. Please pay careful attention to this:

> The following written laws are amended by repealing section 11 of the Kidnapping Act and 31A of the Sexual Offences Act.

Hon. Minister, I think we are making a mistake there. I think that the mistake, when you look to the language of section 11 of the Kidnapping Act, it says:

> "A person who dissuades or attempts to dissuade any person, by threats, force, bribery or other means, from giving evidence in any proceeding relating to an offence under this Act commits an offence and is liable on conviction to a fine of one hundred thousand dollars and imprisonment for fifteen years."

But when we get to 31A of the Sexual Offences, which is Act No. 31 of 2000, we see:

> "Where a person prevents a minor from—
>
> (a) giving a statement to the police; or
>
> (b) testifying,
>
> in proceedings relating to a sexual offence, he commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for…ten years."

We are taking away a golden tool of protection, to minors in particular, in the Sexual Offences Act, section 31A by just repealing it. That includes giving a statement to the police. It does not go within the definition of the new law that is

proposed to be put into the Criminal Offences Act. Also, what we are doing in there is diluting the effect of the Children Act, which is yet to be proclaimed. That is a very serious amendment that the hon. Attorney General ought to look at with great caution, particularly in light of the non-proclamation or non-full operationalization of the Children Act.

Mr. President, I believe that the Dangerous Drugs Act, if I turn my attention next to that, is something that requires urgent explanation; there is a very useful section. There are two useful sections in the Dangerous Drugs Act, sections 59A and 59B. Section 59A of the Dangerous Drugs Act requires a report to be made to the parliamentary committee as to the operationality of the Dangerous Drugs Act. It also requires that a joint select committee of Parliament be established to deal with dangerous drugs.

You would be aware that nearly 2,000 persons are on remand in this country. We have lengthened the time frame for them to come to court; we have gone from 14 days to 28 days by way of remand. In doing that, we are seeing a lot of young men with small amounts of narcotics, marijuana, be it what it is, under the Dangerous Drugs Act, which is an offence under the laws of strict liability, they are being told, "You have to stay in remand. You may not have a bailer; we are going to deal with you".

I think, and I am taking a very bold step here, that it is time for us as a country to look at the issue of cannabis and marijuana in particular, that we ought to have consultation on the issue. Our Remand Yard is filled with young men who have small quantities of marijuana. Mothers are put in jail, living in a block where somebody is renting a room, strict liability applies. Poor young ladies are picked up by the police and given seven months, six months in jail for small amounts of marijuana. Not that I condone it, particularly in a society where you can escape any kind of liability or consequence, if you roll something looking like a joint, you smoke it, you say it will "get your head bad" more than if you drink rum all day, and you say, "Ah taking two pull ah dis and meh head get bad", and there is no consequence. [*Desk thumping*]

Mr. President: Hon. Senators, the speaking time of Sen. Al-Rawi has expired.

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

Question put and agreed to.

Sen. F. Al-Rawi: Thank you, Mr. President. I wish to thank the hon. Leader of Government Business for his kind Motion for my extension of time.

In all seriousness, taking out the anecdotal side of what I just said—[*Interruption*]

Hon. Senator: Why?

Sen. Cudjoe: That is serious.

Sen. F. Al-Rawi:—the fact that high office holders in this country could be in circumstances where there seems to be one rule of law for them and another rule of law for other people, is of great concern. [*Desk thumping*] Therefore, if we are going to look at amending sections of the Dangerous Drugs Act, as we do, I think it is high time for us to look at the statistical information as to how many people populate the Remand Yard, populate the jails of Trinidad and Tobago for certain quantities of narcotics as prescribed by this law.

Mr. President, the amendment itself to the Dangerous Drugs Act, as prescribed, by amending section 57(b) of the Act itself, is not of any real concern. It is a laudable initiative to deal with that, but the real burning problem is the number of users, the number of people in this position, when we find the statistical information demonstrates, if you look to the prisons' report, et cetera, that we have a high population of dangerous drugs users for certain quantities below trafficking amounts.

Part V of the Indictable Offences (Preliminary Enquiry) Bill—well, I am at a loss for words. We spent the last day in Parliament debating the Committal Proceedings Bill, which is to repeal the Indictable Offences Act, which Indictable Offences Act was to be repealed by Act No. 20 of 2011, anyway. So, today, we are amending the Indictable Offences (Preliminary Enquiry) Act. Government has got to make up its mind. Are we going with a new system? Are we keeping an old system? Are we proclaiming anything other than section 34 and then repealing it again? What are we doing with preliminary enquiries?

The criminal justice system is in a serious state and condition. Work has been done over the years. I have the reports with me today, if I could go through them: 2007; 2008; 2003; joint committees going to England; the Special Anti-crime Unit reports; the Ministry of National Security reports; the DPP's reports. Massive amounts of work have gone into the reform of the criminal justice system, but when you occupy time in a Parliament to repeal the Indictable Offences (Preliminary Enquiry) Act, as we did by the parent Act to section 34,

and then you get it all wrong and you just say, "Let us move along. I fired Mr. Volney, everything is okay now. He took blame". That is not good enough. That is not good enough.

The amendment that is proposed by clause 7 of the Bill, which is the amendment to section 39(1) of this Act, I think it is dangerous. I think that it eliminates certain certifications by the witness and magistrate that are laudable in the existing system.

Let us assume the Committal Proceedings Bill does not come back, which is the one we debated last week. The current law is not operationalized because section 34 happened and passed. Then, if we are left with this legislation, the Indictable Proceedings (Preliminary Enquiry) Act, I think that the removal of certification for witnesses and by the magistrate in section 39 of the law is dangerous, and we ought to exercise caution.

12.45 p.m.

Mr. President, there is a very important piece of law to be amended; very, very short piece of law, Mr. President, 15 sections only. The Young Offenders Detention Act, 13:05. We propose to repeal section 7(3) of this Act, by clause 8 of this Bill. Clause 8 of the Bill, in repealing section 7(3), seems from a macro perspective to be laudable. Section 7(3) says:

"No such sentence…"

And we are dealing with sentences, Mr. President, of "power of Courts to pass sentence of detention in Institution". So we are dealing with young people. Section 7(3) which is to be repealed says this:

> "No such sentence passed by a Court of Summary Jurisdiction shall be carried into effect until it has been approved by the Minister, for the period fixed by such Court or for some shorter period, and if such sentence is not so approved, the Court may sentence the offender by any punishment provided by law for the offence of which he was convicted."

Now it seems laudable because it seems to say, let us remove the Executive discretion and involvement in the laws.

But, Mr. President, I am advised and I want the hon. Attorney General to check this, and the Minister of National Security to check this. I am advised that a lot of our young offenders, when the checks are done and a sentence is given by a court, and the Ministry of National Security does its research, they find out

that the young man or young lady is not deserving of conviction. And that the Minister exercises very useful discretion in section 7(3) of this law to bring relief in circumstances where the law has to act, such as to demand that Shylock gets his pound of flesh closest to the heart, and that the sparing of the ability to spill a drop of blood, provided as Shakespeare told us, the equity of the situation is actually brought on by the Minister of National Security.

And I do not necessarily want us in a time where we have a disastrous situation like the LifeSport Programme, where the Government seems to be in open conflict over it, where we are trying to rehabilitate young people involved in crime or reduce the recidivism rate, I do not want us to necessarily throw away a very useful provision which is provided by section 7(3) of the Young Offenders Act. I hope the Government has done its homework, and can speak to this, Mr. President, because I have great caution and care in throwing away useful law.

Mr. President, the Police Service Act is next to be amended. The Police Service Act essentially proposes an enlargement of the ability of the police, under section 50 of the Police Service Act, to take for fingerprints and photographs, et cetera. So the existing law in section 50 says there is power to:

"…taking measurement, photograph, or fingerprint…"

And when we look to section 50 of the existing law, Mr. President, it says that you can do so for people who are in lawful custody. It says that:

> "A person who refuses to submit to the taking and recording his measurement, photograph or fingerprint…shall be taken before a Magistrate who, on being satisfied that such person is in lawful custody, shall make an order as he thinks fit authorising the officer to take the measurements…"—et cetera.

We are taking section 50, Mr. President, and we are enlarging it in a manner which causes me concern, similar to the concern that I have under the Marper line of authority for DNA. Because, Mr. President, if you look at section 50B which is proposed by clause 9(b) to be included—sorry 9(c) to be included. It says:

> "Where at any time after the taking of a fingerprint impression…
>
> it is determined…"—to be—"…unsuitable or insufficient…
>
> it is accidentally destroyed;
>
> a police officer may retake the fingerprint impression without consent."

Twenty years later your fingerprint is lost. You are a deportee, not a person charged, the chief of immigration finds himself operationalizing this law, together with the Commissioner of Police—how the association between chief of immigration and Commissioner of Police works, we do not know—and, Mr. President, you find that at any time after, presumably in the 20 years one would think, if you are dealing with the provision that provides that where you are exonerated, it may be destroyed, but only on exoneration. Understand, deportees, et cetera, do not fit into exoneration. There is nothing to be exonerated from.

So, Mr. President, all of a sudden, anytime within 20 years, the police knock on your door, "come with me. You do not come with me, you are charged with an offence." What is the offence?—jail time and fine. Well where is the balance in this? Does the balance that exists in section 50 of the Act apply prior to the amendment where you must be taken before a magistrate, evidence must be led, you must be deemed to have run afoul of the law, and then it is applied, Mr. President?

Now it is true that due process and rule of law says that the charge must be laid and you must at least go through the process, et cetera. But what concerns me, Mr. President, as we saw potentially at the *Guardian* yesterday, is the frivolity with which law enforcement officers can sometimes find themselves the recipient of allegations towards. Let me restate that—very inelegant. Law enforcement officers in this country often find themselves the subject of an allegation that they have acted capriciously, unjustly or frivolously.

It is essential therefore, where we do not have as the UK has in the Protection of Freedoms Act, 2012 which has a specific provision to deal with fingerprint retention in circumstances by grades for young people, for deportees, for speculative searches. It is critical where we do not have that kind of legislation, that we keep the balances for due process and therefore, prescribe and keep proportionality in the law within the meaning of section 13 of the Constitution.

Mr. President, I wish to turn next to the Immigration Act, and then to the commencement issue. The Immigration Act, Mr. President, is proposed to be amended. Chap. 18:01, the Immigration Act is proposed to be amended in section 4 by inserting, after section 4, the concept of taking fingerprint, et cetera, for someone who is deported on arrival, Mr. President.

Mr. President, I have a serious concern as to the absent Attorney General's insistence to not focus on the law. What is the fallout that may happen as a result of a breach of the Treaty of Chaguaramas as it relates to the Caricom States?

What happens as a result of the application of the laws of international law, be they public or private, be they in a renvoi or double renvoi circumstance of application of laws? What happens to the concept of reciprocity amongst nations? How do we import into Trinidad and Tobago a law where the Government cannot even come to tell us, "well, we have consulted with the persons who are signatories to the Treaty of Chaguaramas, and we are satisfied that we will not be acting unfairly or capriciously or in breach of our obligations in the Treaty of Chaguaramas"?

It is critical if we want to establish this larger union that Caricom is, from a trade perspective or not, moving from "we are not an ATM machine" as the Prime Minister said, to having relations in Caricom now, having failed to diversify the economy as this Government has. But where is the required information to tell us that Caricom backs this? This is the same shameless Government that told us, "we are abolishing the Privy Council for criminal matters, 50th anniversary promise to the nation, that and 50 freed men." Well, we did not get 50 freed men, we got a few less. But the bottom line, Mr. President, is when we went and we told them and we told the nation, you cannot amend the Treaty of Chaguaramas in parts, where you made no exception to the Treaty of Chaguaramas at its execution. We told them you could not amend the criminal aspects to remove the approach of the Privy Council only partially, Mr. President, and therefore, to go to the CCJ only partially.

Famous Attorney General, absent as he always is, saying that you do not reflect on law, show me one piece of statistical information. Well, I am laying that on his footstep, his doorstep, yet again. What happened to that? I told you he has a tendency for bringing the worst thought-out laws to the Parliament, Mr. President, and that is just one example.

So, Mr. President, that is a snippet of what I am going to deal with in the committee stage. Hon. Members are warned and cautioned that if they have young wives as Mr. Volney used to say, and they want to go home, please drink some coffee, come prepared, have read the parent laws. I implore the Independent Bench—and young husbands too, forgive me. The male shall include the female under the Interpretation Act. It is not the other way round. So, I should say young husbands.

But, Mr. President, I implore the Independents to read the Laws of Trinidad and Tobago. Macro level, it looks good. The legitimate aim sounds good, but, Mr. President, the minutia of the law is critical. The minutia was important in section 34. The Government's undertakings in relation to this DNA Act, that is

the law right now, that has been assented to since May 2012. Those undertakings were that the Government listened, the Government got it right. Some of the Independents were not present for that debate. I can promise you, you must read the entire *Hansard* for that debate. Act with care. Act with caution. Keep the Government on it toes, not because they are necessarily wicked—some may make that argument, Mr. President, but I want to say that they do not suffer from Stockholm syndrome; it has been rechristened. It is now Siparia syndrome. [*Crosstalk*] Right.

Mr. President, what has gone on is that they are inculcated in a haste, in a desire to go through a check box, to go through a tick list to say, we pass this, we pass that, we pass this, to populate that check list, they have brought some of the worst laws of Trinidad and Tobago, but we—

Mr. President: You need to wind up.

Sen. F. Al-Rawi: Sure. The hon. Attorney General had two minutes, I take 10 seconds. We as an Opposition having supported 89 per cent of the laws brought to the Parliament by this Government, because of our effort in fixing the laws, are prepared to get it right. One must repeat when the proverbial stick is broken in the proverbial ear. [*Crosstalk*]

Mr. President, I thank you for the opportunity to contribute to this debate. I look forward to somebody's contemplation of some of the issues that we have raised. And I look forward to committee stage. Thank you, Mr. President. [*Desk thumping*]

Mr. President: Hon. Senators, I had indicated at the start of these proceedings that I will defer Announcements for another announcement that had to be made.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received from His Excellency The President, Anthony Thomas Aquinas Carmona, S.C., O.R.T.T. since last we spoke:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President and Commander-in-Chief of the Armed Forces of the Republic of Trinidad and Tobago

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: MR. LARRY LALLA

WHEREAS Senator Dr. the Honourable Bhoendradatt Tewarie is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LARRY LALLA, to be temporarily a member of the Senate, with effect from 15th July, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. the Honourable Bhoendradatt Tewarie.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 11th day of July, 2014."

OATH OF ALLEGIANCE

Senator Larry Lalla took and subscribed the Oath of Allegiance as required by law.

Mr. President: Hon. Senators, it is now approaching 1.00 p.m. I therefore propose to take the lunch break at this point and to resume at 2.00 p.m. This Senate will now stand suspended until 2.00 p.m.

1.00 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

MISCELLANEOUS PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2014

Sen. Elton Prescott SC: Mr. President, thank you very, very much.

I rise to announce my support for this piece of legislation, primarily because it addresses matters of law which have been outstanding for quite some time and which, for the most part, are outdated and are not relevant in our current context. I do confess—this is because of what had gone before—that this will probably best be suited to the work that we will do in the committee stage because each of the individual provisions demands some attention but mainly to ensure that they do not conflict with any existing laws or that they do not create greater issues. So that, for the most part I look forward to what we will do in committee stage.

I do have some comments on that part of the Miscellaneous Provisions (Administration of Justice) Bill, which deals with the Jury Act. In particular, if I may seek to address it—the amendment to section 4 of the Jury Act, which deals with the qualification as a juror—it maintains the age and residency qualifications, but removes what used to be the property qualification, that is to say, that the juror, in order to be qualified had to be seised or possessed of freehold land or interest in land to the value of $720—annual value, that is—or be in occupation of a house which is rated at an annual value of not less than $600 or be in receipt of a net income of not less than $3,000, none of which would have been unachievable today. Almost everyone would have been able to qualify. So that we have now sought to delete those references.

I do wish, however, to suggest to the hon. Attorney General, and to this Senate, that there was a reason beyond mere ownership—in my view, that is—why we had introduced the further qualification of ownership of land. It meant that you had a connection with the country. By being a property owner yourself, you maintained a close connection with the land. Your interest in this country, it would appear to some, would have had greater substance.

For that reason, I am thinking that we should not merely remove the property qualification, but having done so, we should expand the reference to residence in this country, expand the period so that a person, in order to qualify as a juror, must now be 18 years and under the age of 70, ordinarily resident in Trinidad and I would say that his residence here must be much more than two years. I would have liked to see us consider a period of at least five years' residence in this country to establish that permanence, or near permanence, which, I think, the property qualification was aimed at.

Beyond that, the amendment to section 7 of the Act needs some consideration. In section 7, certain classifications of persons are excepted from being required to serve as jurors and it is a fairly long list. The Bill has now eliminated from that list, a number of persons but I would invite Members to consider whether we can continue to maintain, in that list of excepted persons, druggists, school teachers, postal workers and persons who are officers or servants in the customs and excise department and, to a lesser extent, pilots. Without good reason having been given, I cannot concede to any justification for maintaining those classifications and would invite us to give some consideration to that.

Beyond that, Mr. President, it appears to me that the amendments to the Jury Act are quite to be applauded. I do applaud the fact that women are no longer treated as a special case; that they are now to be addressed with the same regard

as men are. If I may say so, in respect of what had been provided in section 22, it might no longer be open to a woman to say, "I cannot serve, I should be exempted because of the nature of the evidence that is to be led in this case or the issues to be tried." What we would have done by repealing section 22 is to equalize both of the sexes in matters of the administration of justice.

There is a further provision that, I think, I ought to comment on—once again, by way of congratulating the Government on their approach to this—that has to do with the identification of special jurors or a category of special jurors. We know it is nothing new, but I do like the listing having been expanded in the areas that have been taken into account: finance, banking, accounting, business, economics, and the business of management, securities or investments. I think there is a recommendation coming from the House of Representatives for forensic accountants also to be included. I would be happy to see that taken into account in the committee stage.

Finally, if I may take a slightly different position from Sen. Al-Rawi, the introduction—if we may call it that—in section 28(5)—if you would permit me to just get to it. No, I am sorry, not 28(5). There is a provision for civil—no, I think I am ahead of myself. Permit me to come back to that, for a moment.

The final position that I want to take in relation to the Jury Act is to raise the concern that has been now made public, that there are eminent persons who are no longer supportive of jury trials. Indeed, they are pressing that jury trials should be removed from the justice system. Indeed I am supportive of jury trials being taken out of the system, although one could see that there might be need for some complementary steps to be taken to ensure that if ever we were to remove the jury system that judges would be supported by qualified persons in a number of areas, in particular when dealing with esoteric offences. By that I mean fraud, in particular, especially in today's world where electronics have taken over what we do. One needs to be guided, especially when there is a judge sitting alone, in the way you treat with those crimes.

My reference to the civil, a moment ago, was with respect to the amendments to the Criminal Offences Act, Chap. 11:01. I was speaking ahead of myself there. There seems to be an introduction of an offence of intimidating witnesses in civil trials which my colleague, Sen. Al-Rawi, spoke on, expressing some concern—but he did seem to suggest that because there is no outcry and, certainly, no data suggesting that civil witnesses are being intimidated—I hope I am referring correctly to what he had said—that there might be no need for legislation of this sort. I am quite supportive of legislation that directly creates an offence of intimidating witnesses in civil trials.

I think any attempt to intimidate any person who is contributing to the justice system in that way, by way of being a witness in a matter, is an interference with a court official, a court officer, pardon me. One ought to make it known that you do not interfere with persons who are assisting the court in any way and that would include witnesses, jurors and persons who bring complaints before the court. So, for these purposes I support the introduction of intimidation of witnesses in civil trials as being an offence and I trust that we will support that introduction when we come to the committee stage.

Mr. President, in the amendments to the Criminal Offences Act there is a repeal proposed of the parts of the Kidnapping Act and the Sexual Offences Act. Once again, if you would bear with me. I looked at those provisions and I do not really quite grasp why they should offend, at all. The Kidnapping Act, Chap. 11:26—I am inclined to say let us maintain the treatment in this Bill of that part of the Kidnapping Act. It has to do with the attempts to interfere with persons, at section 11.

> "A person who dissuades or attempts to dissuade any person, by threats, force, bribery or other means, from giving evidence..."

It is not clear to me whether the Bill makes a sufficient sortie into the treatment of persons who intimidate, to remove section 11 without further consideration. We should look again at section 11 of the Kidnapping Act and section 31(A) of the Sexual Offences Act, in that regard, and, if necessary, shore up the provisions which now, we are introducing against intimidation, before we simply repeal those two sections.

Mr. President, this has been mentioned before. There is a provision in the Act to amend section 5(7B) of the Dangerous Drugs Act, Chap. 11:25. What that section deals with, it says that if a person has elected summary trial in a case dealing with drug trafficking—if you would just permit me to pull up the relevant provision, section 5(7B) of the Dangerous Drugs Act. It says,

> "A person who pleads guilty to, or is found guilty of an offence tried pursuant to subsection (7A)..."

That is a drug trafficking offence, which is triable summarily on election.

> "…is liable to a fine of twenty-five thousand dollars and to imprisonment for five years."

The amendment is to increase the penalty for the offence to $50,000 or where there is evidence of the street value of the dangerous drug, to three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of 10 years.

2.15 p.m.

I think we ought to say to the general public that the prosecutor in the trial is the person who offers summary trial as an option for the accused person, and no doubt is guided by the degree to which the offence is not severe. The prosecutor may be of the view that it is not as sufficiently severe to recommend a trial on indictment and therefore he offers summary trial and the accused may elect to take summary trial. That means that the matter will be determined at the Magistrates' Court and he would not have to go through the stress of having to await an indictable trial at the Assizes.

Invariably, the magistrate having found the accused guilty will make a determination as to what degree of sentencing should be imposed. So, whether we increase the magistrate's right to $50,000 or greater, or the right to imprison to 10 years or greater, does not determine for the magistrate what he or she may do. What would determine it is the gravity of the offence and the antecedents of the accused person. So, I am neither for nor against the amendment being recommended, but I think we ought to know that this tendency we have now to simply increase fines and increase terms of imprisonment does not take away from the judicial officer the discretion to determine for himself or herself what level of punishment should follow which finding of guilt. So, when we come to the committee stage I may make another recommendation on that regard, so I will leave that for the moment

I agree with Sen. Al-Rawi, and I would have made the point myself, that the attempts to amend the Indictable Offences (Preliminary Enquiry) Act, appear otiose, if not redundant, in light of what we have been trying to do with indictable offences and the removal of the preliminary enquiries—well, the change in the way that we wish to commit persons on indictable offences. So, I trust that this amendment will not be seen as essential depending on how things turn out with our work on the committal proceedings Bill. If we introduce committal proceedings, then an amendment to the Indictable Offences (Preliminary Enquiry) Act will really be otiose and one ought not to trouble oneself with it. As it stands, however, the amendment on its own makes sense, and therefore, I will be supportive of it if only for that reason, expecting that it would not see the light of day later on.

Mr. President, outside of this, there does not appear to be any matter that requires greater study. I know we have been warned on the Independent Bench to do the great study. [*Laughter*] I am sure we would be guided in the committee stage on those areas where we are deficient, but I look forward to the committee

stage where we will look more closely at the language of what is being presented for us, and I trust that we would bring about such changes that would render this piece of work worthy of another 20 years, 30 years of administration in this country.

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

Sen. Larry Lalla: [*Desk thumping*] Mr. President, it is my distinct pleasure to rise to contribute on this very important piece of legislation—although I am doing it a little earlier than expected. [*Laughter*] But the legislation contains some provisions which are very well timed, having regard to the circumstances that we find ourselves in now in our national life.

The most important topic on the lips of our citizens is this issue of crime. Every morning you open the newspaper there is another murder of some unfortunate citizen. It breaks your heart every time you see the pain that mothers have to endure when they lose their children, that spouses have to endure when they lose a husband or wife, that children undoubtedly have to ensure before they could have the necessary skills to survive in this life, in this country. They are robbed of a parent, or an uncle, or a grandparent, somebody important in their life. And that taking away of a life from the people of our society leaves an indelible mark on the psyche of the individual.

Crime—and somebody needs to study this—the way crime is affecting our national psyche. The Attorney General touched on the point that we want to get home before it gets dark. We are afraid to be out because it could strike at anytime, anyplace. As the good Sen. Dr. Balgobin said somewhat poetically in one of his previous contributions, "when you are parting with someone you would not be surprised if you see them tomorrow, but you also would not be surprised if you do not see them." I thought he put it quite well, because that is how we are and that is how we are being tuned now, and it is unfortunate, but something has to be done. This Government is committed to doing something about it.

Let us not mince words, this Government did not create the problem. It is a problem that has been festering for a long time. But one thing this Government is committed to doing is to ensuring that the problem is solved, [*Desk thumping*] to ensuring that we have the necessary institutions in place, the necessary infrastructure in place, the necessary resources in place, to ensure that the problem is dealt with because—let us all face it; we all love this country. Whether you are PNM, whether you are UNC, whether you are ILP, whether you are COP—I do not know if I should say MSJ.

Sen. Al-Rawi: NJAC.

Sen. L. Lalla: But we all love this country.

Sen. Cudjoe: What about TOP?

Sen. L. Lalla: And TOP. We do not want to go anywhere. [*Crosstalk*] We want to stay right here, we want our children to be here. [*Crosstalk*]

You know, there is something happening now in our society and maybe we do not pay enough attention to it. But many parents now—and this started perhaps 10 years ago—are committed to giving their children an option. They are committed, if they could afford it, to educating their children abroad so that they would not have to come back to this country if they do not want to. And I am very concerned about that. That should not be. We should be encouraging our children, our young people, to stay here and serve this country, fight for what we have and build upon it. So, the issue of crime has to be dealt with and will be dealt with by this Government.

The provisions of the bill that deal with—I would say DNA evidence, I would not fight up with the big word—[*Laughter*]

Sen. Al-Rawi: Deoxyribonucleic.

Sen. L. Lalla:—that deals with DNA evidence, is concerned with two things. One, information, to enable the police to do its work, and two, evidence, to enable persons who are held to be prosecuted.

The hon. Attorney General mentioned what we all know or what we all believe—that is, that the persons in this country who are wreaking havoc on the lives of our citizens consist of a small group. It is a small group that has to be identified, but not only identified, we have to put ourselves in the position to be able to prosecute them and prosecute them successfully. How are we to do that in a situation where members of the public are afraid to talk to the police? Not necessarily because they believe the police service is corrupt, but because there is a certain lacking of confidence in the ability of the police to secure a successful conviction.

And the police in turn, in fairness to them, cannot secure a successful conviction if nobody wants to talk to them. So, it is a vicious cycle, so to speak. So, something has to be done to ensure that the police has, not only information—because information is useless in a court of law—but have evidence that would enable them to secure a successful conviction.

DNA evidence, fingerprint evidence, would provide that evidence that the police needs. And the good thing about DNA evidence and fingerprint evidence is that it provides what we call in law good corroborating evidence. It is evidence that once it is properly taken, properly preserved, the chain of custody is properly preserved, it stands up in a court of law. It is independent of anything coming out of anyone's mouth. It does not lie and it is good evidence, and we want to ensure that the police is able to have this good evidence which they would need in order to secure a successful prosecution.

My good friend—I always say my good friend, because he is my good friend—Sen. Al-Rawi—[*Interruption*]

Sen. Al-Rawi: Friend to everybody. [*Laughter*]

Sen. L. Lalla:—stood up earlier, and he was letting us know how well-intentioned his party is and singing his party's kudos and praises for being a good Opposition, and giving the Government all this wonderful support for its legislation.

Sen. Al-Rawi: Eighty-nine per cent.

Sen. L. Lalla: Yes, what is it?

Sen. Al-Rawi: Eight-nine per cent.

Sen. L. Lalla: Eighty-nine per cent. Well, that 89 per cent, in my respectful view, Mr. President, is not a reflection of the PNM. It is a reflection of this Government and the type of legislation that it brings to this House. [*Desk thumping*] Because the type of legislation that is being brought to this House is legislation that they have no choice but to support. [*Crosstalk*]

2.30 p.m.

We have to understand that the politics in this country is changing. Our citizens are no longer prepared to accept nonsense and politicking from politicians and political parties. So once there is good legislation on the floor of the House you had better support it, otherwise the population will not forget you, and Sen. Al-Rawi knows that. So, the fact that they have supported the legislation, it is not a reflection on them, it is a reflection on the legislation that we have seen it fit to put before this Senate, for the benefit of the citizens of this country. [*Desk thumping and crosstalk*] I am not attacking him. I am stating a fact.

So, rightly, rightly, Sen. Al-Rawi mentioned the issue of proportionality, and it is important if legislation is to stand the test of scrutiny, it must be proportionate. Our courts are showing that no longer are they prepared to leave the Parliament as the sole judge of what legislation should stand having passed the requisite constitutional majority. The court is—following the other places like the United States and Europe, by applying the test of proportionality to determine whether a law which infringes upon the constitutional rights of the citizens is really needed for the benefit of the citizens and the benefit of the society.

Recently, Mr. President, in a matter before our Court of Appeal, *Barry Francis and Roger Hinds v The State*, it was one of the few occasions on which you had a five-member panel of the Court of Appeal. Normally, as most of us would know, an appeal from the High Court is heard by three judges. This one was heard by five because of the importance of the issue at hand. And the issue in that case was the mandatory minimum sentence that was found to be contained by the combination of section 5, subsection (5) of the Dangerous Drugs Act and section 61 of the Act.

And in that matter the court had to look at this whole issue of proportionality, and whether having a mandatory minimum sentence, which was quite severe, was really needed in our society and in our law. And in that case, Mr. Justice of Appeal Bereaux, giving the majority judgment of himself, Madam Justice of Appeal Soo Hon and Madam Justice of Appeal Weekes went on to apply a two-step proportionality test. The two steps being, does the policy of the legislation pursue a legitimate object, and does the limitation or restriction on the constitutional right bear a reasonable or rational relation to the objective of the legislation.

The minority judgment in the matter was given by the Chief Justice, Mr. Justice Archie, and Mr. Justice of Appeal Jamadhar, who also applied a proportionality test but differed slightly, in that they saw the main emphasis as the question of the reasonableness of the legislation. So any legislation that we seek to pass in this Senate, we have been put on notice, it must pass muster, under the proportionality test, and it must be seen as reasonable.

We heard a lot from Sen. Al-Rawi about the jurisprudence that has been coming from the European Court of Human Rights, and the case of *S and Marper v The United Kingdom*. In that case, Mr. President, the court had to deal with a situation where two young persons were charged with offences, their DNA samples were taken and they were acquitted, and they wanted to have their DNA

record expunged, and they went to court for the court to declare what was proper in relation to the retention of DNA evidence and fingerprints, as Sen. Al-Rawi is pointing out. But this is what the court said, and I think it is very important to us, today in the Senate to pay attention to what the court is saying, having regard to what we understand and accept to be our national circumstances. The court said, under the headings: "Legitimate aim" and—what is—"Necessary in a democratic society":

> "An interference will be considered 'necessary in a democratic society'…"

And of course you are speaking about interference with constitutional rights. So:

> "An interference will be considered 'necessary in a democratic society' for a legitimate aim if it answers a 'pressing social need' and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by national authorities to justify it are 'relevant and sufficient'. While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court…
>
> A margin of appreciation must be left to the competent national authorities in this assessment. The breadth of this margin varies and depends on a number of factors including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference."

So we as a Senate have to make a determination as to what is the importance of the national issue that we are seeking to address by the amendment to the DNA and fingerprint legislation, and whether the means we are using to address that problem is reasonable. Well, no one here, Mr. President, could deny, as I have highlighted earlier, that what we are dealing with is a pressing national problem. It is a problem that is so large on the national psyche, so domineering on who we are as a people that very bold steps have to be taken to address that problem. We are telling the police that they have to identify perpetrators of crime and, more importantly, they have to secure a successful conviction. But we are not equipping them with the means to obtain independent evidence to achieve those two goals.

In relation to persons who are deported, and it bears on something that I recall former Mayor of New York Rudy Giuliani saying when he was in Trinidad some years ago, at the invitation of the then UNC Government under Mr. Basdeo Panday. He was Mayor of New York City, having eight million-plus people, and when he went into office there was a very serious crime problem. I believe their

murder rate would have been as high as ours is right now, and he was asked how did he proceed dealing with that crime problem. And he said something that was so simple that I was amazed that is what they did. He said, persons who break the law have a certain mentality and if you want to identify them or you want the police to focus attention and to get on to them, you need to look at the persons who break simple laws.

So, for example, the persons breaking traffic lights, in Trinidad driving on the shoulder, persons engaging in reckless driving on the roads, persons speaking on their cell phones while driving, those are persons that you need to look at in someway or the other. Some of it might be very innocent and you disregard it, but some of it would lead you to the person who has a general disrespect for law and order and, even worse, is engaged in violent breaches of our laws.

And that applies to persons who are deported, and I say so most respectfully to the citizens of this country because, to take the decision to go to a foreign country when you are not supposed to, is manifesting an intention to break the law. And those persons upon their return to this country, if we are to be serious about dealing with the problem, that is a group of persons that we need to pay attention to as well as all the many other groups in society we believe that are inclined to break the law.

So it is a good idea to focus attention on deportees, regardless of the reason that they might be deported. The difficulty is, at the time they land at Piarco and they are confronted by an immigration officer, in many cases there would be a problem of lack of information. So what are we to do in such a case, simply let them by? I would think that it would make more sense to bring them within the net, and those who find themselves unfortunately in some innocent way, "innocent" could be disregarded. The others we will continue to pay attention to them.

So I have no difficulty in paying attention to deportees and having them give their DNA sample to the immigration officer or the police officer. The thing is, Mr. President, what is needed, very quickly, is for the protective services to be able to build the DNA databank. And we need to do it as quickly as is legally possible, as is reasonable for law enforcement and for the citizens of the country.

Recently, the Chief Justice pointed that right now there are over 500 persons awaiting trial for murder. That problem is not going to go away without a tremendous effort, a tremendous commitment of manpower and resources by the courts, and it is important for us, where possible, to avoid adding to the problem.

2.45 p.m.

The learned Attorney General also drew reference to the United States. During the years 2007 to 2010, I spent some time in Florida where I was attending law school again, and something struck me in my interaction with the folks at the public defenders office and the state prosecutors office, in that it is a fact that for all criminal offences, over 90 per cent of them are dealt with by plea bargaining. No one wants to go to trial in the United States because they know that if they go to trial, the chances are more than likely they will be convicted.

So because of that, the criminal justice system is able to deal with a large volume of offenders. In our beautiful country, our poor country, it is the reverse. In Trinidad, everyone wants to go to trial because you know it will take years. By the time the trial comes up, either the witness forgets, the witness has died, naturally or otherwise, or is just not interested in the matter.

Hon. Senator: Migrate.

Sen. L. Lalla: We have to change that equation. We have to create an incentive for persons to not want to go to trial and to want to have their matter dealt with quickly by plea bargaining. One of the ways we could do that is by ensuring that the police has a certain calibre of evidence, and the prosecutors at the DPP's office have credible evidence to use in prosecutions, evidence which does not depend upon necessarily the life or death of a witness, or the memory, or cooperation of a witness. And we could do that by making these changes to the way we gather DNA evidence and fingerprint evidence.

Sen. Al Rawi mentioned that before we could feel comfortable in making the change that is proposed in the legislation, we need statistics. Well, respectfully, I disagree. We all live here, we all know what is happening. [*Desk thumping*] We all see it in the press every single morning. We do not need anyone to tell us, with statistics, what is happening, what is the magnitude of the problem, and we in this House, in our good sense, acting in a responsible manner, would understand what is needed to deal with the problem. I agree with Sen. Prescott that the changes which are proposed to deal with the issue of witness tampering should also apply to civil trials because when money is involved, as it is in the majority of civil matters, we in the system know that there are all sorts of motivations and all sorts of ways people get to witnesses.

In his contribution very recently, Dr. Dhanayshar Mahabir mentioned that the issue in relation to the FCB IPO was not new. It is something which has happened before, and I suspect from the way he said it, on many occasions before, but has never been brought to light. In those types of matters we want to ensure that

anyone dealing wrongfully with a witness, to get that witness to forget, or to remember something conveniently that he did not remember before, would be dealt with very, very severely.

Before I go further, Sen. Al-Rawi mentioned the issue of the Treaty of Chaguaramas, and he wondered how our actions—if we are to approve the proposed amendments in relation to the taking of DNA evidence from persons who are not citizens of Trinidad—would affect our obligations under the treaty. Well, there are three provisions in the revised treaty which are of relevance. One is Article 45 of the revised treaty which deals with the movement of Caricom nationals and says:

> "Member States commit themselves to the goal of free movement of their nationals within the Community."

As the hon. Attorney General mentioned, making it mandatory for someone to supply a fingerprint upon entering this country does not interfere with free movement. And if you feel that interferes with your free movement and because of that you decide you do not want to come to this country, then perhaps we do not want you to come to the country. [*Desk thumping*]

Hon. Senator: What is not stopping them from coming in?

Sen. L. Lalla: Correct. The other Article is article 46(3) of the revised treaty, which states that:

> "Nothing in this Treaty shall be construed as inhibiting Member States from according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such conditions as the public interest may require."

Our national security interest at present is a very real public interest and it provides proper justification for asking simply that persons entering this country must supply their fingerprint so that we could verify who you are.

The other sections which are relevant are the security exceptions contained in Article 225(b) and (c) of the revised treaty which provides that:

> "Nothing in this Treaty shall be construed:
>
> (b) as preventing any Member State from taking any action which it considers necessary for the protection of its essential security interests;"

The points I made before in relation to Article 46(3) are equally appropriate to an interpretation of those two provisions.

There has been the proposal—or the proposal is made by clause 4(b) of the Bill to increase the eligibility age of jurors to 70. Our society has changed within the last 10 or 15 years, where persons are taking better care of themselves. All over the country you drive and you see more people, older people, out walking, exercising. [*Crosstalk*] People are eating better and they are living longer. The point being, as is said nowadays, that the age of 40 is the new 30, 50 is the new 40, 60 is the new 50 and 70 is the new 25. [*Laughter and desk thumping*] I look at my colleague, Sen. Hadeed, who raised his hands in agreement.

So there is no proper reason why we should seek to lock out our most experienced citizens, our citizens who have learnt the ways of life and they have this wealth of knowledge within their bosoms, and they have good health. There is no proper reason why we should lock them out of the jury system. And, in fact, Mr. President, those are the persons we want most in the jury system, persons who understand the motivations that people would have to act in different ways, good and bad in life, so that they could bring their wisdom to bear. That is the term that is used in court—bring their wisdom to bear on the evidence. We want our wise senior citizens to be available to serve on our juries, and that is why that proposed change is worthy of congratulations to the Attorney General. [*Desk thumping*]

Related to the point I made earlier about the FCB issue is the issue of special juries. Apart from everything that the hon. Attorney General has said, an important point is that having special jurors available to make determinations in matters involving serious and complex fraud and financial misappropriation, is that it acts as a deterrent because persons who are involved in illicit activities in our financial services would know that if they get to trial they would be tried by their peers, by persons who understand how things operate in the financial sector, who understand all the tricks that would take place in the financial sector, and would be able to do justice to the matter.

The point is, Mr. President, if we are serious about having our beautiful country become the Singapore of the region, we have to ensure that we have a financial system which is able to stand up to scrutiny, which is able to have credibility that will allow us to attract the investors and the investments that we really desire, to take our country where we would like it to be. [*Desk thumping*]

There is one other point I would like to touch on, and that is the proposed amendment to the Jury Act that would allow jurors to retire for a longer period—that is, four hours—and would allow judges to permit the jurors to separate after

they have retired to consider their verdict. At present, once a judge has decided to allow a matter to go to a jury, and to allow the jury to retire to consider their verdict, they are not permitted to separate until they have returned a verdict.

It is notorious in the Hall of Justice and at the San Fernando High Court, that once the time gets close to five o'clock, you are going to get a verdict, either guilty or not guilty. And why? Because jurors are normal human beings just like us. Between four and five, they start to think about children to pick up from school, traffic, stopping in the grocery, what the wife has prepared for dinner, sleep. So it is a very good thing to give a trial judge the ability, if he sees that the retirement of the jury is approaching that hour in the afternoon, to allow them to separate and to return the day after, after they have gone home and had their good meal that their husband would have prepared for them. [*Laughter*]

Sen. Ramlogan SC: Ah! [*Desk thumping*]

Hon. Senator: Or would have bought.

Sen. L. Lalla: So, Mr. President, sometimes when Sen. Al-Rawi speaks—and I mean no disrespect—he reminds me—[*Sen. Al-Rawi returns to Chamber*]—and he returns, for which I am happy. He reminds me of the times when you would be—[*Interruption*]

Hon. Senator: Welcome him back to the Chamber.

Sen. L. Lalla:—driving through different parts of the country and you will see these individuals standing on the corner, book in their hand, shouting to the high heaven about all the doom and gloom that is going to befall society if X happens and if Y happens.

3.00 p.m.

I would suggest that that is not the case in relation to this legislation. The pieces of legislation which are proposed to be amended and enhanced by this Bill are all needed to ensure that we are able to deal with the very serious problem that we now face—that is, the issue of crime—to ensure that we equip our protective services with the tools they need to make a serious dent to the problem which we now face, to the problem which we all collectively, regardless of party, would like to be dealt with in the national interest.

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

Mr. President: Sen. Cudjoe.

Sen. Shamfa Cudjoe: Thank you, Mr. President. Thank you for the opportunity to make a contribution to the proposed legislation before us. Now I am no lawyer, but I always have interest in crime and any administration of justice legislation. Because I am a young person and we usually are the usual suspects, I feel the need to say a little something, to throw my two cents in.

Now, Mr. President, this proposed legislation comes at us at a very interesting time for us, as a nation, where crime is at unprecedented levels, especially for us in Tobago. I think we are on our fourth murder now for the year. It may not seem like too many for you, but it is too many for us and we have had two in one week: one on, I think, Wednesday or Thursday, and one also on Saturday. That is happening a little too fast—both broad daylight crimes.

It is too much for us and I just felt the need at this time to enter this debate, especially considering the mood of the people in Tobago and the fear that we are experiencing right now. Nobody feels safe anymore because the people who would have been attacked for the year, not many of them are criminals—well, I would say, they are not known to have criminal background. For the most part it is people wearing large pieces of jewellery, and innocent people who are working taxi and so on.

I know the last two cases—the one that happened on Wednesday or Thursday is the husband of one of my schoolmates and he was a taxi driver who was hired and things went wrong; and on Saturday, the murder of a gentleman, an entrepreneur from town, from the Scarborough area known as "red man", a friend of my family, a friend of my brothers. I felt that one because I know him to be a hard-working person. Now, many would say, "Okay, why is he wearing a necklace worth $200,000 or more around his neck"?

Now, whilst somebody else—[*Interruption*] yes, he is a Trinidadian that moved to Tobago. What is interesting is when we first met "red man," we asked him, "How do you feel so comfortable wearing this necklace"? And he said, "Nothing happens in Tobago. I do not wear my necklace in Trinidad, but I feel so safe in Tobago; I feel at home here; I feel at peace in Tobago." And for years, nothing happened until Saturday. So we lay a good friend to rest and may his soul rest in peace, but we are hoping for some kind of peace, some kind of calm in Tobago.

I have urged the Minister of National Security and the police from time to time, when I make my contributions on national security, of the need for a special crime plan or initiative, a different and specific plan for crime and

managing policing in Tobago because our periods of high crimes are usually at times in our tourism season—you will find a lot of incidents taking place at Easter time when you have a lot of visitors on the island, and in July/August time, especially on weekends.

I am not here to say that Trinidadians are in Tobago committing crimes. I do not know who the criminals are, but I know when the island is very busy and we have a lot of visitors, crime is a very serious problem and it is hitting us under the belt in the tourism area. So I am hoping that there is some kind of new and updated and more vigilant and proactive approach to policing in Tobago, so that we can handle effectively [*Desk thumping*] this scourge of crime.

So, Mr. President, I am called upon today to contribute to this Miscellaneous Provisions (Administration of Justice) Bill, and I believe that this legislation comes at a good time. As a matter of fact, we are too late as a country dealing with this issue. Some may say I sound like I am about to support the legislation [*laughter*] but, Mr. President, I do support the principle, I do support much of what is being proposed, but I would raise my concerns and I believe the concerns of the people in the Opposition, on our Bench, as to why we are opposing and what we feel needs to be done.

Sen. Lambert: [*Inaudible*]

Sen. S. Cudjoe: I will raise my concerns—you would know, Sen. Lambert. I await with bated breath for your contribution.

So, Mr. President, I think it is very important at this time to exploit science and technology—just like the rest of the world—in our efforts to improve and enhance the robustness and the reliability of our criminal justice system. I think that science has played and continues to play a leading role in ensuring public safety. Now, at this time, there seems to be no confidence in our justice system, no confidence in our criminal justice regime and no confidence in our leadership and our systems. Our police officers are outnumbered and outgunned, and something needs to be done because crime continues to spread through this nation like wildfire. I think that we need to reduce the destructive impact of crime and enhance our public confidence in the criminal justice system.

I do agree with Sen. Lalla that forensic science, as it relates to DNA and fingerprinting and so on, will go a long way in treating with this issue, but I want to place on record my concerns as I stated earlier. I think we all agree, we sit here and we debate time after time about the need for DNA legislation. The Opposition would have voted with the Government to pass the DNA legislation—and before

I go on with that, Mr. President, allow me to stick a pin because I do not usually respond, but I want to respond to Sen. Lalla's comment about the reason why the Opposition has supported this legislation is because the legislation was so good, and it is what they brought that is why we supported 89 per cent.

From the onset, Mr. President, when we assumed office as the Opposition Bench, we said that we would support anything that is good for this country, that is in the best interest of this country. [*Desk thumping*] We did not sit like you when you were in Opposition and you opposed everything. We come here and we go through the legislation with you; we state our concerns and we sit and we toil during committee stage to bring the legislation up to par. So let me place on the record that the legislation that you have brought to the Parliament, and the legislation that was passed, polar opposites, [*Desk thumping*] and it was the hard work of Sen. Al-Rawi and all the other Senators, and the Members of the Opposition, we sat here with you very, very long hours. We used to say, "Okay, we will unleash Faris for you in the committee stage", and Faris used to be going at it. We all used to be going at it until we agree.

[*Crosstalk*] So we worked hand in hand and we assisted in making good legislation. But, Mr. President, I think that [*Crosstalk*] we all could agree that the legislation, or the development, the creation of good law, we do not have a problem with creating law, creating the documents, doing the paperwork. We always have a problem with implementation and enforcement. [*Desk thumping*] So I want to place on the record that this Opposition agrees that science and technology and this deep kind of research has its place. It plays a leading role and it has its rightful place in bringing our criminal justice system up to par, and bringing us up in the rank and file with the rest of the developed world, but I am very concerned as to the strategy. We all agree that science is important, but the strategy, Mr. President.

First and foremost, Mr. President, I have a problem. Now, I heard Sen. Prescott speaking about—he spoke about, we would work on the kinks and so on of the legislation in the committee stage, and I want to state my humble view. I do not believe that committee stage is the place to iron out this kind of legislation because, at the end of the day it is pretty much making legislation off the cuff. We sit here one night and we throw in things, we throw in different provisions as to, oh, give the person 10 years for that offence; no, five years; with no proper deliberation as to why we are making these kinds of recommendations. [*Desk thumping*]

Now if this is something that we all agree across the floor—the Government, the Opposition, the Independents—we agree to this whole DNA business, but I think we should have established and I think it is not too late to establish some kind of committee or working group, where we can go through this thing and iron it out. So when we come to Parliament, we should pretty much be just doing the formal part of it because we have been through the consultations with the stakeholders and the experts in the area. So we will be passing something that we all could agree on.

But, Mr. President, the Government has chosen to bring this—they create their legislation with as many flaws that it has, that we hope to iron out during a committee stage tonight and we go for a long time and come back tomorrow, and then say we tired and cuss the SRC, but we need to plan our business properly.

First thing first, this Government, four years later, still does not have a legislative agenda. If you had a legislative agenda or had a plan, you would have placed on your schedule this kind of legislation earlier to allow it time to go to joint select committee, not come before us two weeks—and I am not even going to count 16 days because you have about four, five days: four days of weekend and one day of public holiday. So you have pretty much 11 working days of which—we have one Chamber. So we have to have some days off so the Lower House could sit also. So roughly two weeks before the session closes, you bring critical legislation like this and expect us to iron this out over one night. I do not agree to the strategy. [*Desk thumping*].

What is this Government going to do? They are going to leave here and go out and say, "The Opposition did not support us; they supporting the criminals and they stand up for the criminals", and that is not the point. We are trying to make good legislation. I am not saying we are going to get it perfect, but this is something that we all agree on. Why can we not sit together and work this thing out in a proper fashion? I can tell you, everybody who was supposed to be consulted in this process were not consulted, because when the AG was making his presentation I make some calls, and I could tell you, everybody who was supposed to be consulted was not consulted, and everything is not peaches and cream as they are saying it is.

So, Mr. President, I think we need to—we always say this needs to happen and that needs to happen. In this country for years, as a young girl growing up, to this time in my life, we know what we are supposed to do. This is supposed to be done, and that is supposed to done, and this is not supposed to be done that way, but if we do not do it, who will? So if we know we ought to spend some more

time in parliamentary oversight and legislative oversight and we need to sit as a committee and sit as legislators and make this thing right and we are not doing it, then we are leaving it for who to do? And then we have comments for the SRC.

So, we need to do our work, Mr. President. Some people may be upset with me, but I want to place this on the record. I really think the Government has abdicated its responsibility as it relates to bringing proper legislation and looking out for the best interest of the country. [*Desk thumping*]

3.15 p.m.

Now, I think much of the focus has been too much on elections or preparing for elections or public relations to say we have passed this law and that law and we have passed 100 pieces of legislation. The same goes for the dog Bill that was recently proclaimed and if you go out to these municipal corporations right now, most of them, their police units or the units that are responsible for taking care of these dogs are not ready. They do not have the necessary transportation for the legislation to be implemented.

Sen. Al-Rawi: No insurance, no vet certificates.

Sen. S. Cudjoe: No insurance—all the necessary infrastructure and the technical and human resources that are necessary to bring the legislation into effect so that it works, it is not in place. So, are we here to sit here, talk fancy, wear nice suits and create a lot of paper? This is a lot of paper and at the end of the day, redounds to no benefit to the people of Trinidad and Tobago. [*Desk thumping*]

Then, when we ask for different compensation or when we ask for a "bligh" or we ask for consideration from the public, we cannot be confused as to why they are upset with us because they are not feeling like they are benefiting too. So, this Government has placed us in an invidious position. [*Desk thumping*] I am going to use that there, the AG's word. So, do not set us up, you are setting yourself up and you are setting up everybody else here, because we need to set aside the time and do our work to redound to the benefit of everybody.

So, Mr. President, I want to place on the record, I decided to do my little research for this, I decided not to focus too much on the law, the legal terms, but to look at the workability or the infrastructure, the "operationality". I do not know if workability is a word, I just created that. [*Laughter*] But, Mr. President, how are we going to make this thing work? How are we going to bring this thing to life? I wait with bated breath to hear what the Minister of Justice is going to

say because much of what I have to contribute, I am sure he is going to have a—well, I hope he has a response because it deals with the "operationality" of this thing.

Now, recently countries like Ireland and other European countries have established legislation to set up their database for DNA and fingerprinting and so on. I think it was on June 19 or somewhere in mid-June, Ireland would have passed their law for DNA database, and I tried to follow that process. I was very impressed with what I saw on the Internet and on the TV because they are establishing very sophisticated and advanced technologies in the area of DNA and fingerprinting. As a matter of fact, these countries are way ahead. They are not just talking about using forensic science but about implementing what they call "real live forensic science". This live forensic technology is intended to close the gap or reduce the delay time between information and evidence gathering and the identification and subsequent arrest and conviction of the offender.

Now, I was so impressed with the progression and their enthusiasm about the whole thing, so I got on YouTube and I decided to listen to some of the interviews of the commissioners in Ireland and the other European countries. I caught on to the debate and the commissioners and the stakeholders, they reported and highlighted the sophistication of their technology and the kinds of equipment that they are working with. And what stood out to me is that the commissioners and stakeholders said:

> We are through with setting up the infrastructure and we continue to improve the infrastructure, so we are ready to go. We are simply awaiting the passing of the legislation.

So they have dealt with setting up the infrastructure and making sure that they are ready to go. They have done their consultations and they were, at that time of the interview, with RET—I want to get it right. Is it RET news? I think it is RET or TRE news was a place where I saw one of the debates and they were ready to go. RTÉ news, Ireland. So they were ready, they had the infrastructure set up and ready to go, and it raised a red flag in my mind, because like many other issues of critical national development or, should I say on many issues that are critical to our survival, we put the cart before the horse.

We find ourselves putting the cart before the horse, like in this legislation where we bring this legislation to the House, it is passed. You get a couple of votes from the Independents, you do not care too much about what the Opposition has to say. It is passed and you say, "Okay, we have passed it" and

the thing turns into a law and you have no way of implementing this thing properly. So the cart is before the horse and that is the recipe for chaos, confusion, carelessness and craziness.

Mr. President, many of us would be—after the assassination or murder of former Sen. Seetahal, a gentleman would have come to the forefront. His name is Dr. Valery Alexandrov. Now, this man has been complaining for the longest time. I guess it is across both administrations. I had the chance to google some of his reports and he has been complaining for years about the inadequacies of the Forensic Science Centre. The Trinidad and Tobago Forensic Science Centre is critical, it is central, to the execution and the whole administration of this implementation, the effectiveness, of this entire piece of legislation. They come front and centre. The complaints that they have been making, or he has been trying to bring to the attention of the Government and of the public at large—I hope Sen. George, I trust that he would—well, Sen. Ramlogan promised that he will address some of them and I hope that promise is kept.

I want to first start with the hours of operation. Now, Dr. Valery Alexandrov further stated that the Trinidad and Tobago Forensic Science Centre does not meet international standards. First and foremost, he says it operates like a kindergarten. It opens at 8:00 a.m. and closes at 4:00 p.m. When I called today, it still opens at 8:00 a.m. and closes at 4:00 p.m. and he has been making this complaint for quite some time. So, when the pathologist goes to work on a Monday, you could meet up to 10, 15 bodies from the weekend murders. I am not making this up, if you google his name and the Trinidad and Tobago Forensic Science Centre, all the newspaper reports would come up. I have called the pathologist and these are some of the concerns that they are faced with.

So, we have a situation where the Trinidad and Tobago Forensic Science Centre does not meet international standards. Now, first and foremost, we do not even meet local standards because they receive a failing grade from OSHA, and you could find that in the March 18, 2013 report and I heard the interview again. There is an interview on the Internet and I saw it with my own eyes on TV when he was interviewed the week after Dana Seetahal SC was tragically murdered. They had a failing grade from OSHA and I think that we should be thankful that Watson Duke has not made his way down to the forensic centre because he is wreaking havoc throughout the entire—right now, he is in Tobago. He was at the Division of Agriculture on Monday just causing a lot of trouble. So we failed the OSHA grade.

I want to highlight some of the problems that OSHA would have mentioned: ventilation problem, inadequate ventilation systems, no exhaust ventilation for dilution of these cancer-causing chemicals; mould in the cupboards of the DNA department improper chemical, storage and handling.

Hon. Senator: Repeat that.

Sen. Al-Rawi: Say that again.

Sen. S. Cudjoe: Mould in the cupboards of the DNA department because of humidity. Inadequate ventilation in the photocopying room and the rest of the Pathology Department because of malfunctioning air-conditioning units.

Chemicals storage and handling: chemicals not labelled adequately in the chemical storage room; empty hazardous chemical bottles in the old mortuary room; procedures for handling chemicals are inadequate; inadequate storage of human remains such as bones and tissue samples; bone respiratory and separate storage area needed for tissue samples, and the list goes on and on and on, Mr. President. So, we do not meet international standards, right, we do not even meet local standards; we have no standards over at the forensic centre.

Now, the workload in order to meet international standards, one pathologist must work on between 250 to 350 bodies per year. Now, in 2012, Dr. Alexandrov worked on 437 bodies out of 904 bodies and last year, that unit worked on 1,026. There are the different reports where he stated how many bodies he worked on each year and every single year, he had been at least one time or two times over the international standard. That is unacceptable.

Now, the facilities: the size—and then, too, he does not have the necessary support staff. It is an inadequate number of pathologists working there in the forensic centre. They had asked for four pathologists—forensic pathologists. At some point in time, they have three, they have two. Somebody recently, at the beginning of year, I know Dr. Eastlyn Mc Donald-Burris had some problems with contractual arrangements and she did not have a contract for some time so she was not working for some time. And they get sick very often because of the problems with the facility, so sometimes pathologists are out on sick leave.

So, Mr. President, the necessary arrangements need to be made to ensure that this centre works effectively because we can talk about DNA and the importance of DNA, but if the people and the facilities are not up to standard, then we are going to be receiving contaminated DNA records. Now, the facilities: in addition to the size of the facilities, there are issues as it relates to operating tables. They are supposed to have three operating tables, they have two and, at one point in time, only one was functional.

Now, I would have raised the issue of equipment. Now, Sen. Ramlogan, AG, would have mentioned that they are in the process of purchasing or they already have some new equipment. All that is well and good, but in the newspaper reports and when you listen to some of the interviews of Alexandrov himself on YouTube, he is making mention of having to buy little pieces of equipment and tools out of his own pocket. Tools like scalpels, there were no scalpels and the centre did not have a camera. He had to take money out of his own pocket to purchase a photo camera to take photos of the cases.

Then, there is another situation where—let us say a murder takes place on the weekend, it is taken to a funeral home and then on Monday morning, you go to work. Now, the pathologist does not know what is taking place, unless he reads the newspaper, as to what to expect on Monday morning because the police and the forensic centre does not have that kind of relationship where the police reports to the forensic centre or to the pathologist what he is to expect. So he finds out about these cases while reading the newspaper, Mr. President.

3.30 p.m.

Now, they are severely understaffed as it relates to pathologists and supporting staff also. So there is a serious backlog of work, and based on the position, our current situation with crime, the bodies are coming in faster than they can work. So there is a backlog and a long wait time. So there is a delay in police investigations.

Now, Mr. President, conditions and compensation. Now, working conditions, I would have mentioned some of the problems experienced, based on the OSHA Report, but for compensation, these pathologists have been lobbying for proper compensation packages, and more so to be provided medical allowances or medical insurance, because they are working with these poisonous substances, they are working on TB—people who were infected with TB, HIV. Very recently, I read a newspaper report where Dr. Alexandrov's hand broke out in ulcers, and he had to take time off from work. So there is some difficulty or some kind of challenge as it relates to providing this benefit for, or this allowance for these workers, Mr. President, but we also have to understand, when they take time off from work due to illness, then we suffer, we still have to wait on them, because it is only about four of them.

Mr. President, I wanted to raise the issue of the absence of a bones depository. Now, there is no proper facility or equipment or staff to treat with bones. As Dr. Alexandrov would have mentioned in his report, there are boxes of bones lying around the centre, and there is no necessary resources to treat with this.

There is a case in the newspaper about farmer Joseph Panchorie [*Interruption*] who is believed to be from Cedros. Now, he went missing on January 18, 2010 and some hunters stumbled upon some bones on his agricultural estate. They took the bones to the—they contacted the police, and it is believed that the two officers from the police station took the bones to the forensic centre.

Now, the brother of Panchorie later gave a blood sample, but a couple months later he was told the police lost—they could not find the blood sample. So four months after that he gave another blood sample and wrote to the Forensic Science Centre asking, okay, what is going on with the matter? He was then written by the people at the forensic centre to say that the—let me quote it:

> "'This is to inform you that our records show that the body of your brother Joseph Panchorie never came to the Trinidad and Tobago Forensic Science Centre.'"

And when you continue to read the report, Dr. Alexandrov goes into the problem of:

> "'There are things scattered all over the office, all over the autopsy room,…"

There are boxes, there are nine boxes of bones and they have to be separated and so on, Mr. President.

I did not see in the legislation we spoke about handling bones, Mr. President, but we need to consider this serious matter, because you do not always find a full body of flesh, eh, sometimes you find bones, just bones. In many cases we could recall where police officers had to deal with just bones. If we are serious about this DNA business, we have to make provisions to treat with issues of this nature.

Now, Mr. President, that brings me to the issue of policing, because I think it is very important to say—Mr. President, before I get to policing, I want to raise the issue of qualifications, and the issue of the heavy workload in the Forensic Science Centre. Now, as I stated before, pathologists are not supposed to handle over 350 cases per year. And we have a situation here where pathologists are handling two times, three times sometimes, the number of cases, and that creates a serious problem.

I want to draw to your attention the case of Annie Dookhan, who is a Trinidadian-born chemist who moved to the US. She was very popular in the news sometime last year or earlier—no, it was last year, Mr. President. She claimed to be a chemist with a master's degree, and later on when the investigation was done, well, the police service was caused to investigate her because she was dealing with too many cases.

So Mrs. Annie Dookhan was dealing with too many cases and she brought that attention upon herself. The end result of it all, she had submitted—she had falsified evidence that would have impacted 34,000 cases in the State of Massachusetts. She is now behind bars. Every time they report this girl, they want to let you know that she is from Trinidad [*Crosstalk*] and there is a problem with people working without qualifications, and [*Interruption*] so on there, Mr. President.

So I want to just raise a red flag and give the advice to the Minister to please check. I know you are hiring people, the AG spoke about you are trying to fill some of the vacancies and so on. Please make sure to check and double-check and triple-check these qualifications, because they are dealing with very sensitive issues of national security.

Now, Mr. President, and as much we are trying to fill these positions, what I have understood from employees of the Forensic Science Centre, is that we are unable to fill these positions, all the positions that are supposed to be filled, because the space is just too small. I understand that there was recently a field trip to Ontario, Canada, where experts and officials went to take a look at a forensic centre that is being—that was just established in Canada, so that we can have something similar here in Trinidad. I understand that it is going to be built in central, but in the meantime, we have to work with what we have.

So I know last year some $3.7 million was attributed to refurbishing the current centre, and we were given the undertaking by the Government that this refurbishment would be completed by March of this year, and that has not happened. So four years and $3 billion to the Ministry of Justice, $3 billion later, Mr. President. We are really asking, are we getting value for money? And are we prioritizing in the way that we ought to? So, Mr. President, I just wanted to raise that issue and I want to urge Members to examine this case of Annie Dookhan. It is very serious, and I think that it raises—it should raise some red flags for all of us.

It is reported here that in two years, her turnaround time for tests dropped significantly, and she was dealing with over 500 samples per month. Now, that is normal for us, because if Dr. Alexandrov has dealt with 437 cases, and that is doing, not just taking samples, he is doing full autopsies, Mr. President. Maybe we need to consider separating the serious and the not so serious forensic issues, because we have some very general, or somewhat general cases that are being handled in the same place.

Mr. President, allow me to raise another issue, policing, because many of the clauses in this proposed legislation speak to giving police this much authority, and more responsibility, and I have no problem with that. I also want to treat with that matter where Sen. Lalla tried to imply that forensic science is the end-all. I want to make the point clear that forensic science is no substitute, should never be considered a substitute for good policing. [*Desk thumping*] They complement each other, they go hand in hand, they complement each other, they must go hand in hand, Mr. President. We cannot have one without the other, if we are supposed to have an effective and properly working justice system. I am just saying it. It is the same thing.

Sen. Lalla: I agree with you totally.

Sen. S. Cudjoe: Okay, thank you. So, Mr. President, I just wanted to make that clear because it is the belief of some of the people in the police service, that they drop the ball—some of the complaints from the Forensic Science Centre is the police act as an escort service, they escort the body to the building, the bodies are not properly tagged. Whatever they are dropping off, whether it is guns, cutlasses, whatever is supposed to be tested as evidence, they are not properly labelled. They make drop-offs to the Forensic Science Centre and never, ever check up on what they had dropped off, Mr. President. Dr. Alexandrov referred to it as sloppy policing.

For instance, there are forms at the Forensic Science Centre that police officers are supposed to complete. They are supposed to fill out these forms when they come to do business there or to drop off bodies or whatever, Mr. President, and they refuse—they do not fill out these forms. You could find this record in the March 02 report done by the *Guardian*, Geisha Kowlessar, entitled:

"Sloppy work by cops is cause"

Now, Mr. President, much of this is attributed to lazy policing and the need for training and education in the police service. Police need to be well trained and educated in their field. They ought to know the difference between a close-range shot and a long-range shot, "the difference between blood and decomposed fluid", and most of the police officers are not aware of that, according to Dr. Alexandrov. If I lie, I lie after him. So, Mr. President, I want to place on the record my concern.

In the First World and many of these countries that we refer to, they have these sophisticated means and measures and techniques of policing as it relates to DNA. In these countries, Mr. President, you study, you study hard, you go to

school and you earn your degree or you earn whatever training and qualification, because you want to attain your goal to become a police. I find sometimes here, the people who do not study and did not have any goals, they just end up being a police. [*Laughter and crosstalk*] It happens in some cases, I will tell you.

There was recently an advertisement for police officers, and I became very concerned because in the US, I remember when my cousin was trying to be a part of the police service, she had to study and get a criminal justice degree, and so on. Then I saw an advertisement for policing here and they were told to just come with your ID, you do not have to walk with any—if it is a recent—[*Interruption*] Allow me to make my—let me make my contribution. So that has been the concern.

Mr. President, we have to—it is now some of these beliefs about the police, right?—they cause a bad name to be brought upon the police and it brings down officer morale, because there are some people who would have trained, and there are people who are dedicated and diligent and very serious about their work, and then there are some people who know that they do not want to be a police, they never had any intention to be a police at all, but because they could not find jobs anywhere, they go and sign up to the police service. I am not making this up.

3.45 p.m.

Mr. President, I have read this in the newspapers. I have read editorials about this, so we have to be serious about the qualifications and the requirements that are necessary for people who want to enter the service. People have to be passionate about the job. Somebody who is going to be a correctional officer—anybody in the defence force, anybody that is dealing with national security—just like teaching, just like nursing, just like medicine, you have to be passionate about the job. We cannot consider this thing as a last resort.

I am raising this topic because it was recently a topic of serious discussion on Channel 5 in Tobago, on the radio in Tobago—George Leacock took Ancil Dennis to task. Many of the people who advertise, "Oh, if you do not have a job, go sign up for the police", that is not the way it is supposed to go. Just like anywhere else, if you want to be a police officer, you are supposed to work diligently and dedicate your time and your energy towards doing that. It should not be considered a last resort, and I feel very seriously about that. It is not my intention to offend anybody who entered the service without qualifications, because you have people like Fitzgerald Hinds who entered the service without qualifications and became very passionate and gained his qualifications and moved on to bigger, better things after.

Mr. President: Hon. Senators, the speaking time of Sen. Cudjoe has expired.

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

Question put and agreed to.

Sen. S. Cudjoe: Thank you Sen. Dr. Balgobin, thank you Mr. President and thank you colleagues. So, I want to make it clear that the point that I am making here is the police service should be considered seriously. It should be something that applicants are passionate and serious about. We need to come up with a system or some kind of means of figuring out who are really serious about this thing and the people who are not, but becoming a police should not be a last means or a last resort just because you could not find a job somewhere else.

You cannot fail the dictation or cannot fail the multiple choice or cannot fail these simple things. Right now they allow them to get three questions wrong in the multiple choice, and I think the kind of simple, easy questions that are being asked, I do not think they should be allowed to get any wrong, but maybe I am too—[*Crosstalk*] But I just feel so strongly and so passionately about the people who are supposed to protect us and defend us, and I think that they should love their jobs and be serious about it, and not just have it be: "Oh, last resort, I did not get a job somewhere; let me be a police." So, I wanted to place that on the record.

Another point on policing, Mr. President, police officers have a lot of responsibility in this legislation, and in many other pieces of legislation, and we have a serious problem in policing that is detrimental to the improvement and the enhancement of our criminal justice system. We have a problem of rogue officers. We have to admit, we have a serious problem of rogue officers in the service, and it creates a bad situation for everybody else who is working diligently and everybody who is working according to the oath that they have taken—they are serious about their jobs; they are not in for corruption and they do not rent their equipment and so on. So, we need to empower and properly tool the systems and the bodies that are supposed to treat with pulling rogue officers out of the system. We cannot simply be transferring the officer from one office to another or from one division to another division—you are transferring the problem.

So, I know of many situations in the defence force and in the police force where an officer would have acted inappropriately and would have done something that is against the law, and instead of treating with that officer—and

we know well and good that that officer is guilty—his batch brothers or his batch people, or whatever he calls them, would cover for him and they send him to another division and then call the victim for an ID parade of the officer when you know well and good that that officer is not standing in the ID parade. The Police Complaints Authority and people like Gillian Lucky have spoken about this time and time again, about being serious about treating with rogue officers, because we need to improve the confidence of our people in the criminal justice system in order to advance and better our feeling of safety in the public. All right?

So, my final two points are two issues that have been brought up by Sen. Lalla—the first one is the retention of records—also the AG would have brought this up. Retention of records: my father used to say when he was alive, "Man must have reason. Anything you do, you must have a reason for doing what you are doing." Up to this minute, Mr. President, I have not heard a proper scientific or any significant reason as to why the Government is proposing 20 years for the retention of records for people who have been exonerated, and this includes also juveniles and children. I thought for some time—well, I believed the Government when they were serious about working on the juvenile justice system. I thought that something special would have been considered for young people and children because across the other countries, for instance, the Ireland legislation that I had followed, for people under 18, the retention time is six years and for people over 18; for adults, the retention time is 12 years. Now, we have given a retention time of 20 years for everybody, and I have a serious problem with that. I need to know what is your reason for 20 years and why there is not a special provision for young people or juveniles, for children, Mr. President.

Now, the AG would have spoken about the one-strike-out system that had worked perfectly. He said the police officers and these other stakeholders are commending the Government for this move, but I think this one strike out is also being imposed—also being brought into force in this legislation because if somebody was exonerated—you were considered for a crime, you were tried and exonerated—the fact that you are still retaining the person's record for 20 years, I am conceiving this, I am believing this to be some kind of presumption that this person is going to be guilty of something later.

So they were considered and exonerated, but you are still going to hold their records for 20 years, and you are saying maybe they will do something later. That is not fair because it is a human right to have a fair trial—everybody has the right to a fair trial; everybody expects this "innocent before proven guilty"—All right?—and that means you do not think that person is innocent. That person

does not have a chance to prove his innocence before proven guilty. You already have that presumption that that person is guilty by saying. "Okay, you will consider that first." It means the next time you are considered there is some chance that you might be guilty. The legal people, please guide me on that, but that is how I interpreted it, and I find it rather disturbing.

Now, secondly, I wanted to raise the issue of deportees. Now, Sen. Lalla would have made the comment that he thinks that deportees ought to be considered and in the way they were considered in this legislation, it does not matter—or should I say regardless of the reason for the deportation—and I strongly object to that, Mr. President, because each person that was deported has a specific reason as to why he or she was deported and sometimes, at the end of the day, that person is not a criminal. We have to make legislation that is appropriate for our people and our time and our history.

If you reflect upon our history, you would know that around the 80s many of our—like hundreds or probably thousands—people would have migrated to the US. Even in this day and age you have some of your brothers and sisters, family members, going out to the US to become babysitters and domestic workers and even students, and if you overstay that time—one day out of that six months—and get caught, you are going to be deported. It does not mean that you were a criminal in America or that you are returning home to be a criminal. But I remember being a student, if you get caught overstaying your time, they refer you to that home department and you get deported, but you did not intend to be a criminal.

Sen. Karim: The Department of Homeland Security.

Sen. S. Cudjoe: The Department of Homeland Security, thank you, that means that you are listening.

Sen. Karim: I always listen to you.

Sen. S. Cudjoe: I appreciate that. [*Laughter*] So, Mr. President, I want the Government to reconsider that recommendation if they are into taking recommendations for this, but I think you need to examine the reason for which the person was deported because it could be your grandmother who went out to the US to be a babysitter and overstayed one more day. Okay?

So, I am happy to know that Sen. Karim would have mentioned, I think sometime last year about an area of study in forensic science that the Government would be pursuing. I know the announcement was made and I hope to see it come on board.

Sen. Karim: January 2015!

Sen. S. Cudjoe: He said January 2015 it is going to be started, but by that time it might be too late because they are in the grave already, Mr. President. [*Laughter*] But we are going to continue it once that is the case. All jokes aside, Mr. President, I am happy that that is something that is being pursued. I think it is something that our country needs. When we set up these institutions, these tertiary level institutions, we should not just do maths and English and language and so on, we need to look at the areas that are critical to our situation and the development of our country, and I am very, very pleased about that.

So, Mr. President, that is my two cents. I hope the Government would take into consideration some of my recommendations. I hope the Minister of Justice would bring us up to speed as to what is happening in the forensic centre. I am very hopeful, Mr. President, about the Government reconsidering the manner and the approach and the strategy used to bring legislation of this nature, that we all agree to it in principle, but we need to work out the strategy and be on one accord because, at the end of the day, it is about our national security, our public safety—the safety of our brothers and sisters and our children—and we are all interested in that. It is for the advancement of us as a people and our progression as a nation. So, Mr. President, with those few words, I sincerely thank you. [*Desk thumping*]

Sen. Dr. Victor Wheeler: Thank you, Mr. President. I had hoped to only speak for a short time, but after Sen. Cudjoe it would be a very, very short time [*Laughter*] because she actually pointed out quite a few of the issues related to the Forensic Science Centre that I had hoped to address. So, I would just like to endorse many of the concerns she had, I also share those concerns, and I would like to move on now specifically to the Bill, the Miscellaneous Provisions (Administration of Justice) Bill, 2014.

Mr. President, clause 3(c)(iii)(2) which refers to the custodian, and where the DNA databank has been moved from the Forensic Science Centre to under the control of the custodian, I am just wondering if there is a need to identify where this databank will actually be located.

4.00 p.m.

Mr. President, I do not know if it is something that will be put in the regulations, but I just want to flag that. I am not actually seeing if it is going to be moved from the Forensic Science Centre, where it is to be located. I presume the custodian will have an office, but is it that it is the office of the custodian or is there some other place that the custodian will have control of?

The other thing I would like to comment on is with respect to the capability of doing DNA analysis. The impression may be given that once we pass this legislation—the 2012 Act, I am informed, is not yet proclaimed—that it will significantly improve our capability to catch the criminals. But all the DNA analysis would say is that—when you take the sample from the person and identify that there is DNA present from someone else, all you can say is that there is physical contact. It does not automatically mean that the person's DNA who may be present was actually involved in the crime. That person may have had a conversation with someone earlier on. They may actually have an article of clothing from that person. You yourself might be casually walking in the street and come in contact with the person, and then a crime is committed soon after. It still requires the need for proper policing, proper investigation. The DNA analysis is only part of the evidence collected, or the collection of evidence in the solution to crime.

We have already heard the conditions of the Forensic Science Centre where the potential for contamination is high. We do not have the pathologist or the forensic pathologist going to the crime scenes to collect samples. You have someone at the crime scene collecting the sample, then they place it in a container, then that is given to someone to bring into the Forensic Science Centre itself, where it is going to be tested, and then after it is tested it has to be stored. So there are many avenues from which contamination can take place. Contamination is actually one of the big concerns with doing DNA analysis, because it can significantly alter the accuracy of your results.

With respect to subsection (16):

"Where a citizen of Trinidad and Tobago—

(a) is deported from any place outside Trinidad and Tobago;…

a non-intimate sample shall,…be taken from…"—that citizen—"without his consent…"—upon his arrival into Trinidad and Tobago—"by a qualified person at any port of entry."

The last time I travelled to America, they did not take a sample but they certainly took a copy of the scan of my fingerprints. Actually the person commented, because I had been there before, they said, "You know, who I am seeing here looks a little different from the picture on the records, but we know it is you because we have your fingerprints, so I will let you pass". I was actually quite alarmed at that, because I did not think that I had physically changed in any way. [*Laughter*]

Hon. Senator: You looked younger. [*Laughter*]

Sen. Singh: And you are looking at yourself every day.

Sen. Dr. V. Wheeler: I do not know if maybe I had a low haircut. But the thing is, when I read this—and I presume it is some sort of technology we would be using here. If we will be taking samples from persons when they come into the country—and I presume we will be developed to a point where you can get instant results—if there is any mischief taking place or if there are some problems with the equipment, we might find ourselves causing serious embarrassment to visitors to our shores.

I do concede that anyone who is coming to visit a country, you should not object—for me personally—in principle, to have some method of verifying who you are, because if you are not about the business of crime, there should not be a concern. Knowing how technology itself can be abused, I am just a little bit concerned about what can be done with this type of—when this is passed and how it can be used and abused.

Mr. President, just to speak generally on crime, since I have been in this Senate we have passed many laws. Some of them have been proclaimed, some have not been proclaimed. The argument being given that you pass tough, strong laws to fight crime, to catch the criminals, but in spite of what has happened over the past four years, the murder rate is certainly increasing. Certainly compared to 2010 and now, I certainly feel less safe than I did four years ago. Sen. Cudjoe referred to two murders that took place in Tobago recently.

It is true—well, one of the individuals was known to be displaying very expensive jewellery, but you also had an employee of the Tobago Regional Health Authority where I work, who was murdered, and I am not aware that he had any propensity or tendency to display jewellery. I do not know the details of what happened with him, but I am actually quite concerned.

The Minister of National Security has referred, on several occasions, to a particular police chief from North America, Bill Bratton, who it is said was responsible for reducing crime significantly in New York in the 1990s. The theory that he referred to was the Broken Windows Theory, which was really a brainchild of criminologists, James Q Wilson and George Kelling.

The argument was that crime is the inevitable result of disorder. If I am permitted to quote from this passage:

> "If a window is broken and left unrepaired, people walking by will conclude that no one cares and no one is in charge. Soon, more windows will be broken, and the sense of anarchy will spread from the building to the street on which it faces, sending a signal that anything goes. In a city, relatively minor problems like graffiti, public disorder, and aggressive panhandling..."

In that particular case it is aggressive begging; that could be analogous to some of the vagrants we have on the streets, some of which who beg, some do not:

> "they…are all equivalent of broken windows, invitations to more serious crimes:
>
> Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions."

It is not surprising that many of the crime hotspots are in areas that are not as in sanitary condition as other places.

> "If the neighborhood cannot keep a bothersome panhandler"—or beggar—"from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place."

Even though this theory is what Bill Bratton was famous for, and it contributed, so it said, to reducing crime in North America, particularly in New York in the 1990s, it has also been pointed out that during the 1990s violent crime declined across the United States for a number of fairly straightforward reasons. One of those reasons was the illegal trade in crack cocaine, which had spawned a great deal of violence among gangs and drug leaders, that spread of crack cocaine had started to decline; but in Trinidad and Tobago, it is not in decline, it is on the increase.

The reason I am just mentioning that is even though it is important to adopt the theory of Bill Bratton, I know attempts were made to have traffic police, litter wardens, so that you supposedly catch those people who dirty the streets and who park illegally. We are supposed to be bringing in technology to catch people who speed. We actually passed laws against drunk driving, but people still take a drink and go into their cars.

We need to deal with some of the underlying problems: the drug trade, importation of guns. Unless serious effort is made to address these matters, I am not convinced that passing these laws as we are doing here, spending all these

nights, will have as good an effect or be as effective as we would like, unless these other matters are dealt with. [*Desk thumping*] So even though I will be very happy to support the legislation, I am not looking forward to the committee stage, according to Sen. Al-Rawi, but I am sure that when adjustments are made it will be a move in the right direction. I am concerned that unless those other things are addressed, we really might be spinning top in mud.

Mr. President, I thank you.

The Minister of Justice (**Sen. The Hon. Emmanuel George):** Thank you very much, Mr. President. I stand to contribute to the Miscellaneous Provisions (Administration of Justice) Bill, 2014 and, as indicated by the Attorney General when he did lead off the debate, this Bill seeks to amend about seven pieces of legislation: the Administration of Justice (DNA) Act, the Jury Act, the Criminal Offences Act, the Dangerous Drugs Act, the Indictable Offences (Preliminary Enquiry) Act, the Young Offenders Detention Act and the Police Service Act.

As Minister of Justice, two pieces of legislation here directly affect my remit, and that is the Administration of Justice DNA Act and the Young Offenders Detention Act, and I will speak to those two in particular.

Before I do so, let me address a couple of the issues raised by previous speakers, in particular let me start with Sen. Al-Rawi who, early in his contribution, asked what happened to the DNA Act since 2012 after it was passed and we had the regulations to the Act. I want to say by way of response that the DNA legislation was first introduced in Trinidad and Tobago in the year 2000, and the Act was subsequently replaced by the DNA Act of 2007. In the case of both those predecessor pieces of legislation, seemingly simple matters such as insufficient or unclear definitions and procedural provisions, rendered them fundamentally unworkable, resulting in a lack of full implementation. So the issue of the difficulty of implementing the DNA Act, predates this latest DNA Act passed in 2012.

In fact, the DNA legislation of 2011, which was later passed in 2012, included an effort to correct the mistakes of the past, and the highly technical nature of the regime required several stakeholders to implement the new administrative arrangements for taking, storing and testing DNA samples in a relatively short time frame.

The point I want to make is this: in light of that fact, in February 2012, and indeed before the Act became law, an implementation committee was formed comprising all the stakeholders that would be responsible for implementing the Act upon its coming into force.

I want to read into the record this implementation committee, because they had to review the Act, identify all the loopholes or lacunas, as my legal people are wont to state, and make recommendations, before the regulations could be made. I want to read into the record, as I said, the representatives on that committee.

The committee comprised: the Ministry of Justice; the Trinidad and Tobago Defence Force; the Trinidad and Tobago Fire Service; the Ministry of Health; the Ministry of Gender, Youth and Child Department; the Director of Public Prosecutions; the Trinidad and Tobago Police Service; the Immigration Division; the Service Commissions Department; the Customs and Excise Division; the legal office of the Ministry of National Security; the Trinidad and Tobago Prison Service; the Programme Director of the HIV/AIDS of the Ministry of Health; the Deputy Director of the Trinidad and Tobago Forensic Science Centre and the State Counsel, Ministry of Finance and the Economy; the personnel department, the director of communications from our Ministry, and the legal officer, and there were several other officers of the Ministry of Justice involved in this committee.

4.15 p.m.

There were also technical contributors to the committee including Miss Stephanie Daly, the Chairperson of the Children's Authority. There was Nicole Ramlachan, Associate Professor of the University of the West Indies—University of Trinidad and Tobago, sorry—and the Trinidad and Tobago Police Service represented by Sergeant Sylvester Malco, and Miss Andrea Jennings of the Personnel Department.

All of these persons have been meeting since 2012 in order to come up with the regulations to this DNA Act. And I am saying also for the record, Mr. President, that I have in my hand here the final report of that committee which was submitted and which has led to the compilation of the regulations to this Act. And the regulations are currently being prepared by the CPC, and those regulations would eventually, we hope in very short time, come to the Parliament for affirmative resolution.

So, I want to answer Sen. Al-Rawi by telling him, that he always talks about the Government bringing half-picked legislation to the Parliament, but when time is taken to do it properly, he stands up here in his very dramatic fashion and asks, "where the regulations? Where the regulations to this Act?" You know, I mean, here it is a lot of people are doing some very hard work to get these

regulations done, and I want to, as I said, lay it on the record or place it on the record, that this work is ongoing, and that it is now in the hands of the Chief Parliamentary Counsel—and being addressed by the Chief Parliamentary Counsel. [*Crosstalk*]

Sen. Al-Rawi also spoke about [*Crosstalk*] the Young Offenders Detention Act, and the amendment that we seek to make here today, to remove the requirement for the Minister to get involved in the sentence that the court had given in respect of a young offender. And again, in this case I just want to bring to the attention of this Parliament the matter of section 7(3) of the Young Offenders Detention Act, and the rationale behind it because, insofar as Sen. Al-Rawi is concerned, he is saying that it is better to keep this piece of legislation in place so that a young offender—research has found that young offenders are sometimes found not guilty and it is a good protection that we should keep this piece of legislation in place. But we are saying that it really conflicts with the separation of powers, and I think the Commissioner of Prisons was also the one who suggested this amendment be made.

And I just want to quote from the Note that was taken to Cabinet on this matter, and which explains the entire thinking behind the recommendation for the removal of section 7(3) from the legislation of the Young Offenders Detention Act, and therefore the Minister's involvement in what is, in effect, a court's decision which ought to be carried out, and which in very many cases interferes with the good that could come to the young offender if he is able to begin his sentence immediately upon the court's decision being made.

It says here:

> There is great concern within the Trinidad and Tobago Prisons Service with respect to the injustices suffered by young persons who are in conflict with the law, due to an outdated legislative framework and unnecessary administrative delays. This has resulted in a call to take immediate action to resolve certain critical matters in the short term. One such matter is the delay in the process of approval of sentences by the Minister pursuant to section 7(3) of the Young Offenders Detention Act, 13:05, which Act provides for the reformation of young offenders and for their detention in an industrial institution, namely the YTC, at Golden Grove, Arouca.
>
> Section 7(1) of the Act provides for:
>
> "Where a"—young—"person is convicted before the High Court on indictment of any offence other than murder, or before a Court of Summary Jurisdiction of any offence for which he is liable to be sentenced to imprisonment,…" and

> "that the person is not less than sixteen nor more than eighteen years of age,"
>
> and it appears to the Court that:
>
> "…it is expedient that…"—such a young person be—"…subject to detention…"—in an industrial institution—
>
> "the Court may, in lieu of sentencing him to the punishment provided by law for the offence for which he was convicted, pass a sentence of detention under penal discipline in the Institution…of not less than three years nor more than four years."

But pursuant to section 7(3):

> "No such sentence…"—of detention in an institution—"…shall be carried into effect until it has been approved by the Minister" responsible for prisons, who in this case is the Minister of Justice.

So that the Minister now has to get certain information, and very often information on the young person, and very often it involves him trying to find out the person's age to verify the age and so on. And in many cases sometimes to get this information—you would not believe—it takes two and a half, sometimes three years. So that very often the sentence to which the young offender is subjected is very often passed before he can actually begin serving his time and so on. And it disadvantages him because when he gets to prison the law provides that the Commissioner of Prisons can, if he behaves well, give him, after six months, set him on a sort of probation. And he can also have access to training and so on in certain skills in the prison, once he begins his sentence. But because it takes so long for him to begin his sentence, he very often cannot avail himself of these benefits and so on in the course of his serving his time. And this is what we are trying to remove.

In addition, as I indicated, the separation of powers dictates that the Executive via the Minister should not be involved in approving, virtually, a sentence that is passed by the court. And I could quote from the Cabinet Note again:

> Once a sentence is passed by a magistrate for a young person to be held at the institution, the court must submit to the Minister a request for approval of the sentence accompanied by the order of detention, a suitability assessment report, a probation officer's report and the person's birth certificate.

> Due to delays in receiving requests from the court for approval of sentences to the institution, compounded by delays in the submission of the probation officer's report, the approval of the Minister cannot be effected in a timely manner, with approval being secured on an average between two to three years after the sentence has been passed, since a sentence to the institution must be for a minimum of three and a maximum of four years, the wait for approval may amount to almost the entirety of the young person's sentence to the institution.

In addition, other disadvantages—pending the approval by the Minister, a young offender cannot be classified as either serving a sentence or as a remanded inmate. As such, he is not entitled to benefit from the training and development programmes offered to lads whose sentences have been approved.

This difficulty has resulted in the development by the prison service of a system through which the young person awaiting sentence, and approval by the Minister, is referred to as a YOAA or a young offender awaiting approval, and who, in the interest of fairness, is allowed to engage in a variety of programmes and activities but, strictly speaking, the Commissioner of Prisons ought not to be taking that initiative on his own.

So, I am making the point that the recommendation and the amendment to the legislation is argued in the Cabinet Note and stands on very, very firm ground of, one, making sure that the young offender has all of the advantages that can accrue to him, as a result of his beginning to serve his sentence directly from the court making the decision, and he being taken to the institution, and also the issue of the separation of powers.

So, I want to dismiss any truth or any basis for the argument presented by Sen. Al-Rawi in respect of this particular issue that he raised regarding 7(3).

On the matter he also spoke, saying that he was stepping a little out of line by talking about the prisons being filled or the remand prison being filled with young persons in particular on charges of cannabis possession. I do not think he is the initiator of this. I think, the Chief Justice in his address to the opening of the new law term did make some argument, and I think that argument is in the public domain, and we need say no more about it at this time.

But again, Sen. Al-Rawi in his usual, as I said, melodramatic manner takes issue with all of these things as if they are matters of great substance and so on, and when they can be very, very easily explained.

Let me turn now to matters that were raised by my goodly colleague, Sen. Shamfa Cudjoe. And Sen. Shamfa Cudjoe took the opportunity to be an apologist for pathologist Dr. Alexandrov. One wants to simply say that, if you are checking the Internet for information [*Crosstalk*] and so on, you want to check too on the veracity of what you see. And if you speak to anyone you also want to double-check on the veracity of what the person is saying to you. So, you cannot take a person's word and simply [*Crosstalk*] say that all that he is saying is said in complete truth because a lot of work is taking place at the Forensic Science Centre, and there are answers to all of the issues raised by Dr. Alexandrov.

Before I forget, let me indicate that in respect of the bone depository that Dr. Alesandrov is taking issue with, the response that I want to present to this House, Mr. President, is that while there is no bone depository at the Forensic Science Centre, there is indeed a dedicated storage space where bones are kept. And it is planned that at the new facility that we plan to build at Carlsen Field, we will indeed make adequate space for that. There is no adequate space for it at this time at the Forensic Science Centre, but there is some space that is set aside for it.

Additionally, due to the lack of the appropriate personnel for the proper analysis of bones at the Forensic Science Centre, the centre was not equipped for it. Provisions have been made for the new personnel to treat with this at the new facility. And this has been the situation since the building was first constructed in 1982. So this is not a new issue for us.

Again, Sen. Cudjoe indicated that, or asked, whether everybody who was consulted in respect of the drafting of this legislation, was consulted and I mentioned just now that all of those persons were consulted in respect of the development of the legislation, in particular the development of the regulations. So that when Sen. Cudjoe says that she made some calls and checked with people who ought to have been consulted, and they were not consulted, I would like her to identify for me exactly who those people are, because I did call out all of the people who were consulted in respect of this matter. [*Crosstalk*]

Mr. President: It is now 4.30 p.m. I propose to take the tea break at this point and to resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. President: Before we took the tea break, the Minister of Justice was on his legs and by my estimation he has another 35 minutes and 48 seconds.

Minister of Justice.

Sen. The Hon. E. George: Thank you very much, Mr. President. Thank you for being very precise with my time. [*Desk thumping*]

Mr. President, I was on the point of referring to some of the matters mentioned by Sen. Cudjoe during her contribution. I had come to the point where I was speaking to the issue of consultation, because Sen. Cudjoe had said that she had made some calls, and checked with people who ought to have been consulted, and they had indicated that they were not. I had asked her to please let me know, in light of all of the persons I had identified as having been consulted in respect of the compilation of the information that would lead to the construction of the regulations—I had read out all of those names of those agencies that were involved in the consultation—could she please let me know who she had called and they said that they were not consulted on this matter.

Sen. Cudjoe made mention that in her research she had found that countries like Ireland and other European countries had undertaken what they call live forensic technology and that they had set up infrastructure and were awaiting the passage of legislation so that once that legislation was passed, they would be ready to go because the infrastructure was in place.

I want to contradict what Sen. Cudjoe is saying because it is my experience, having been a public servant for many, many years, that the legislation, more often than not, in our context here in Trinidad and Tobago, precedes the establishment of the particular institution and the infrastructure for the institution. I could go into many of the experiences that I have had in the establishment of agencies like TTPost or like the Civil Aviation Authority and so on, all of which legislation had to come into being first before those agencies could be set up.

So, my congratulations to the Irish and the European countries who can do it their way but we have a tradition of doing it our way here. I think that until it can be proven that our way is really absolutely wrong, I think that we have to continue doing what we have to do. The legislation must precede the establishment of the infrastructure that goes into these institutions.

I just want to make an en passant reference to another issue raised by Sen. Cudjoe. The statement she made was that the legislation this Government has been bringing here, to this Senate, has not been good and has to be fixed at the committee stage by—I want to quote her—"unleashing Sen. Al-Rawi", that it should go to parliamentary committees and so on and the Government should set aside time to do the work. This is her advice to the Government.

I am saying that—again, from my experience in the public service—I am aware of the process by which legislation reaches the Senate. It goes in the form of a policy note to Cabinet. That note is then sent to the AG for him to have the CPC do the legislation. It is then taken to the Legislative Review Committee before it is brought to the Parliament. This is the process that has been followed in respect to all legislation brought to this House and this has been going on from time immemorial. I do not think that anything has changed.

The CPC and his team do very, very hard work and in my interactions with them over the years—both with wearing my previous hat as a public servant, and now as a Minister—I have found them to be entirely competent people.

No legislation being brought to this Senate is perfect because we have persons inside here who have different perspectives and so on. They bring these perspectives to bear, and on the basis of those perspectives, you make changes. I see nothing wrong with that and I do not think it could be extended to the point where the Government is condemned for bringing legislation here that has to be fixed, so to speak, in very, very fundamental ways.

I take the opportunity, therefore, to thank the CPC and his team for all of the work—[*Desk thumping*]—that goes into the design and creation of this legislation. They will never find me condemning their work that is brought to this Senate and is amended here.

So we now come to the issue of Sen. Cudjoe's reference to issues raised by Dr. Alexandrov. Let me say this at the outset: In any organization where you have workers you are going to have people complaining about things. It is so very natural—again, I draw on my own experience coming through life and coming through the public service—that you are going to get your workers, if you are a manager, complaining. Nobody is working in a utopian situation. You are always going to have challenges. In fact, it is the problems that we meet that we are being paid to fix. So, if there are no problems we might as well all stay home.

So when people complain about problems and the work, I take those complaints as par for the course. You are going to complain and you are going to have people complaining all the time. So, Dr. Alexandrov is just one of the persons who complain in an organization—in a government organization—in a work environment.

The one thing that Sen. Cudjoe said that I want to compliment Dr. Alexandrov for; she did say that he took money from his own pocket to do things to enable work to go on. I want to pay public tribute to him for doing that because that is exactly the kind of initiative that we want when our public officers are faced with challenges.

I want to just—with your leave, Mr. President—indicate that when I was Transport Commissioner and head of the Licensing Office, there were times when I would have to bring my own lawnmower from home and give it to the labourers there. There were two guys who did the labourer work around the Licensing Office compound on Wrightson Road—I do not remember their names; a twin of Indian ancestry. I used to bring my lawnmower from home so that the grass could be cut so that in front of the Licensing Office would look like somebody is taking care of the place.

While I am at that, let me say that what is going on at the immigration office is, particularly, a bother to me because here you have a situation in an office where there are challenges that one expects the management would deal with, and it really should not come to the Minister and the Government. [*Desk thumping*]

Let me put this in context. As the head of a department or a Permanent Secretary in a Ministry, an accounting officer, the matters that fall under that particular agency are the responsibilities of you as manager. For example, as Permanent Secretary, your responsibility, first of all—the prime responsibility of a Permanent Secretary—is to ensure that the environment in which your workers are working is safe. The first thing you have to ensure is that their safety is not compromised. [*Desk thumping*] The second thing that you do is that you have to ensure that your accounting unit is working and so on so that your officers in your Ministry can get paid. That is the second thing that the Permanent Secretary is responsible for.

The third thing that you are responsible for is to make them work. So having ensured that the environment is safe for them to work, clean and does not threaten their health and safety, and you are paying them, then the third thing is to make them work. I am putting the role of a Permanent Secretary in a very fundamental way here. At the Licensing Office, for example, when I was Transport Commissioner, anything having to do with air conditioning, the cleanliness of the building, the upkeep of the toilets and so on—all of the things having to do with the area in which the people under me worked—were my responsibilities to make sure that they were well kept. [*Desk thumping*] I never called the Minister to say, "Minister, my air-conditioning unit is not working, call Peakes." [*Desk thumping*] That is not the way.

People are abdicating their responsibility and everybody is saying the Minister and the Government. That is not so at all. That is not so at all. I want to dispel all these beliefs that people have. It has come down to this and it really is a shame, Mr. President, that we have the Government being held as the culprit in matters where you want to change a light bulb or a toilet plunger and so on and you are saying it is the Minister. How come?

In my day, as Permanent Secretary and as Transport Commissioner, that was not so, I took it upon myself to deal with it. If the elevator was not working when I was in the Ministry of Labour in Riverside Plaza—those elevators were 26 years old when I got there, within two years I changed all four of them. I sent a note to Cabinet saying these are 26 years old, we are taking parts from one to fix the other and so on, it is not working well. We are wasting a lot of the time of our workers in trying to get the elevators up and down, let us change them. The Cabinet agreed and we changed them. Nobody stopped work and so on to say let the Government do this and let the Government do that.

So, that I am saying to Dr. Alexandrov, thanks very much and I appreciate it very much that you could find it within yourself, with all of the complaining that you are doing—I am not saying that your complaints are not on good grounds—but thanks for also being able to take money out of your own pocket to make sure that you can do your work, or that the work of the Forensic Science Centre can go ahead.

In respect of the matter of the standards at the Forensic Science Centre, I have got a response from the Ministry and the people at the Forensic Science Centre. I want to put into the record—because the Senators on the Opposition Bench, in making their contributions, went on to indicate that the problems at the Forensic Science Centre started with this Government. Just like with the prisons—with all of the reports that came from the Abdulah Report in 1981/82 or thereabouts, coming right up with the Deosaran in the early 2000s, that were given to the PNM Government, were never acted upon. Again, we are saying, in respect of the Forensic Science Centre, nothing could be further from the truth than to say that all of these problems started in 2010 when this Government came into power.

Let me just indicate here, from what the people in the Ministry have provided.

> The Forensic Science Centre building at Barbados Road was constructed around 1982, give or take a year. When this Government came into office in 2010, we found it in an alarming state of disrepair.
>
> Since 1991, the number of staff and the range of services offered by the Forensic Science Centre had outgrown the then purpose-built facility.

I want to read that again:

> Since 1991, the number of staff…

So, when we speak about staff shortage—

> …and range of services offered by the Forensic Science Centre had outgrown the then purpose-built facility.
>
> Upon taking office it was discovered that there were two autopsy suites, one of which was not in use as this formed part of the original building. The suites shared the same ventilation and airflow system as the main building. This, as one could imagine, posed a number of health hazards. There was also a severe lack of processed-evidence storage space and a dilapidated shooting range, among several other issues.

5.15 p.m.

In an effort to remedy these ills, the Ministry of Justice set about providing immediate relief to staff at the Forensic Science Centre, and I want you to permit me to give a few examples of this. There was a darkroom at the facility which no longer served a useful function, as the Forensic Science Centre is now, I am pleased to say, a fully digital facility. As such, that darkroom has been converted into a processed evidence storage area which now allows for storage for items related to toxicology, biology and chemistry. Such a storage space never existed before, and this activity was completed in January of 2012.

In another instance, south of the new storage area, there is now an expanded document-processing lab, also completed in 2012, and this expanded facility allows for greater space and storage capacity for the processing of documents alleged to be of a fraudulent nature and requiring forensic analysis. There is also under way a complete reconfiguration and refurbishment of the kitchen, lobby, administration area and the director's office spaces. All of this is ongoing work, and there is work also to be done at the ballistics firing range for upgrading this firing range.

The autopsy suite—and this is where we come to Dr. Alexandrov—has also been earmarked for refurbishment. The Ministry has been engaging in the tendering process with respect to this refurbishment of this autopsy suite, but we have had some challenges in that regard. In May of 2013, a costing was obtained for that refurbishment and Cabinet's approval was obtained in the sum of $3.7 million and NIPDEC was mobilized in November of last year, and in February of this year, 2014, the RFP was sent out.

Responses were received and the Tenders Evaluation Committee at NIPDEC sat and considered the submissions, and that initial tender drew four responses. Three were struck off for being non-responsive to the issued RFP and the final

bidder was disqualified from award on technical grounds. So that the process of getting a proper tender for this failed and we are at the stage now where we have put it out for tender a second time, and we are awaiting the results again from the tenders committee.

But more importantly, Cabinet agreed for the construction of a state-of-the-art facility for forensic and pathology services to be constructed at Carlsen Field on a five-acre site for the Ministry of Justice, Forensic Science Centre. The study tour was conducted there and a design brief has been put out and pre-tender activities are proceeding in respect of what we envisage would be a design/finance/construct model. This is going to be a priority project and we are arguing for funding to be placed in the budget to ensure that we can undertake this particular project.

But as I said, the pre-construction work is taking place and a public tender was issued on June 05 of 2014 for the procurement of a design consultant to develop an architectural design and a cost for the construction of the facility. This tender was initially carded to close on July 10, 2014, but will now close on July 30 instead, in response to a request from bidders.

I say all of this to say that we are attending to the matters and the challenges facing the Forensic Science Centre, both at the centre itself, which, as I indicated, is now too cramped to accommodate both the staff and the equipment, and the need for space that is required now. But that, too, Cabinet has taken a decision for the construction of a new centre and we are proceeding with all of the necessary pre-construction activity for this centre.

Mr. President: Minister of Justice, if I might just point out that you really have another six minutes. I seemed to have mistimed it just now.

Sen. The Hon. E. George: Thank you very much, Mr. President.

Mention was also made by Sen. Cudjoe about understaffing, especially of pathologists and so on. All of us would be aware, the discipline of forensic pathology is one for which there is always a scarcity of trained personnel, and I want to indicate that steps have been taken to address this particular issue by seeking Cabinet's approval for the award of scholarships to nationals of Trinidad and Tobago in the areas of forensic pathology and forensic document examination.

I have in my hand here, Mr. President, a draft note for Cabinet, dated July 11, in which the request is being taken to Cabinet for its approval for the award of scholarships for public officers for the study at the postgraduate level in three

scholarships to nationals of Trinidad and Tobago for study at the postgraduate level, two in forensic pathology and one in the area of forensic document examination. So we are taking steps to address the issue of the shortage of that critical need for forensic pathologists at the Forensic Science Centre.

Again, remember that these challenges, we are saying, have been challenges that the institution has been facing for several decades and we cannot solve all of the problems at one fell swoop. There is no "Mandrake" here waving a wand. [*Desk thumping*] Therefore, we have to address all of them systematically, prioritize them—address all of them systematically—so that we solve them.

There are always going to be problems that remain unsolved while you are solving as you go along. So you are going to get complaints from persons who work in the offices, like Dr. Alexandrov, but we welcome the complaints. I just urge Sen. Cudjoe to please, when you get the complaints, also check with the management so that you get a response also to what is being done to address the issue and so on, and simply coming to the Senate and trying to score points is not fair to the persons at the agency who work very, very hard. And I must compliment, again, the executive director of that Forensic Science Centre who does really, really yeoman work to ensure that the centre functions as best as it can, given all of the circumstances and challenges with which it is faced. Public servants in that agency work very, very hard and it is not good for their spirit for them always to be hearing just the naysayers criticizing how they are operating, because they are doing their very best in all of the circumstances. [*Desk thumping*]

I want to turn now, having dealt with Senators Al-Rawi and Shamfa Cudjoe on the matters that they raised, to the issues that directly affect the Ministry of Justice in this particular proposed legislation that is before the Senate today. I did speak to the matter of the amendment of section 7(3) of the young offenders legislation, and put in perspective the rationale behind the proposal to remove section 7(3) from the legislation.

So, Mr. President, if we can look clause by clause at what is proposed in Part I of the Bill. Part I is comprised of clause 3 with 19 subclauses, and it seeks, in part, to introduce definitions for the "DNA record", for "exonerated" and for "private security officer".

Clause 3(c) seeks to amend section 10 of the Act by renumbering 10 as 10(1) and inserting new subsections and so on, so that you create a custodian and you separate, what I think my colleague, the AG, referred to as the holder of the DNA information as against the person who is testing the information. So that there is some separation of responsibility, so that the integrity of the process is preserved.

Mr. President: The speaking time of the Minister of Justice has expired.

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

Mr. President: Before I put the question, I just want to remind Members that if you intend to engage in long-running discussions, you should do that outside of the Chamber and not inside of here. [*Desk thumping*]

Question put and agreed to.

Mr. President: The Minister of Justice. [*Desk thumping*]

Sen. The Hon. E. George: Thank you very much to you, Mr. President, and to all Members present and to my colleague, Sen. Fazal Karim.

I was proceeding with section 10(3) which will allow for the custodian to lawfully delegate his functions in circumstances where such delegation is necessary. Having regard to the stringent requirement in the Act that the custodian act independently in the exercise of his functions, this amendment was aimed at ensuring that the staff of the office of the custodian operating under the bona fide instructions of the custodian, would be acting within the confines of the law. This provision is patterned after section 90(6) of the Constitution which empowers the Director of Public Prosecutions to delegate his functions, where necessary.

Clause 3(d) would amend section 13(3) of the Act by inserting a requirement that the prescribed form be completed in order to certify that a person has witnessed the taking of a sample where required, pursuant to the Act. This amendment would serve to ensure that there is documentary proof of the requirements of the Act where samples are taken from vulnerable persons, such as children and incapable persons.

Clause 3(e) will insert a new section 13(A) which will allow a police officer serving a summons on a person to appear before a court as a defendant in a criminal case to, at the same time, serve notice on that person to attend a specified place for the purpose of giving the DNA sample. This amendment is intended to allow police officers to obtain DNA samples from persons who go before the court other than through arrest and charge and who may have committed criminal offences.

Clause 3(f), in a similar vein, would amend section 14(7) of the Act by inserting a requirement that a prescribed form be completed in order to certify that a person has witnessed the taking of a sample where required pursuant to the Act.

So, Mr. President, all of these clauses are meant to make the necessary amendments that have come out of discussions that involve the persons and agencies that would have to give effect to the legislation. And very often, even with all of the care that is taken in the Parliament to ensure that we put good legislation out there, when the implementers—those persons who have to give effect to that legislation—go through the legislation and see the things that they need to do, sometimes they find things that cannot work and we have to come back and make the necessary amendments to ensure that they work. We are not perfect and this is an exercise that we enter into from time to time, and amendments have to be made, and it is my own experience, again, that legislation has to be constantly amended because the life of man goes on, and from the time you implement legislation, it is virtually passé.

5.30 p.m.

So, in my own view, there should be a team of people constantly working on amending—looking at existing legislation and seeking to amend them and bring them up to date. And I could refer, in fact, to a very recent case here, where the prison rules, which were in effect since 1838, have only just been amended and redone in order to bring them up to modern times. But it really should not take—almost 200 years, if you give it another 20 years, nearly in excess of 170 years to change legislation. Legislation should be constantly looked at.

So, it is good that the Government, through the AG, has brought this—presented by the AG here earlier on today, has brought this legislation to the Parliament. It is action that needed to be taken in the context of the fact that the legislation could not work as it was originally worded or framed, and we are here today to seek, to put that right, and I commend this legislation to my colleagues, Senators on both sides of the aisle and I hope that at the end of today—at the end of the debate we can pass this legislation with full support. It makes complete sense, the proposals that are presented here in the pieces of legislation referred to. Thank you very much, Mr. President. [*Desk thumping*]

Sen. Stuart Young: Good afternoon, Mr. President, Members of the Senate. Once again as I rise in this Senate, I would like to convey my appreciation for the privilege to be able to contribute, and I am very thankful for that privilege. First of all, I would like to start by saying that I agree with what Sen. George said a short while ago, and that is the attitude that he described, an attitude that he has told us whilst he was a member of the public service, he lived by. And that struck a hard chord with me, and that is something I would like to start off by referring to in the Senate here today.

And it is this, Mr. President, that I have alluded to it before and I will continue to allude to it, because if only one or two people in our society take heed and follow the call, I think I would have made some level of contribution. And that is that we, as a society—it is my respectful view and my opinion, and a humble one at that—need to change. We need to change our attitude and we need to develop as a society as we move, hopefully, towards a First World status in the not too distant future. And again I was heartened during the contribution of Sen. Lalla that I heard him refer to Singapore, because again that is a jurisdiction to which I have been making much reference during my contributions.

So before I get to the Bill, Mr. President, if you and the Members of the Senate would allow me a further opportunity to just try and sow some seeds of thought, and they are as follows: that we must stop thinking as individuals, meaning a selfish people. We must stop being a selfish people. We must take personal responsibility. We must each do what we can to improve this great nation of ours. And the time to do so is now. Now is the time for us to take stock as a people. [*Desk thumping*]

Respectfully, Mr. President, and members of society, it is now a time for us to sit back and reflect. It is a time after that reflection for us to act and to change the way that we operate, and we have grown to operate. And I, as an individual, cannot accept when we say it has always been that way, this is how it is, we have the whole shutdown of the immigration system and people are not taking personal responsibility. I must say, I agree with Sen. George there, that the buck must stop somewhere and it is not in a situation like that necessarily, at a ministerial level. And we on this side, having said that, we on the Opposition side would like to thank all of those members of the public service who are living by these attributes. [*Desk thumping*]

And having started with that so to speak, as my preamble, my introduction, Mr. President, I would like to place this Bill into some context, and we heard from the Attorney General earlier today as he started the debate and brought it to us. The context of this Bill is one of crime. And there should not be a single citizen in Trinidad and Tobago that is not currently disturbed by the issue of crime. We are all affected by the issue of crime. Not one of us is immune from the effects of crime. And this legislation, we are told, and I have read it and studied it, is about addressing some of the issues in the criminal justice system. And there are parts of it in here, that like Sen. Prescott and Sen. Al-Rawi, we support, I support, because it makes sense—the amendments to the Jury Act, long overdue, and other areas.

There are a couple of critical areas that I will come to shortly that I think we should pause and we should reflect on and we should consider and not flippantly dismiss, as I have heard done a little earlier today with the responses: "well tell us why we should not do it; tell us why not to do it that way." But we should really sit back and reflect on the issues of privacy of each individual citizen of Trinidad and Tobago, because it is going to affect each one of us in some way or the other. But coming back, Mr. President, to this context of the Bill and that being crime, the Bill we are told by the hon. Attorney General is a Bill to deal with certain lacunas in the existing law and to assist in the criminal justice system.

Crime is a real and disturbing issue in Trinidad and Tobago today. He told us we are giving the police service the tools to combat crime. I found it interesting and as he must, because we all must, he has admitted that crime is at a troubling level. He said that the police service want a DNA database to get matches to assist them in their fight and in their combating of crime. And the question is, why can the police not feed into the nodes of the system to assist in the fight against crime?

So all of this talk about crime as the context and the background, in preparing, over the weekend, to come and make some level of contribution, it disturbed me when I saw on the front of the *Sunday Express* newspaper and then the story picked up on page 3, Sunday July 13, 2014, *Sunday Express* newspaper, an article written by Anika Gumbs. And I will just refer very quickly to a few of the standout parts of the article which I think must—any sensible citizen reading it should pause, and we here have some level of contribution to make via legislation and we must take note of what is happening in the society and what is being said. And if I may, it starts:

> "SEVERAL high-powered rifles are among the cache of 359 guns that have either been smuggled into Trinidad and Tobago along its coastal boarders [*sic*] or were locally built by cold-blooded killers over the last six months."

That must give us cause for concern. It goes on:

> "According to the Police Service serious crime statistics, a total of 255 woundings and shootings have occurred for the year.
>
> Some 1,220 robberies and 1,114 burglaries have also taken place.
>
> Only last year a United States District Court identified Trinidad and Tobago as a transshipment point to smuggle guns, drugs and terrorists during the high profile court matter involving Dino Bouterse, son of Suriname President Desi Bouterse."

"Bouterse", I am corrected by Sen. Prescott. Thank you.

And then we have our hon. Minister of National Security being quoted in the article and it says:

> "Contacted on Friday, National Security Minister Gary Griffith confirmed to the Sunday Express that during January to June…"

—which is our first six-month period for this year:

> "…police seized 359 illegal guns."

Mr. President, as a society we must pause and we must have a serious level of concern, and we must all work together in trying to arrest the situation and trying to bring some level of sanctity and sanity back to our society. And what concerned me, and there is actually a very useful chart that is put into this article as well, labelled: "Serious crime statistics". And when one looks at it, under the heading of murders and it lists for each month, the first six months of the year, the number of murders, it does it for robberies, fraud offences, woundings and shootings, et cetera. I am not going to worry to read through each one of it in an alarmist fashion. But what I do is, I tell us here in this Senate, that it is up to us to do what we can to ensure that we protect the rights of each one of the citizens of Trinidad and Tobago and to do what we can to stop the crime situation that is taking place.

And I sat and I listened and I listened to the Attorney General, and all he said about what they are doing about crime and the crosstalk and the criticisms made of Sen. Al-Rawi's contribution in an unfair manner. And I thought to myself, the Attorney General has a saying he likes to utilize very often, which is, "talk is cheap". And I thought to myself, you know this is a prime example, because we sit here and we listen to the criticisms and the pointing of fingers in relation to crime. And we have brought to the forefront, Mr. President, a very, very, disturbing element of support of criminals and criminal elements in our society. And until we get the results of the audit I am going to bring it up again, because I think it is my responsibility and duty not to let it die, and that is the LifeSport Programme. [*Desk thumping*]

And the media, Mr. President, our ever alert and hard-working media, once again, on Sunday July 13, *Sunday Express* newspaper, kept the issue alive and brought to our attention, because, of course, one of the media's, in my respectful view, one of their responsibilities and duties is that of public interest and to keep alive with us and to keep on the front burner issues that can very easily be

shuffled by the politicians to the back burner. And the article to which I refer, Mr. President, and I would like to refer to the Senate, is that written by Miss Asha Javeed.

> "As Central Audit Committee sends letter…
>
> Creed 'back in country'"

And what I would like to focus on are a few elements of this article, and if I may start it off, she said:

> "On Friday, Minister of Sport Anil Roberts was interviewed by the Central Audit Committee."

So, we finally now know that the Minister of Sport has been subjected to an interview by the committee and we will wait to see what is said. It goes on to say:

> "In a statement yesterday, the ministry said:"

And this is the Ministry of Finance and the Economy.

> "'Official letters have been dispatched to both PS Creed and Ruth Marchan requesting that they make themselves available to be interviewed on LifeSport by the Ministry of the Finance and the Economy.'…
>
> Finance Minister Larry Howai, in an e-mail yesterday, said while he had confirmed earlier this week the draft of the report would have been ready by this weekend, it…was not yet ready."

And I pause because, Mr. President, respectfully we have been waiting on this now for some period of time. This is an issue that was brought to our attention by those on the other side. We have heard—and I am not going to go into the details of all of the horror stories we have heard. But the reason why I am raising this is that we are talking about crime. We have a Government telling us this legislation combats crime, we need to fix the criminal justice system. And I agree with them. We do need to do that. But respectfully, whilst saying that, you cannot be speaking tongue-in-cheek and, behind the backs of the nation, be feeding the criminal element. [*Desk thumping*]

Miss Asha Javeed goes on to quote. [I*nterruption*]

Sen. Hadeed: If you would not mind. Do you have proof that the Government of Trinidad and Tobago is feeding criminals? Do you have actual proof of that? Do you have hearsay evidence of that?

Sen. S. Young: Sen. Hadeed is now delving into the realm of hearsay evidence and wants proof. What we have is a Minister of National Security who has warned us and told us that there are criminal elements at very high levels in the LifeSport Programme. We have evidence that there are criminal elements that are gathering caches of arms in the LifeSport Programme and that the Government is funding the LifeSport Programme. Do I have evidence, Sen. Hadeed, that anyone in the Government is going and physically handing the criminal elements cash or money and funding? I personally do not have that evidence. But if I may continue.

> "'However, in discussions with the auditors this week, we identified a few areas…'"

This is a quotation of Minister Howai.

> "'…we identified a few areas where further work was required to verify certain conclusions and I requested that the additional verification take place.'"
>
> **5.45 p.m.**
>
> "'The report has taken longer than expected originally as the issues that needed to be addressed ballooned beyond what was originally envisaged based on statements made by certain officials of the programme which then needed to be verified.
>
> As you know the auditors cannot accept the statement of any individual and would have (as far as practical) [to] verify against hard evidence and documentary proof that validates the statement and obtaining that information can be difficult at times.
>
> In addition, as you quite rightly identified we have been having some challenges in meeting with all officials of the programme', he told the Sunday Express."

It goes on:

> "He said the work had taken longer than envisaged 'given the extensive nature of the verifications that were required to confirm what work was actually done and the scrupulous care that had to be exercised in reviewing documents such as invoices, etc, and the limited resources of the unit'."

It then continues:

> "'After it is handed over, the Prime Minister will determine the next steps from'"—here.

The author goes on:

> "The funding and recipients of LifeSport were identified in an investigative series by the Express newspapers into the funding to the Jamaat-al-Muslimeen.
>
> LifeSport is a programme in the Ministry of Sport which pays criminals $1,500 a month to play sport.
>
> The programme has been riddled with financial irregularities since its inception."

Sen. Hadeed, Members of the Senate, it is that type of statement that concerns me if anything in there is true. It goes on to say:

> The—"National Security Minister Gary Griffith said LifeSport will now be directed by the Trinidad and Tobago Defence Force."

So again, I marked the record on this occasion to say, if we are talking about revising the criminal system, the criminal justice system, let us ensure that we are not doing anything at all to continue the breeding of criminals in our society or—[*Interruption*]

Sen. Hadeed: Would you? Is the Government doing all in its power to do an investigation on this issue; and after the investigation, the result of the investigation will give you facts?

Sen. S. Young: Sen. Hadeed, that must be a facetious question because the truth is, I do not sit in Cabinet, I do not sit on your side, I have no idea what the Government is doing. [*Desk thumping*] I would like to hope that the Government of Trinidad and Tobago is doing all that it possibly can.

The AG said that criminal elements are hell-bent on holding us to ransom. Again, the LifeSport Programme comes to mind. This must be a tongue-in-cheek comment when it is being suggested that Government, through the Ministry of Sport, has funded criminal elements via LifeSport. I remind the country, Mr. President, that it is the hon. Minister of National Security, who has alerted us to this worrisome problem in the LifeSport Programme and we wait. We wait on the audit report from the Ministry of Finance and the Economy and we then wait to see what happens after that. But again, we mark the point, we mark the record as has been suggested by even the organizer of the Independent Bench, the hon. Sen. Drayton, on the last occasion. We have concerns about the veracity of the audit even before it is done.

The Attorney General said, we turn a blind eye to what is taking place on the ground. When he said that, I stopped and I paused and, again, thought about the LifeSport Programme.

The next issue, if I may, is to move on to the constitutionality because as we are aware and we have heard debated and the contributions of the Attorney General, Sen. Lalla, Sen. Al-Rawi before, we are all very conscious that this is a Bill that breaches or has the potential to breach our constitutional rights that are enshrined in our written Constitution, and I heard reference to the case law and I heard reference to how the case law should be applied, et cetera. If I may, Mr. President, I think it is important that we go back to the source, and that is to be found at section 13(1) of our written Constitution and it says:

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

Mr. President, I have seen it fit to quote this test because this is the important test. The test is not whether we think it is so, the test is not whether one jurisdiction does it differently, but rather in an application of the law we must be able to show that the Act is reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual. And I agree with Sen. George, that we do not just look at another jurisdiction and say because in Ireland it is so, because in the UK it is so and we adopt it willy-nilly, or just because they say so it is so.

But the point is, as a lawyer, we know in the application of the section 13 test of the Constitution, that is exactly what the court would be called upon to do. In looking at the proportionality test we have heard discourse of, during the course of the debates today, a court is going to look—Mr. President, as you yourself would be familiar—and see, is this type of legislation one that is reasonably justifiable in a society that has proper respect for the rights and freedoms of the individuals? And the question then is: well, how do you apply that test? And the application of that test, respectfully, Mr. President, is by looking at other democratic jurisdictions and countries and looking at how they have dealt with the law, and we look to Europe. We look to the UK which I will come to a short while ago.

The two largest DNA databases in the world, or two of the largest according to my research, are housed in the United States of America and the United Kingdom. And then what we do is, we look to these jurisdictions to see how they have dealt with this problem before because, as the Attorney General said, we are playing a catch-up game. The benefit of playing a catch-up game is you are not reinventing the wheel, Mr. President. So you can look to other democratic jurisdictions and see the errors they have made and ensure that we do not make the same mistakes, ensure that we do not fall into the same traps.

When I start going through the Bill, on a semi clause by clause basis, that is where I am going to caution us in relation to the keeping of the records for 20 years with DNA and then the fingerprinting. It seems to be contradictory. At some level they are saying indefinitely, at some level they are saying the Commissioner of Police must keep it until he so decides, and then on other occasions it is giving a year.

I am just saying that when we are looking at Bills and we are looking at legislation that we recognize require a special majority, Mr. President, we have a duty to sit and to consider it carefully, and to apply that section 13 test ourselves before we just vote and vote on party lines, and then, unfortunately or fortunately, a lot of responsibility falls on the Independent Bench. Because at the end of the day, Mr. President, they are the gatekeepers and the protection, because even where we in the Opposition say, "Nay", we do not have the sufficient numbers to ensure that wrong legislation does not go forward. [*Desk thumping*]

And it is to be remembered, through the existence of case law that exists in many jurisdictions including ours, that even after the legislators decide to pass a Bill and give it that section 13 stamp of approval and say the three-fifths majority, the courts have still held—as Justice Jamadhar had done in relation to the Proceeds of Crime Act—the courts have still held that we failed that test.

So I caution at this level, it is not sufficient to say as we have heard said time and time, and I am sure we are going to hear it in committee stage, "No legislation is perfect. You know, let us just press on with it. We will deal with it down the road". I cannot subscribe to that, Mr. President, and I am marking the spot now, that when we are dealing with legislation that affects the constitutional rights of the citizens of Trinidad and Tobago, which include us because we are not immune from it, we must pause and look at it very carefully and give consideration [*Desk thumping*] to what is reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual, and I respectfully submit that means, looking at the legislation in places like in Europe and in the United Kingdom.

It has been mentioned before what is the story that took place in the United Kingdom and is worthwhile mentioning again, very briefly, Mr. President, because we know in the application and the interpretation of our laws and our system here in Trinidad and Tobago, being a Commonwealth jurisdiction, we look very frequently to the United Kingdom, England and Wales for guidance as to how we should interpret our legislation and apply our legislation. And, the United Kingdom, England and Wales do not have a written Constitution, but they now subscribe to the European Court of Human Rights and the Human Rights Bill and that is similar in some of its provisions to our Constitution.

We have heard reference to the case Mr. S. and Michael Marper. If I may, just briefly: Mr. President, what had happened in the United Kingdom was, they had started off similar to us with our DNA legislation and our fingerprinting and saying we can keep it indefinitely, DNA a wide, wide variety of people and fingerprint them, et cetera. That was then held by the European Court of Human Rights on February 27, 2008 to be unlawful and to be in breach of the protection afforded by their Bill, and that was the case as we have heard referred to Mr. S and Michael Marper.

> "S. was a minor, at 11 years old, when he was arrested and charged with attempted robbery on 19 January 2001; he was acquitted a few months later, on 14 June 2001. Michael Marper was arrested on 13th March 2001, and charged with harassment of his partner; the charge was not pressed because Marper and his partner became reconciled before a pretrail review had taken place.
>
> In November 2004 the Court of Appeal held that the keeping of samples from persons charged, yet not convicted—i.e. S and Marper—was lawful."

So we have the English Court of Appeal, in 2004, holding that this is lawful to keep the samples, similar to what we are now proposing in our legislation.

> "However, an appeal was made to the European Court of Human Rights and the case was heard on 27 February 2008. On 4 December 2008, 17 judges unanimously ruled that there had been a violation of Article 8 of the European Convention on Human Rights, which refers to a person's right to private life, and awarded €42,000 each to the appellants."

Mr. President, the significance of that statement, as we heard Sen. Lalla refer to in a case a short while ago, you had five Court of Appeal judges when it is normally three, but there was a dissent. We are now hearing that 17 judges of the European Court of Human Rights ruled, unanimously—not one voice of

dissent—that it was illegal and unlawful to keep the samples of persons who had been charged but not convicted. And if that is not a wake-up call to us here in this Senate, I do not know what else can be when you have 17 judges agreeing to something unanimously. A panel of that amount, Mr. President, in my experience, it is very infrequently that you would find it is a unanimous decision.

> "The judges said keeping the information 'could not be regarded as necessary in a democratic society'."

Where have we heard that language before, Mr. President? Respectfully, I have read it out four times before. Section 13 of our Constitution, the application of that test has been done by the European Court of Human Rights and 17 judges have unanimously held that the keeping of this information for these persons who were charged and not convicted "could not be regarded as necessary in a democratic society".

Mr. President, that is as loud a warning as is possible. Let us pause, let us look at it again—and it is not that we should not take the DNA, it is not that we should not take the fingerprints, but the retention of the records in certain circumstances, especially where a person is not convicted—[*Interruption*]

Hon. Senator: Or a child.

Sen. S. Young:—or a child, we must look at very carefully and we must guard their rights jealously, because one day it could be us or someone to whom we are close, and even if it is not, Mr. President [*Desk thumping*] we have had democratic jurisdictions say it is not justifiable.

A little earlier we had quoted—just before I move on—from the same case. Sen. Lalla quoted a certain passage and he said:

> A margin of appreciation had to be left to the competent national authorities in that assessment. The breadth of that margin varied and depended on a number of factors including the nature of the Convention right in issue, its importance for the individual, the nature of interference and the object pursued by the interference. The margin would tend to be narrower where the right at stake was crucial to the individual's effective enjoyment of intimate or key rights

He stopped there and what is important, respectfully, is the next sentence:

> Where a particularly important facet of an individual's existence or identity was at stake, the margin allowed to the State would be restricted.

Again, that is the identical situation to the Bill that we are considering here today. And I repeat it:

> Where a particularly important facet of an individual's existence or identity—that could only be your DNA and your fingerprinting—was at stake, the margin allowed to the State would be restricted.

Again, the same case decided by 17 judges unanimously is cautioning us and telling us, in the clearest possible language, you should not, if you are acting democratically, it is not reasonably justifiable to keep these records for 20 years and a number of years and keep them indefinitely. [*Desk thumping*]

6.00 p.m.

Before going to the legislation, I would like to just touch on the point of infrastructure and storage facilities and this is in particular for the storage of the DNA and the fingerprinting system. When we look at the fingerprinting system and, in particular the fingerprinting of persons entering our jurisdiction, it is going to require a massive storage, a massive database, and we should ensure that we have the infrastructure to do it. Now, Sen. George addressed this point, and I agree with him again, where he said—if you would permit me, Mr. President—legislation must precede the establishment of infrastructure. That is absolutely correct, I agree with him, and I say this must be right.

But, the point that Sen. Cudjoe was making, and as I understood it, is that we are concerned. We are marking the ground; we are concerned. We are not saying do not go forward with the legislation, we are just saying we are concerned about a lack of infrastructure for years after legislation has been passed, and therefore, the legislation is not effective or not as effective as it should be. And, in an example—she referred to a recent example—is the Dog Control Act and the use of the municipal corporations, and as we understand it, they are unable to cope.

The point is—and it is a simple point—to not proceed with the legislation but to give yourself, as the Government, sufficient lead time to put in place what needs to be put in place to ensure that the legislation is effective—ensure that you have sufficient resources and ensure that you have the infrastructure available. With the fingerprinting, you need to ensure there is a proper infrastructure, you need storage and you need secure facilities within which to store it. It is not something that is insurmountable, it is done in other jurisdictions, it is just caution to ensure that we do it properly.

Again, with the DNA, the lack of regulations, Minister George told us that one of the reasons, or the reason he gave us for the lack of regulations and he gave us a long list of people and a committee that is put in place to develop, and

I agree with him, you need to consult, et cetera. But, however, we cannot allow them to hold us back from the effectiveness of our legislation, and it cannot be a sufficient reason or excuse. We must get the legislation to work. How can the legislation work without regulations?

I am also told the DNA was—and Sen. George gave us a history of the DNA and how it became law in Trinidad and the Act was replaced in 2007. What we are not being told is at the time the UNC was in Opposition and they did not support the legislation at that time, and the UNC sat on a joint select committee and they did not support it. [*Desk thumping*]

Just to go very briefly, Mr. President, through some concerns I have with respect to the Bill that is before us and it starts off with clause 3 where we talk about the DNA record. We say the:

> "'DNA Record' means a record either in textual or electronic format, that is kept in every place or institution…"

I would just like to caution here that we should not just say "every place or institution", we should give it some level of qualification, that it is an official place or institution, or registered or approved place or institution. So we must require them to be official, registered or approved.

We then go, if I may, to—it is 3(b) in the Bill and it is an amendment to section 5(2) of the parent legislation and we are saying let us delete all the words after "samples". When I read section 5(2) of the parent legislation, it says:

> "The Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA samples…"

And it goes on to say:

> "…and DNA profiles, including the Forensic DNA Databank of Trinidad and Tobago."

This is just a question—I think I would like it to be explained, maybe I have missed it. As you all know, I am new to the House—but I cannot understand in reading it, and just on the face of it without explanation, why we are now seeking to delete that the Trinidad and Tobago Forensic Science Centre shall no longer have custody and control over DNA profiles nor the Forensic DNA Databank of Trinidad and Tobago. So, if someone can explain that, I would be very appreciative.

We then go on in clause 3(c)(iii) where we are now talking about the custodian and we are amending the reference to the custodian to add:

"The Custodian or…"

And we are adding:

"…any person acting under and in accordance with his general or special instructions under subsection (3) shall be deemed to be a Government expert for the purposes of the Evidence Act."

Any attorney who has practised litigation, and in particular evidence, and is more so in criminal matters will know the hurdles that one has to get over to ensure that it is proper evidence, it is admissible evidence and it stands up. Again, I am cautious here because we are not saying—we know the level a custodian has to be but when that custodian is delegating his duty, we are not saying what the qualifications of those people are, I am just saying the importance of evidence for criminal trials cannot be overemphasized. And I would like to suggest that we take a look at it and we question whether we should not be putting in there some qualifications for these people to whom it can be delegated. I agree that the custodian cannot do it all and he or she would need assistance, but do not just let it slip through a process of delegation.

I had serious concerns with 13(A), the proposed amendment to 13(A) or the inclusion of a 13(A) into the Act, which is:

"Where a police officer is required to serve a summons on a person to appear before a court as a defendant in a criminal case, the police officer may also serve on the person a Notice requiring that person to attend on such date and time and at such place as specified in the Notice for the purpose of giving a DNA sample."

This is open to abuse. I mean, when I read it, I had serious cause for concern because we are giving now a police officer whose duty is to serve a summons on a person to appear before a court as a defendant in a criminal case and to call upon them to give a DNA sample if who sees it fit—the police officer, him or herself? And the question I have is when a police officer is serving a traffic offence summons on someone, is this sufficient? Where is the proportionality in that police officer now having the power—the expressed power that we are giving him—to also require you to give a DNA test? We need to look at the qualification for the use of that power.

The point of deportees being subject to a DNA sample, again, respectfully, it is my position that we should not just say any deportee, any person who is deported. There are categories of people who may be deported back to Trinidad

and Tobago for expiration of visas. They have overstayed their permission to be in another country and they are deported to Trinidad and Tobago. Again, proportionality. Is that a crime that should subject them to DNA? I agree with when you are subjected to criminal charges or you have convicted and it has not stood up the test of time, or you fall into a serious offence category, DNA when you come back in. But someone who has overstayed their visa or went away for a better life but did not go through the legal system, and is then found by the immigration of that country and sent back, is that somebody that we should—[*Interruption*]

Sen. Lalla: Suppose he break the law.

Sen. S. Young: I am not saying it is somebody who did not break the law, Sen. Lalla, if you would listen carefully. I said it is proportionality. If you understand proportionality, it means for something that is *de minimis*, you do not bring down the full brunt of the law on them, [*Desk thumping*] but that seems to be your attitude. Focus on LifeSport and do it on LifeSport. [*Desk thumping*] Do it on LifeSport.

Sen. Al-Rawi: Talk to Anil.

Sen. S. Young: Right. Go and take two pulls, be in a room with ladies in question, bring down the law on that.

Then, I go to the new subclause (o) and when we talk—and this is the point I was making earlier, Mr. President. When we come back to the test of—we are now looking at subsection (12) and the introduction of subsection (11) and we say:

> "Notwithstanding section 7(2), where a sample is taken from a person who is exonerated…"

This is a person—we are now including a definition in the Act of exoneration. So the person is exonerated:

> "…the DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, after the expiration of twenty years from the date of exoneration."

I caution because we now know that the constitutional test found at section 13, we have 17 judges of the European Court of Human Rights saying that is not applicable, that it is not justifiable in a democratic society. It is not reasonably justifiable. This is the point that we mark and we marry the case of Marper and the caution of the 17 Justices from the European Court of Human Rights.

Moving along to Part II of the Bill and juries, I agree with Sen. Prescott that these amendments, some of them are long overdue. We agree with the new introduction of 7A that allows persons who were previously exempt to now elect as to whether they would give of their civic duty and service.

In addition to when we go to the exemption under the section 8, the repealing of section 8 and the replacement, I caution, and I just put it on the table, that when we are now making pilots who are licensed subject to jury service where as they were not before, I know as a working procedure, pilots' schedules are always done a couple of months in advance, and it is often very difficult for them to get the time off, and it causes the whole shifting of crews, et cetera. I just caution that when we are doing it, whether that is something we want to look at, should they be exempted? Should we keep the exemption for them? I agree with Sen. Prescott with the other categories of individuals or offices that he referred to—the customs, et cetera—that we should maintain them, and that is the point to mark it.

Moving along to Part III, the "Criminal Offences", it is important, I believe, to include this type of legislation based on what we are hearing reported in the same newspapers—whether it is called hearsay or not—of witnesses and people not coming forward to give testimony because they are being threatened, and therefore, the criminal justice system is falling or weakened or buckled at the knees, and we have now created and put in sufficient categories of sentence and penalties to those who are threatening witnesses in both the civil and the criminal arena.

The next issue I had was at Part VI which is the "Young Offenders Detention" and I listened very carefully to the two reasons given by Sen. The Hon. Emmanuel George—one being the separation of powers argument and the next one being the delay. I had one question that came to mind, which is: as it currently stands—and we have received pleas from those in the system and the prison service to say, "Just be cautious when repealing this discretion that currently exists with the Minister" and I hear what the Minister is saying. My question is this, as it currently stands, the utilization of section 7(3) of the Young Offenders Detention Act which says:

"No such sentence…"

And that is a sentence passed by a judge or the magistrate in the criminal arena.

"No such sentence passed by…"

—when dealing with juveniles—

> "…a Court of Summary Jurisdiction shall be carried into effect until it has been approved by the Minister for the period fixed by such Court or for some shorter period, and if such sentence is not so approved, the Court may sentence the offender to any punishment provided by law for the offence of which he was convicted."

The question is this, as it currently stands now, is it not that when a sentence has been passed, the time that is run before the Minister approves it or disapproves it, still count towards the sentence? So, to say the utilization of delay as an excuse, I am not certain that that delay works against the person.

But, our understanding and whilst we caution and we ask the question, I think this is where a Cabinet note was read, of course, which we have no access to. But the point is, should we not find a way to maintain the discretion because it is an important discretion, we are told, where there are some persons who have been sentenced and then through the probation officers or the social services officers who are then dealing with the young offender, they then recommend to the Minister and through his technocratic and bureaucratic process that the person not be sent to YTC for some reason or the other.

I think we should just be cautious before we repeal that section and cast it off into the deep blue sea, and maybe find a way for the Minister to ultimately retain a discretion because there still may be circumstances where this is something that will be applicable, and we are reliably informed that that exists and it has a usefulness. So, all we are saying, Sen. George, is just take a look at it, do not give away your discretion completely, and we are just cautioning whether it is something that you should not find a way to maintain but it does not apply in every single situation and circumstance.

6.15 p.m.

We then move along, Mr. President—I then move along to Part VII of the Bill, the "Police Service", which is really where we are now talking about the police having the ability to take photographs and to fingerprint individuals, and the immigration authorities to also do so. Again, it could be a useful tool, I agree with that, but my concerns are picked up at the new section 50 subsection (1), it starts:

> "A police officer may take and record for the purpose of identification the measurement and photograph of a person who is a detainee or an accused."

No one can complain with that. Subsection (2):

> "Where the measurement or photograph taken under subsection (1) is of a person who has not previously been convicted of a criminal offence and such person is discharged or acquitted by a court, all records relating to the measurement or photograph shall be kept by the Commissioner."

My question is, for how long? How long does one keep it? You have gone through the process, you have gone through the system. We believe in a criminal system that first, of all, you are not guilty until proven so. But then secondly, when a court has discharged you, which is what we are saying, or acquitted you, why is it that indefinitely, your photograph and measurements should be kept by the commissioner? Again, I caution that that cannot fulfil the test of proportionality, and section 13 of the Constitution. At the new proposed section 50B:

> "(1) Where at any time after the taking of a fingerprint impression under 50A—
>
> (b) the fingerprint impression is lost or accidently destroyed; or
>
> (c) the fingerprint impression cannot be used for any other reason,
>
> a police officer may retake the fingerprint impression without consent."

But then it goes on at subsection (2) to say:

> "Notwithstanding the fact that the quality of a fingerprint impression is not suitable or sufficient, the fingerprint impression shall not be destroyed and the Commissioner shall cause that data to be transferred to the National Fingerprint Database."

So you have a situation here where we are providing that the impression is lost or accidently destroyed, or it cannot be used for any other reason. The question in my mind—[*Interruption*]

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

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

Question put and agreed to.

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, hon. Senator. Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continues to sit until the completion of the business at hand.

Question put and agreed to.

MISCELLANEOUS PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2014

Sen. S. Young: Thank you, Mr. President. Members of the House, I am going to wrap up very quickly. Where we are now at is section 50C, and this has raised a lot of concerns. This is where we are talking now about:

> "At all ports of entry into Trinidad and Tobago, a police officer or an immigration officer under the Immigration Act..."

This is where we give them now the power to record on anybody entering Trinidad and Tobago. Quite wisely and based on a suggestion in the other place, the Lower House, we have now included a 1(A), that allows the Minister by regulation to exempt.

Respectfully, Mr. President, the Attorney General has gone to great lengths, and presumably great expenses, to obtain advice from, he said, Lord Michael Beloff, as well as Christopher Straker on this issue. And to say that it does not offend the treaty of Caricom, they are merely mortals, they are merely attorneys. Yes, they have great experience, et cetera, and some weight, but the point is, and we then heard Sen. Lalla refer us to article 45 of the Treaty of Chaguaramas.

Respectfully, I think they have all missed Article 7 of the Treaty of Chaguaramas, which is the non-discrimination article, because as I understand the point, it is not about movement. [*Desk thumping*] This is not a point, Mr. President, about free movement and free access. It is a point that is being raised and we are marking it as the Opposition. It is about discrimination, that our Caricom members, our fellow members of the Caricom, cannot be discriminated against by our domestic legislation, and it says this, Article 7, Non-Discrimination:

> "1. Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality only shall be prohibited.

2. The Community Council shall, after consultation with the competent Organs, establish rules to prohibit any such discrimination."

It is a discrimination point, they have missed the point. [*Desk thumping*] I do not know what the great Lord Michael Beloff's instructions were, but it could not have been to look at it from a discrimination point. [*Desk thumping*] The discrimination is this, Mr. President, and we mark the record, the discrimination is that we are not requiring our own nationals upon entry to be fingerprinted, but Caricom, our brother members of Caricom States are being required to be fingerprinted. So, therefore, it offends because we are discriminating on the grounds of nationality. If it was that Trinidad and Tobago citizens were also required and restricted accordingly, there would be no discrimination; that is the point. [*Crosstalk*]

Again, I caution with the retaining of our fingerprints, and that there seems to be some conflict here, where we are saying that we retain them for a minimum of five years, but then we are saying that the Commissioner of Police can keep them indefinitely. So we mark that spot.

So all in all, Mr. President, and in summary, I would like to say that hopefully, some measure of reflection will take place. And respectfully it is my submission, Mr. President, that with respect to the fingerprinting and the DNA amendments being proposed here, we run afoul of section 13 of the Constitution. And I ask that persons who are to vote, reflect very carefully when you have 17 judges from the European Court of Human Rights saying unanimously, and I will quote it again, saying unanimously, that they could not be regarded as necessary in a democratic society, that they are about to pass legislation with respect to DNA and fingerprinting, that it is running afoul of section 13 of our Constitution.

With those words, I would like to thank you, Mr. President, and the Members of the Senate. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: [*Desk thumping*] Thank you very much, Mr. President. Last week, when the Leader of Government Business indicated that we were going to be discussing and debating the DNA Act, I must confess I knew very little about it, and after a few days I realized how much I actually do not know about DNA legislation, but I think it is a critical piece of legislation since it is aimed at crime-fighting. At the outset, I think it is important to emphasize, Mr. President, that the legislature performs the very first act. A lot will depend upon the Executive arm of the State if this piece of legislation is to make the kind of difference we would like it to make.

Last week in this honourable Chamber, Mr. President, we did accept the legislation with respect to the securities industry. This, to a large extent is meant to regulate the industry, as well as to address the pervasive phenomenon of white-collar crime, in which there is no DNA evidence, but in which there is tremendous financial loss. So I see this piece of legislation as complementary to what we, in fact, passed last week.

While I did not intend at all to speak on the amendment to the Jury Act, the fact that the Government is thinking it fit to include now retired individuals aged up to—in excess of 65 years. I think it is really a valuable move because the retired individuals in this country do constitute an important pool of reserve talent, which we can and should use. This is in keeping with the increase in longevity, the increase in the education levels of all members of the society, and the fact that people are looking after themselves well. They are productive well beyond their mandatory retirement years. This will offer to these individuals an opportunity to perform national service, which may be a bit more onerous to those in the working population.

At the same time, Mr. President, we need to recognize that the congestion levels in Trinidad and Tobago seem to be rising. Getting to the High Court from anywhere outside of Port of Spain is always going to be a challenge for individuals. And one hopes that the Government will consider, or if they are not considering, have these particular courts which require jury trials which would try the indictable offences across the country. So that we will have individuals, these retired jurors, having to commute no more than 16 kilometres, before they reach. [*Laughter*] Because you see, I take the cue from Sen. Al-Rawi that there must be proportionality. And if we as legislators are given a 16-kilometre commute in which it is expected that we will be safe while we drive, I think we can, in fact, apply the same rule.

So it would mean, Mr. President, that there will have to be executive action, where I see, I do not know if the law prevents it, but I see no reason why in Chaguanas, for example, we could not have a court complex, which will have the summary trials on one wing, and the indictable offences on another wing. So individuals who are pressed into jury service from the central part of the country can, in fact, reduce their commute time, same for Arima, and Sangre Grande areas and then into the Point Fortin area.

So we do absolutely need to decentralize our justice system, if we are going to really be efficient with respect to using the pool of available jurors. I am sure once we do that, and we minimize the inconvenience to these jurors, we should

find a large number of the retired individuals willing to serve. At the same time, I think this is something that should be left not mandatory, but rather optional. There may be some individuals who are eager to go back out and participate in some form of activity, and these are the individuals who should constitute the first pool from which one would draw. They have after all, Mr. President, worked up to age 60 or 65 in general, and to press them into jury service, which is compulsory, may be asking a bit much of them.

So I would recommend that the Government give consideration to establishing a pool, a voluntary pool, where those 65 to 70, who are willing to serve on the jury trial, so that they can be pre-screened and then be made available. We could use that particular pool for what seems to be a problematic issue for the administration of justice.

But, Mr. President, I really want to focus on the DNA aspect. I regrettably cannot pronounce the words, they are much too difficult, and the second is that it deals with molecular biology. The last time I did biology was 38 years ago, and the only thing I am sure about is how to draw the amoeba. The amoeba is a one-cell organism and it could take any shape. So you could never go wrong with that amoeba.

But when we are looking at DNA, Mr. President, we are moving towards a much more complex system, when in 2003, I saw a report that the scientific community had completed its mapping of the human genome, I did not fully understand the implications of what the scientific community had achieved. In fact, what was achieved upon subsequent reading was that they were able to obtain the three billion or so chains which completed the human species of all possible combinations of the DNA samples.

So the completion of the genome sample indicated that there is the database which can identify every single individual who belongs to our species. This is scientific progress at its very highest. When we were speaking about those to be consulted or who were consulted in the implementation or in deriving the regulations for the DNA Act, I heard from the Government a great deal of agencies, but there was one agency that—and one Minister or Ministry that I did not see included which I thought was critical.

6.30 p.m.

That, Mr. President, was the Minister of Tertiary Education and Skills Training, because the DNA process is advanced science, advanced molecular biology. It is technology dealing now with the human body, and one expected

that there would have been an interest in Trinidad and Tobago to develop a technical capability in the field of molecular biology. This is a growth field, and Sen. Young in his contribution, commented on the Singapore experience.

A few debates ago I did mention it as well. Singapore, a formerly trading country, has now one of the largest and most advanced biomedical industries in the world, which they started about 20 years ago from the ground up. It meant that they recognized the various economic advantages, and I know we are speaking about crime, but really, the Singaporeans recognized the economic advantages to be derived, having identified the human genome chain, that we could now use that information, not only in crime-fighting or forensic work, but also in a great deal of medical work, and this is where I think the issues—and I would come to that point—of the violation of privacy rights will emerge.

But the issue currently for us is, according to Sen. Cudjoe, that our institutions seem very incapable of implementing the law that we are going to pass today. Last week in my debate—it is as if there is an old theme—in my debate last week I said, "until we ensure that the Securities and Exchange Commission really is made into a very strong and capable entity, the law passed by the Legislature will not make the kind of difference that we want it to make". This is the enforcement arm.

And when we look at the DNA legislation, we know that this is not typical police work. This is highly scientific work. In fact, the reading suggests, Mr. President, that we need to ensure that there is some kind of consensus or agreement on the system for DNA analysis. My own reading indicated—and I was not aware of this—that similar to the problems which arose when the VCR was first introduced, there was this debate on whether one should go on the Beta technology or the VHS technology. One had to standardize the machine so that it would be very convenient for all actors in the industry to conform. The world went to the VHS standard and away from the Beta model. Similarly with the CD, there had to be some consensus as to the size of a particular compact disc. They settled on 80 minutes. My understanding is that 80 minutes was enough time to have all of Beethoven's symphony in one particular compact disk. That was the reason.

So, they had to settle on a standard. Similar to those new technologies, we do have in the DNA analysis the following—I will have to read them because what the research is indicating is that there is something known as the RFLP Convention, and that stands for Restriction Fragment Length Polymorphism. I do not know what it means. [*Laughter*] There is another system for DNA analysis called the PCR, Polymerase Chain Reaction, and the third is called the STR, Short Tandem Repeats.

In the laboratory itself there are various techniques which are used and these techniques, according to the scientific literature, are not always compatible. The RFLP requires much more resources and a much larger sample. The STR requires a much smaller sample, it takes a lower time but it gives you much less information. We, therefore, come to the position that we absolutely need, as we are starting from the back, to get an agreement from the scientific community as to what method we are going to use and why. When you look at the forensics some of them go on RFLP and the majority go on STR. STR is cheaper, it is easier to obtain a result, but it gives you much less information, and sometimes the information lost in STR may be information that you would need for convictions.

So that we do need, really, to have the laboratory up and going and of a world-class standard. What this means is that Trinidad and Tobago has to recognize that we do need to develop a technical expertise in this area. The good thing is that the Government of our Republic—and I heard Sen. George indicate that there were scholarships being made available. The good thing is that on an annual basis the Government grants—I do not know—a couple hundred scholarships for the A level examination, the advance exam at the high school level. If we are really to develop the technical capability in this area, I think, in creating the human manpower base that is definitely required, to manage and operate a world-class laboratory, and that—I am coming to the world-class laboratory as well.

We do need to start from now to identify students who have this capability in molecular biology. Have it as one of our fields that we are going to encourage, so that a decade from today we can have a cadre of individuals, PhDs in Molecular Biology, who will be available to us in Trinidad to manage the laboratory that we need. And we need to do that, Mr. President, because the laboratory that we have must be accredited. We must, in fact, meet certain minimum standards if we are to satisfy the courts here and abroad with respect to our DNA sampling and DNA testing. So, we do absolutely need to get our laboratory in a world-class standard.

Now, there are those who would say that this is going to be an expensive proposition. The thing is, this is scientific work. Scientific work is never cheap nor is it achieved overnight, but it requires planning. We have heard all too often that we have passed laws and we are then going to wait for the institution capacity to be built before these laws are approved or assented. The thing is that we need to recognize what we need to do ex ante and we need to develop this capability. This DNA testing laboratory can be a multifunctional one, multifaceted. It can be for forensic purposes, but also for medicinal purposes as well.

But if Trinidad and Tobago were to develop such a facility, I am sure that it would be able to pay for itself because, currently, my understanding is we may have to get some samples tested at labs abroad. There would be countries in our region, I am sure, which could make use of a first-rate lab located right here in the Caribbean.

In the Caribbean we tend to make the error of looking only at the English-speaking Caribbean, as that is the limit of the Caricom arrangement, the Caricom treaties. But when we look at the Caribbean Sea we notice that there are many countries which do not fall within the view of the planners of Trinidad and Tobago, coming down to countries such as—let us see the countries: Guatemala, Honduras, Nicaragua, El Salvador, Belize, Jamaica. Well, Jamaica is within our sphere. But let us go through again: Guatemala, Honduras, El Salvador, Belize, Nicaragua; what do these countries have in common? Well, they are close to us. They are in Central America. They share a similar colonial history and they also are in the top 10 countries with the highest murder rates in the world, right on our doorstep. The highest being, number one, Honduras; with Guatemala, number five; El Salvador, number four; Belize, number three.

So, we do have a problem with crime in our region. Colombia and Venezuela are also very, very high on the list, very close to us. And if Trinidad and Tobago can develop that kind of facility, world-class facility in the DNA area, then I am sure there will be no shortage of work for this particular lab, which may be able to pay for itself and also provide the launching pad for a range of industries which are said to be now the new growth area in the world, biotechnology. We are not there and if, unfortunately, crime and the high incidence of murder in Trinidad and Tobago is forcing us to go there, then there is a silver lining where we can develop a technical capability in this particular area. But, in order to do that we need to recognize that the time to start is now.

So, Mr. President, we absolutely need to develop our technical capability in this area, and we do need to ensure that the testing facilities, the forensic facilities are really of a world rank. The good thing is we have the human capital base in the country and I am sure if we do a check we would find many Trinidadian scientists are operating outside Trinidad and Tobago in this field and we do need to get them back here. We will always lose a lot internationally but the fact of the matter is, once you train a great deal there will always be an opportunity for them to come to build the institutions here.

The issue which surrounds the DNA, in addition to the one that I have mentioned, is that concerning privacy rights. DNA requires the taking of a sample from an individual. The sample can be invasive or non-invasive. We can get DNA

from saliva. This is what the scientific literature says. We can also get it from blood, and when we are taking the sample with respect to say, the taking of blood, it is said that the individual's privacy right is being violated. I have seen the argument in the United States with respect to what I think they call a Fourth Amendment principle. I am not convinced by it. And the reason, Mr. President, is this, I have heard the argument that visitors to our shores may take exception, but I take exception too.

Whenever I am leaving the Toronto airport—and it has happened on every single occasion, where I am singled out—I do not know for what reason—and I am searched. So, this guy seems like the likely candidate to carry a gun or something that I am not supposed to carry, and they leave others—but I am singled out—and then on my very last trip, leaving the Toronto airport, Canada, a society which says it does not discriminate against anybody and it has the best human rights record and so on, it somehow seems to single me out for special treatment. So, I leave there, and there is this particular person on the line who asked for my hand, and she scrapes my hand with a machine—I do not know for what. I thought she was getting DNA without my approval.

My colleague Sen. Small says, well, they somehow perhaps suspected that you had phosphorous on your hands, which is the residue from explosives and they were testing to make sure you did not. So, I seem to be targeted for this at the Toronto airport. I do not mind, Mr. President, in the United States, because they are open about profiling. They are open about ethnic profiling. That is how they do their policing. But a society like Canada, they are singling me out, they are violating my privacy. But, if I need to leave, and I do want to leave to get back to the Chamber, I do have to subject myself to that. If they consider that it is in their interest to pass a machine on my hand and scrape my hand, I really would like to know why they selected me of everybody, I somehow suspect I may look a little suspicious, but—[*Laughter and interruption*]

6.45 p.m.

So that if they are the ones who are going to subject me to that—if in our jurisdiction our law enforcement officers, including immigration, hold the view that we do need to subject people to some kind of invasive practice in the interest of national security, I think then the issue does not arise. The privacy rights, really, Mr. President, arise not because of the invasion by the pin prick or taking some other type of bodily fluid from you, it really arises from the use of that particular information. The DNA has within it a great deal of information that can be considered to be private, and I think this is where we need to be concerned

that the information that is contained there is not used by insurance companies to deny someone insurance coverage, because the mapping of the human genome now has given the indication that when they take my DNA sample, they can tell if I am someone who is prone to a particular type of cancer. Do I have that gene? Do I have the sequence that will predict me as someone who will be going to get cancer at some time or a disease like diabetes or glaucoma or something? It is an important predictor.

This particular information can be misused by insurance companies in denying individuals the right to health insurance or life insurance or any type of coverage. I think we need to be alerted to the fact that the information which is collected would be used purely and principally for forensic purposes. Once that is the case, then the privacy rights of an individual would be protected.

I do not know what the situation in Europe was, but I have a suspicion that if an individual, say is HIV positive, and it comes up in the DNA, it may be something that he would want to keep under control and not to be made public. There may be good reasons then for an individual who does not want his private health status to be exposed to say, "I do not wish my sample to be held", but when we are looking at the forensic side of the picture, my view is that the sample should be kept for a very long time. And we come to the point really, Mr. President, with respect to how do we go about selecting our sample.

You see, the hon. Attorney General was not very clear on how we are going to select the sample whose DNA would be tested. What is the basis? What is the criterion? Is it that you are someone who has committed a crime in the past and, therefore, you have a record and this means that you are a prime target for criminal activity in the future, so past behaviour is a predictor of future criminal behaviour? If that is so, let us know. Is it that you are going to look at a particular group of individuals and suggest that this particular group is a group that is at risk for criminal activity?

You see, we have to understand that the DNA is only evidence. It is only evidence left behind for particular types of crimes—not all violent crimes will leave a DNA print. We know in the case of sexual offences DNA would be used, it would be available and, therefore, that evidence is going to be available, but for a violent crime like murder—murder by gunshot, murder by cutlass attack or something—that might be an archaic kind of murder now, murder more by firearms might be the murder—it may not leave the kind of DNA evidence that you want and, therefore, you still need the fingerprints which may be available. Though now, I imagine with the manner in which crime is conducted, the

criminals are getting more and more careful with respect to leaving a trace behind. So, we do need to understand, Mr. President, that there is only a limited type of crime that will be solved once we can gather the DNA evidence, and having gathered the evidence, the evidence is properly tested by the laboratory.

This particular type of crime is in existence. We need to keep it. It would be used to convict people; it can be used to exonerate people, very valuable, but we need to understand that it is only one type of evidence that would be available. This means that there will still be a need, Mr. President, for there to be old-fashioned policing together with modern policing; old-fashioned policing to collect the evidence within which there is no DNA—it could be murder weapons or whatever it is at the crime scene. But also, we do need the officers to understand that where there is the possibility for DNA, then we will need to handle this evidence with much care. This is going to be a challenge for the police service; it is going to be a challenge for the struggling facilities at the labs that we currently have, so we do need to build the institutional capacity there.

I think, given that we do have a rise in criminal activity in Trinidad and Tobago, and we have seen a decline in criminal activity in the United States—my colleague, Sen. Wheeler, raised a very valuable point—the policing activity of the people like Bill Bratton, and so on, may have been responsible for the reduction in crime in New York, but then when you looked at the data, you saw that crime was falling everywhere in the United States, including high-crime areas such as in the United States. The consensus is that the proportion—that percentage of the population, the source of the criminal—had somehow declined, and the source of the criminal was the at-risk youth, male youth, 15 to 24—that was that the at-risk youth had that particular cohort of youth using crack cocaine, as Sen. Wheeler indicated, and engaging in other types of deviant behaviour started to fall. Their behaviour started to change.

What had happened? There are many explanations for it. Some contentious, some unscientific, but it is still a mystery as to why the crime rate dropped so dramatically when individuals expected a crime bloodbath in the United States. But what we do know is that there is a cohort of youths, the 15 to 24, that commit the most amount of violent crime.

When we come to white-collar, I would like to see the data. I have not seen the data, but it could be individuals with MBAs who are perhaps over 40 and are in positions of influence and power. I really would like to see a profile of the white-collar criminals as I have seen a profile of the violent criminals. The white-collar criminal is not leaving a DNA trace, but the violent criminal may in

fact do, via because of the youthfulness and via because of his negligence, and it may very well be that when we are collecting our sample, our data, to compare with what is in our database, we would want to look at the youth, at the male population, and we may want to collect that DNA sample. We cannot do it for everybody in the population. To do that, Mr. President, would be poor economics. This is expensive testing.

I do not think we have considered the expense of the testing. The Government has not told us what it will cost to perform one of these tests. I have seen costs that can go up to a couple hundred US dollars for the simplier test and not the most advanced that I have mentioned. So that the actual test itself, how you go about doing it, it is a costly exercise and in order to make the best and efficient use of the allocations which are going to be made in building up the database, we need to identify which is the population that most likely will become the violent criminals, the proportions. We are profiling. So the Canadians have profiled me as someone who can perform great harm and injury to their country as I leave the airport—only as I leave, never when I enter. Somehow, I do not know why. I have got to question that, but there is a profiling. Maybe Senator they do not want me to leave.

Hon. Senator: You did not spend enough money. [*Laughter*]

Sen. Dr. D. Mahabir: So, I think they track your credit cards as well to see exactly whether you have spent enough, so that if you can stay for a couple more weeks, a few more thousand so, perhaps, they do have a target that each visitor must spend.

The population, you see, the sample that we are going to choose will have to be a relevant sample. It would be contentious, but when we are building up this particular database when we are trying to identify so that we could compare the evidence from other crime scenes, we need to have as huge a pool as possible of the likely suspects—"round up the usual suspects" as it is said in Casablanca. We need to do that. That in my mind should not cause any kind of major contention. This is a crime-fighting tool.

If, as the AG said, you have nothing to fear, you have therefore no problem in surrendering a portion of whatever fluid that is required for the test. If you have something to fear, well I could imagine you will have some kind of issue with the matter, but we do need to identify our population. Let us be very clear with respect to why we are choosing this particular population and it simply can be an age, because statistically 15 to 24 constitutes the group engaged the most in

violent activity and it can be across the board. We can get that, develop our database, and I am sure over a 10-year period or so, we would have a particular amount of information that will allow us to get that valuable tool in crime fighting.

Mr. President, we need now to look at the detection of criminal activity using science as our guide and as our aid. Over the last decade and a half, since the mapping of the human genome, we have learnt more about the genetic sequencing of the human body than we knew for the previous 50 years. The information that is available has just cascaded upon us in tandem with the availability of computing power; the ability to have a huge database and then to search that database in a matter of seconds, given the advanced search engines that we have—it is something we use every day when we google, when we go on eBay and when we engage in any Internet activity—but really it is possible now for us to be able to feed into our system a fingerprint, and I see no problem why anyone in this country should refuse to give to the authorities his or her fingerprint.

It is something that can be mandatory when we apply for ID cards or something, it is part of my identification. I have no issue with it if it is going to be used in a database. So that if there is a crime scene and my fingerprint turns up, I have no issue saying, "Well, yeah, I was there but I was not part of the scene," but we do need, given the low detection rate in Trinidad and Tobago, to use scientific methodology to improve upon our detection so we can narrow down our range of individuals who are to be interviewed, and with computing power and with the advent of the technology with respect to DNA processing, I think we need to move with alacrity in this area.

But before we can say that this is dynamite legislation, I think we need to accept that the legislation is only the first phase. It is going to be left upon the Executive arm of the Government to build the institutional capacity, and to identify this particular field of study in which we are new, to say a decade from today, we will not be new. So that a decade from today when we are coming to amend the legislation—I think this legislation ought to be amended. The DNA legislation ought to be amended frequently as a scientific community makes greater and greater advances in the field—a decade from today, Mr. President, when the Senators come to amend this piece of legislation, I think it would have to be that we already have the crime labs; we have the technical capability, and we are simply amending the legislation to make certain bits of information that we previously did not capture which can now be captured by the new technology as admissible evidence.

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

7.00 p.m.

Sen. Anthony Vieira: Thank you, Mr. President. As the hon. Attorney General stated at the beginning of this debate, this is a composite Bill intended to address ambiguities and certain lacuna in the system. He says that this legislation will balance the scales of justice and will go a long way in assisting the law enforcement agencies to better fight crime.

I am pleased to assure Sen. Al-Rawi that I have juxtaposed this legislation against the respective parent Acts and, as far as I can tell, there is not much that is invidious in this Bill. Indeed, there is very little in this Bill that I would regard as objectionable. I find the legislation generally helpful, responsible and good. In fact, my own view is that it does not go far enough; in particular, as it applies to the Jury Act and preliminary enquiries.

I think it is generally recognized that quite often people do not want to serve on juries, not just because of the inconvenience, but also because of concerns regarding high profile cases. Employers, and especially those in small businesses, can also have a hard time sparing their few key employees, and they are now going to be put at greater risk because of the increase in penalties for not letting your employees go to do the jury service easily.

I think too jury trials can be expensive. Left to me, I would do away with jury trials altogether, not just seek to tweak them. In this regard, I very much support and agree with the views expressed by the hon. Chief Justice in his address at the opening of the 2013/2014 law term. I know that these statements are in the public domain, but I think that they are sufficiently important to put on the record and, in any event, they mirror my own views. The Chief Justice said regarding jury trials as follows:

> "Earlier this year, the Judiciary hosted a lecture and panel discussion on the question whether jury trials should be retained. It arose in part out of a concern that jury trials were becoming lengthier, expensive and unmanageable and that the quality of justice received was questionable. I want to preface my remarks by reminding us that there is no such thing as a constitutionally entrenched right to a trial by jury. What our Constitution guarantees is the right to a fair and public hearing before an independent and impartial tribunal. Judging from the appeal statistics, that is what the vast majority of persons charged with criminal offences get before the magistrates in this country, without the assistance of a jury.

> In the High Court, trial by judge alone has always been an option, albeit rarely exercised. The conventional argument is that juries are more in touch with life on the ground and that somehow translates into a truer verdict. In my experience where the issue is the determination of the legal issue of guilt or innocence based on the assessment of the weight and reliability of complex evidence, for which jurors are not trained, that supposed advantage is far less significant than might be imagined. One also has concerns about the general level of functional literacy. The truth is that as the issues and evidence involved in criminal trials have become more complex, so have the length of trials. They often have to be interrupted for lengthy legal submissions while jurors twiddle their thumbs; evidence is led in voir dires and then, if deemed admissible, has to be repeated in its entirety before a jury. Issues of admissibility, bad character etc. are dealt with during the trial, further increasing the length of the trials and lost productivity of the jurors. It is now not unusual for trials to last several months at the end of which the jury receives a summing up covering many weeks' evidence, which they are supposed to assimilate and then required to return a verdict in a few short hours. It is not fair to them.
>
> Moreover, there is a more fundamental philosophical and process issue. If transparency of process and accountability are the underlying principles of practical justice then how come the one process that ultimately determines one's guilt or innocence is neither transparent nor accountable. We have no way of knowing whether jurors understand the judges' instructions or, if they did, whether they followed them. I have heard this argument brushed aside by some defence attorneys on the basis that it is the jury's right to return a capricious verdict or one more in line with their values, which presumably represents the community's sense of justice. One asks rhetorically, why then pretend to be a court of LAW? I thought that the premise of representative government was that the values and mores of society were embodied by Parliament in the laws. What about the juror's oath to return a verdict according to the evidence and in accordance with the instructions on the law given by the trial judge? Prejudice and bigotry can cut both ways. At least a Magistrate or single Judge is obliged to give reasons for their decision that can be analysed and critiqued."

The Chief Justice went on to say many more things, but I think that is enough of it.

At the Dana Seetahal SC symposium, Senior Counsel Gilbert Peterson also endorsed the need to eliminate trial by jury. He expressed concern about having a juror sit for months listening to evidence, but you are talking about complex

concepts that law students may take years to understand, and some lawyers still do not understand, and yet you are asking jurors to apply it to the evidence. He, like me, believes that we would be advancing the system if we are able to eliminate juries.

Mr. President, I think the same applies as regards the Indictable Offences (Preliminary Enquiry) Act. The Bill proposes that evidence contained via computer-aided transcripts or in certified transcripts of electronic, audio and/or video recordings can be used in proceedings. I have no trouble with this amendment, per se; it will certainly help expedite the process, but like the hon. Chief Justice, I have to wonder whether we even need to continue with preliminary enquiries at all.

This is what the learned Chief Justice said about preliminary enquiries at the opening of this year's law term:

> "While I found many of the criticisms of the Indictable Offences (Preliminary Enquiry) Act to be valid, my main difficulty with it is not that it went too far but that it did not go far enough! What it does, in a rather cumbersome manner, is transfer a lot of the old procedural concepts from the Magistrates' Courts to the High Court. In the process there are several steps and procedures that add no value. Unfortunately, what has been termed the St. Lucian model was adopted without a thorough interrogation of the many difficulties they have experienced in implementation. From my point of view though, that is water under the bridge...We must stop thinking of these procedures as if they are an immutable part of the criminal trial process. We have a lot to learn from the gains made in the civil jurisdiction where the average time from filing to deposition has fallen by an order of magnitude because of better pretrial management. We need a fundamental conceptual rethink. When should the trial process actually start?"

In a statement dated May 05, 2011, the Law Association of Trinidad and Tobago also submitted that the abolition of preliminary enquiries is desirable in the interest of speedier justice. It is noteworthy that in the United Kingdom preliminary enquiries were abolished over 30 years ago.

My position, at least as regards these two aspects of the Bill, is that they merely offer tactical advances in the fight against crime, when what we really need is an over-arching strategy. Like Sen. Prescott SC, I will say more about the technical aspects at the committee stage, but for purposes of this debate, the point I think which needs to be underscored is that our criminal justice system is in crisis.

These amendments, in my view, are akin to rearranging the deck chairs on the Titanic. Useful measures, but they are not going to fix the system and they are not going to avoid the disaster. What we need is comprehensive reform.

As regards amendments to the DNA Act, I note the arguments put forward by the hon. Attorney General regarding the test of proportionality and his desire to rebalance the scales of justice. I agree that DNA can be a double-edged sword, not just in helping detection, but it has also been used to free wrongfully convicted persons. Accordingly, I welcome the use of this very valuable forensic tool, and I agree that the beefing-up of our national forensic centre is a matter of national urgent importance. I do, however, want to sound a note of caution.

The gathering of DNA samples implicates greater privacy intrusion than the traditional taking of fingerprints. DNA sampling involves the collection of biological matter: blood, urine and other fluids, and this can reveal a lot more about a person than one gets from the mere taking of fingerprints. In fact, it can reveal a treasure trove about an individual's medical and personal history. It therefore requires, I think, a high level of responsibility and data security. Those involved in the gathering and handling of such data would have to be astute in guarding against misuse or the leakage of such information.

Another question that arises concerns the situation as to when the right to take samples from a suspect is triggered. "Suspect" is defined under the parent Act as a person whom the police have reasonable grounds for believing is about to commit an offence or may have committed an offence. All right, so here is a suspect on an intellectual property matter or a telecommunications case, or even just a "cuss case", where he was engaged in a heated argument and he is about to be facing a charge of obscene language. Would it be appropriate or reasonable for DNA samples to be taken from that suspect without his consent?

Sen. Young talked about the recent case in the European Court of Human Rights in which it was ruled that the UK Government was violating the rights of privacy of two men whose profiles were being held on the DNA database, years after criminal proceedings against them had been dropped. Well, I also had read that case and I was trying to reconcile the thinking in that case with those many judges who gave a unanimous view, with what I heard the hon. Attorney General saying earlier in this debate, when he talked about, "The wider the database the greater the probability you will get a match". Or, "What is the prejudice to be caused about giving a DNA sample?" I agree with the hon. Attorney General that this is dynamite, but if this is dynamite then it needs to be handled carefully. [*Desk thumping and laughter*]

I also tend to agree with the thinking of the European Court of Human Rights that we need to exercise great care, in our zeal to combating crime, that we do not inadvertently usher in the age of "Big Brother". We need to be astute that in balancing the State's legitimate interests in facilitating crime prevention, the balance does not unjustifiably tilt against the fundamental rights of citizens. Have no doubt about it, the storing of innocent people's genetic details is a breach of their right to privacy. All right?

7.15 p.m.

If the rationale for keeping an innocent person's—and when I say innocent person I am talking about a person who has not been tried and convicted—data for 20 years, is that if he has not committed a crime now, he might in the future. Well that is a false rationale, and we cannot allow that to dictate and impress us. That is misguided. My biological data is my property. And it is my property to be shared only with health care providers or loved ones on an as-needed basis. The State should only be able to access my data under the very strictest circumstances and with the strictest of safeguards. And this is where the legislation is a bit silent and fuzzy. I agree that DNA fingerprinting will be a useful tool in the fight against crime, but like all other tools they are not fail-safe. We have to be mindful of the possibility that samples could get misplaced or mismatched, and think of the serious miscarriages of justice that might occur in such a situation.

Yes, DNA sampling and profiling will offer an effective crime control measure, but we must be concerned about the potential human rights impact of the proposed legislation. There must be rigorous safeguards underpinning this legal framework, governing the taking, the retention, sharing of DNA samples, and the operation of the DNA database. We have to ensure the integrity of DNA evidence through proper regulation, and that is essential to avoid any miscarriages of justice. There should be some guarantee in the legislation, I think, against the possibility that the DNA database can be used for any other purpose. Who is going to monitor the operation of this database? Who is going to watchdog human rights? Who is going to guard the public interest? What about the availability for legal advice on the services of an interpreter before the taking of bodily samples? What about the rights of the mentally infirm? The sharing of DNA profiles: now, I see that we are going to be sharing it; it might even be shared internationally. Okay. I do not think that the sharing of DNA profiles should be allowed without a framework of safeguards and rigorous procedures in place.

Should the owner of data be informed that his biological information is about to be shared? Should he have an opportunity to challenge the transfer of that information in advance? We need to be mindful of the fact that a DNA database stores and retains the most personal information that an individual might have, and we cannot be flippant about this. [*Desk thumping*] We must be concerned about the implications for human rights. We must be concerned that the retention of anyone's DNA sample is necessary and proportionate.

Mr. President, concerns about the use of juries, preliminary enquiries and the use of DNA sampling and profiles apart, I generally support this legislation, and I thank you. [*Desk thumping*]

Sen. Camille Robinson-Regis: Thank you very much, Mr. President. Mr. President, I rise to make an intervention on this important piece of legislation, on the debate on this important piece of legislation, mainly because of the fact that we on this side have serious concerns with the specific clauses that deal with the DNA retention.

Mr. President, my colleagues on this side have indicated that those are our concerns, and I would just like to lend a certain level of credence to what has already been said by my colleagues on this side, but also to indicate that our concerns are not raised lightly, but are raised in the context that we feel, as a developing nation, despite the fact that there is a desperate situation and a crisis that is facing us in the criminal justice system, the fact is that as a developing nation we cannot only institute legislation for the current situation, but we must, in fact, think of the long-term effect of the legislation [*Desk thumping*] that we are passing in this Parliament.

Mr. President, the test for any such piece of legislation that—like the legislation that is before us—is, one, that it must have a legitimate aim, and that means that the legislative objective must be sufficiently important to justify limiting a fundamental right.

Two, measures designed to meet the objective must be rationally connected to it.

And, three, the least injurious means, meaning the means used to impair the right must go no further than is necessary to accomplish the objective. And this test of proportionality was set out in *De Freitas v the Permanent Secretary for the Ministry of Agriculture, Fisheries, Lands and Housing and others*, and cited at 1999, 1 AC at page 69. This is an Antiguan and Barbuda case. Mr. President, this was also confirmed and recently adopted in the Northern Construction 2014 case and was cited by the Chief Justice of Trinidad and Tobago.

Mr. President, for us on this side we are of the view that there is a legitimate aim in this legislation. And we do believe that the legislative objective is sufficiently important to justify limiting a fundamental right. So, we have no problem with that. We also believe, Mr. President, that the measures designed to meet the objective are rationally connected to the objective. So, we have no problem with that, Mr. President. But, Mr. President, the third limb, which is the least injurious means, must go no further than is necessary to accomplish the objective. We have a fundamental objection to the means that are being used in this particular piece of legislation, Mr. President. My colleagues have said that. [*Crosstalk*] They have said that.

And I am hearing Sen. Lambert indicate that it would be fixed, and I hope so because, Mr. President, the issue that keeps emerging in this debate, particularly on the side of the Opposition, is that we are highly concerned about the intention in this legislation to keep DNA samples for 20 years. Mr. President, we have said this on this side ad nauseam, and I will repeat it. And the concern that we have is that when the sample is taken, it can be taken from a person who is arrested. It can be taken from a person who is arrested and convicted, and in both instances the DNA sample is kept for that 20-year period, Mr. President. And we have a serious objection to that. And that is why we continuously say we are opposed to this piece of legislation, essentially, based on that overstepping of the fundamental rights of the citizens of Trinidad and Tobago.

Mr. President, in an article entitled "DNA databases and human rights" from *GeneWatch* which is a United Kingdom publication dated January 2011, it says, among other things, what are the concerns about DNA databases. And it says, Mr. President:

> "Expanding DNA databases to include many persons who have merely been arrested represents a significant shift in which the line between guilty and innocent is becoming blurred. It undermines the presumption of innocence by treating people who have merely been arrested as somehow less innocent than others who have not been convicted of any offence. DNA databases also shift the burden of proof because people with records on them may be required to prove their innocence if a match occurs between their DNA profile and a crime scene DNA profile at some point in the future."

And, Mr. President, I think this touches at the heart of the concern that we in the Opposition have expressed with regard to retaining these DNA samples, particularly of innocent persons.

Mr. President, the article goes on to say, the hon. Attorney General has indicated that, as was just repeated by my colleague Sen. Vieira, that this a "dynamite piece of legislation". And if I quote Sen. Vieira he says, "if it is dynamite then it must be handled carefully". And, Mr. President, I agree with that wholeheartedly.

So, Mr. President, the article goes on to say, and permit me to quote again. Under the rubric:

"DNA databases, privacy and human rights.

DNA is left at crime scenes, but it is also left elsewhere. The retention of DNA and fingerprints from an individual on a database therefore allows a form of biological tagging or 'biosurveillance', which can be used to attempt to establish where they have been.

This means that DNA databases can be used to track individuals who have not committed a crime, or whose 'crime' is an act of peaceful protest or dissent. For example, in a state where freedom of speech or political rights are restricted, the police or secret services could attempt to take DNA samples from the scene of a political meeting to establish whether or not particular individuals had been present."

Now, Mr. President, I do not want to sound alarmist, but we saw what happened in the case of "Skippy" Barrington Thomas who held a political meeting and a whole mob of people was sent to disrupt that meeting.

We also saw what happened recently when the unions and the People's National Movement joined with the unions in a political march, and then there were persons who were holding placards with racial statements, and there were concerns about who put those persons there. I mean, Mr. President, if I took it to a logical conclusion—or maybe an illogical conclusion—we could wonder what would be the effect of keeping these DNA samples of so-called innocent people, Mr. President.

7.30 p.m.

So, we on this side, we caution the Government that the keeping of DNA samples—particularly of innocent people—for 20 years is not acceptable.

Mr. President, where the Attorney General indicated that this would be an important tool in the arsenal of the police service, again, GeneWatch says, and I quote:

> "Using speculative searching to identify suspects can mean that the balance of evidence is shifted: the onus is on the individual to prove they did not commit the crime, rather than the other way around. Any individual with a record on a DNA database may also be vulnerable to being falsely implicated in a crime by the planting of evidence by: corrupt police officers, powerful government agencie, or by criminals. Even if a miscarriage of justice does not occur, an individual who is falsely accused of a crime as a result of a DNA match may be subjected to a stressful police inquiry, pre-trial detention, or extradition to a foreign country."

Mr. President, like my colleagues did on this side, I caution the Government that there are too many possibilities existing that can occur in the circumstances that this legislation presents. We on this side cannot support the legislation as it now exists because we are of the firm view that it definitely goes too far and it will be injurious in the long run. We are suggesting that the Government rethink this particular clause, look at it again and look at what is happening with countries that have already gone through this, in terms of the time that they are taking with maintaining DNA databases and also with the mechanisms that they are using to store the DNA databases that they are, in fact, using.

Mr. President, we, on this side, have no difficulty with clause 8 except, as indicated by my colleague Sen. Young, with regard to the repealing of section 7(3) of the Young Offenders Detention Act which ousted the jurisdiction of the court. We were of the view that this was ousting the jurisdiction of the court, but we have asked the Minister of Justice to re-examine whether or not it will be of best effect to exclude, totally, the Minister's ability to deal with a situation where a young offender has been detained and the Minister has a discretion. Sen. Young raised that point and I want to reiterate that point.

Sen. Lambert: We are leaving that.

Sen. C. Robinson-Regis: You are leaving it.

Sen. Lambert: Yes, we leaving it.

Sen. C. Robinson-Regis. Thank you very much.

Mr. President, I repeat that we are in the process of building a democratic, developing nation. Our legislation must reflect that and, consequently, we must act with care and consideration.

As we try to deal with this crime situation that has put us into a state of crisis, I note that our Minister of National Security is now purporting that it is the People's National Movement that is encouraging crime. I hope I am not—

Sen. Griffith: I did not say that.

Sen. C. Robinson-Regis: I hope I am not misquoting—

Sen. Griffith: I said a crime plan is a plan to commit crime. That is what I said.

Hon. Senator: I heard what you said.

Sen. C. Robinson-Regis: I trust that the Minister is not purporting that it is the PNM—

Sen. A. Singh: "Gary, interrupt on the record and say it nah."

Sen. C. Robinson-Regis: Why you advising the opposition? He will get his chance to speak.

Sen. A. Singh: He might not speak.

Sen. C. Robinson-Regis: He will speak, he is very prepared to speak. He is prepared to speak.

Mr. President, the question that I asked and I continue to ask this question—where the Minister continuously says that the Government has no crime plan. Is that what you say Minister? That the Government has no crime plan, or that the Government has no—

Sen. Griffith: You giving way?

Sen. C. Robinson-Regis: I will.

Sen. Lambert: There is no need.

Sen. C. Robinson-Regis: There is no need for a crime plan?

Sen. Griffith: Mr. President, worldwide, governments do not come up with crime plans. No one here in the Government has a concept of criminological theory. We are politicians and I can quote from the person who is equivalent to me in the United Kingdom and her entrance in the Home Office, she actually stated that the role of a government is to provide the administrative, the logistic and the financial support for the law enforcement agencies and to let them do their job.

So, when we speak about a crime plan, the words of a crime plan—this is what I said yesterday, and I will say again—a crime plan is a plan to commit crime. This Government, we do not have crime plans, what we have are policies; policies to ensure that we could put the logistical, the financial and the

administrative support to ensure that we can utilize our national security resources in an effective and efficient manner. I hope I have clarified this, Mr. President. [*Desk thumping*]

Sen. C. Robinson-Regis: I do not know about the part about the PNM because I think the PNM's name was mentioned in that whole story that came up about the crime plan.

Mr. President, if I recall, all three other Ministers of National Security indicated that they had crime plans.

Sen. George: Who?

Sen. C. Robinson-Regis: One was—[*Interruption*]—You were not there long enough. You were not there long enough to have a plan. You did not have a plan.

Sen. George: Those words never escaped my lips.

Sen. C. Robinson-Regis: You did not have a plan. [*Interruption*]—

Hon. Senator: Jack Warner.

Sen. C. Robinson-Regis: You were not there long enough.

Hon. Senator: Subash Panday.

Hon. Senator: Brigadier Sandy.

Sen. C. Robinson-Regis: Brigadier Sandy's main crime plan was the state of emergency.

Hon. Senator: The Prime Minister said she has ovarian fortitude.

Sen. C. Robinson-Regis: Mr. President, if Minister George is saying that he never said he had a crime plan, he did not say much when he was the Minister because he was not there long enough to really say anything.

Hon. Senator: She keeping you fit, you jump up real fast. [*Laughter*]

Sen. George: Of course.

Sen. C. Robinson-Regis: Mr. President, certainly, former minister Jack Warner had crime plains of varying levels, different types of crime plans, but as Minister Griffith is saying now, a crime plan is a plan to commit crime.

Hon. Senator: The SOE was a crime.

Sen. C. Robinson-Regis: Former Minister Jack Warner had a lot of crime plans, a lot.

Mr. President, the concern that we on this side have with regard to this issue of using this legislation as part of the arsenal, it is not part of a crime plan, it is just part of the arsenal. It is the dynamite that will explode across Trinidad and Tobago and deal with the criminal situation. We, on this side, have a major concern. Is the police service ready for the use of DNA in dealing with crime? Have they been trained in collecting DNA evidence?

We had a situation where we had officers who belonged to the SAUTT, who were trained in certain collection of DNA, other forensic fields and so on. The question that we on this side have to ask: Is the police service in a state of readiness for implementation of this legislation? We are of the view, unlike the statement that was made that you do not await the legislation—I think it was Minister George who made that statement—and then put things in place. We are of the firm view, on this side, that this Government, as they have done with other pieces of legislation, they are not ready for the implementation of this legislation.

Mr. President, we have seen this situation with the Children Act. This Government, to date, has done nothing with the suite of legislation in relation to the Children Act. [*Desk thumping*]

We have seen a similar situation with the anti-gang legislation. Has anyone been arrested with regard to the anti-gang legislation? They touted that as another piece of dynamite that would deal with the crime situation. Nothing has happened. Over 8,000 persons were arrested during the state of emergency and one person was retained under the anti-gang legislation. As far I understand it, he has not even been convicted.

Mr. President, the DNA Act that was passed in this House, what is the status of that particular piece of legislation? As a matter of fact, we asked the question in this Senate: How is DNA stored? What is happening with regard to that? The answer that we got was very, very fuzzy, from the Minister of Justice. As a matter of fact, the answer took three paragraphs.

Sen. Lambert: When you were there how was it stored?

Sen. Al-Rawi: Stored at SAUTT's lab at the forensic and it was shut down by you all.

Sen. C. Robinson-Regis: As a matter of fact, Sen. Lambert, there was a lab that had been established and my advice is that that lab was practically destroyed after you all came into Government. So, nothing has been put in place and as a matter of fact, we are understanding that the mechanism for storing DNA is highly questionable at the Forensic Science Centre.

As my colleague Sen. Cudjoe said, there is mould in the area where the DNA samples are being stored. If something is not done—I am asking the question: When this piece of legislation is passed, and we are to keep DNA samples for 20 years—of persons who are innocent, guilty, awaiting trial—what is the situation with the storage of that? What is the situation with the storage of those DNA samples? Nothing is in place and DNA samples are being collected on a daily basis. [*Desk thumping*]

Mr. President, what is the situation with regard to the offshore patrol vessels? [*Interruption*] It has everything to do with this. That is part of the dynamite that you all have been talking about.

Mr. President, we saw the Prime Minister head off to Brazil. I do not know if she saw the vessels in operation in Brazil. Is it not Brazil who bought our vessels? She may come back here, whenever she does return, indicating that she has seen the vessels and she would like to buy two, just as she did when she went to China and saw the long-range vessels.

Mr. President, my understanding is that it is this Minister of National Security when he served as he then was—

Hon. Senator: This one?

Hon. Senator: "Doh blame him nah."

Sen. C. Robinson-Regis: "Ah blaming him."

Hon. Senator: "He does get too much licks, man."

Sen. C. Robinson-Regis: When he served, as he then was, as advisor to the Prime Minister—national security advisor to the Prime Minister—he was the one who advised that the fight against crime was on the land and not at sea and, consequently, we do not need offshore patrol vessels.

Hon. Senator: I cannot believe that one, boy. I cannot believe that one, boy.

Sen. C. Robinson-Regis: Yes, it sounds like him, does it not, Mr. Maharaj? Right, Senator? [*Interruption*] I am advised.

Hon. Senator: "They setting you up."

Sen. C. Robinson-Regis: I am advised that he was the person.

Hon. Senator: Who advised you?

Sen. C. Robinson-Regis: I was advised.

Mr. President, with the situation that is facing us, I stand here and ask the question of the Government: Where, today and over the last week, we have seen soldiers on the streets in east Port of Spain, in the Laventille area, in the Beetham area, in the *Guardian's* offices, where—

Sen. Lambert: Well done.

Sen. C. Robinson-Regis: Sen. Lambert is saying well done.

Mr. President, it cannot be we are standing here in the Parliament to pass legislation that will be infringing on the fundamental rights of the people of Trinidad and Tobago. [*Desk thumping*] We have a situation where the fundamental rights of the people of Trinidad and Tobago may, again, be overstepped by the soldiers who may have no proper authority to be acting in the way that they are acting.

7.45 p.m.

Mr. President, the People's National Movement has had a history of joint patrols between the army and the police, but it has always been understood that the army has certain boundaries and the police has certain boundaries. The situation that now exists where the army seems to be overstepping their boundaries has left the people of Trinidad and Tobago wondering exactly what is happening with the army. [*Desk thumping*] As a matter of fact, we have come to a situation where there is a concern and a question being asked, whether martial law or military law is now the order of the day in Trinidad and Tobago. The question is being asked, is this the intention of the Minister of National Security?

Mr. President, we also have a situation where the police commissioner has said absolutely nothing. He has remained mum in these circumstances, and what is curious is that the police, ahm—

Sen. Griffith: Welfare.

Sen. C. Robinson-Regis: Yes, thank you. The police welfare association has come out strongly and indicated that they have serious concerns about this situation that has been developing and that has been allowed to continue unabated.

Mr. President, I ask the question tonight, this evening, and I ask the Minister of National Security to give the citizens of Trinidad and Tobago some assurances as it relates to how the army/soldiers are operating in Trinidad and Tobago.

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

Sen. C. Robinson-Regis: They have appeared to be acting over or ultra vires their jurisdiction and it is imperative that the Minister say something to quell the concerns of the citizens of Trinidad and Tobago.

I do not expect the AG to say anything on this, but I expect the Minister of National Security to give some calm and reassurance to the people of Trinidad and Tobago. I also expect the Commissioner of Police to make an intervention especially in the light of the fact that the members of the association have expressed concerns over this situation.

Mr. President, we have made it quite clear that our approach to legislation is not to oppose for opposing sake. We have indicated that once the legislation passes muster, we would support the legislation. In fact, 89 per cent of the small number of Bills that were brought to this Parliament did pass muster, and consequently we did support those pieces of legislation.

Sen. Lambert: You will support this legislation.

Sen. Al-Rawi: After we fix it for them.

Sen. Lambert: You will have to support this, the whole country wants that.

Sen. Al-Rawi: And the SRC does not want to pay.

Sen. C. Robinson-Regis: Mr. President, you know, this Government has a penchant for trying to frighten the citizens. I recall, in a previous piece of legislation, the Attorney General said the Judiciary was living in fear and the magistrates were fearful.

Mr. President, you know, even that piece of legislation, which is the one-strike legislation that the goodly Attorney General cited as being so important in the arsenal, that that was also another piece of dynamite. I am not even sure if the legislation is, in fact, being used, because if it is one strike and you are out, where are the statistics that tell us that this particular piece of legislation, that particular piece, that was dynamite in the arsenal of the criminal justice system, has, in fact, been useful? [*Desk thumping*] There is no information forthcoming, and the Minister and many of the Ministers on that side just make wild statements that this is going to happen and that is going to happen, and we have done this and we have done that.

Mr. President, my colleague Sen. Al-Rawi indicated that this was his favourite book [*Holds up book*] from the members of the Government, and I am also finding it very interesting reading—

Sen. Al-Rawi: Good comedy.

Sen. C. Robinson-Regis:—because they have talked about policy shifts and all kinds of achievements—as they put it, actual achievements—where, in fact, very few of the so-called actual achievements are a reality in Trinidad and Tobago. Very, very few; they are fictitious. [*Crosstalk*]

Mr. President, I just want to give you an example. One example, Mr. President. "Manifesto Commitments", it says:

> "We will have immediate action in specific areas identified in our 120-day plan that will begin to make a difference immediately."

Mr. President, when do they start counting the 120 days? I am really confused by this document. And just a simple, simple measure:

> We will begin the introduction of camera technology at traffic lights and set into motion an efficient system of ticketing offenders.
>
> Actual achievement says:
>
> Cameras have been installed at select traffic lights across Trinidad and Tobago.

Mr. President, this is one simple example.

Where are the cameras? Have these so-called cameras that have been installed actually resulted in tickets being sent to offenders? If we are not careful and if we do not go through this document line by line, we would believe that, in fact, this document is accurate. Another manifesto commitment, "Containment and Eradication of corruption." Mr. President, the actual achievement:

> "Action taken by Prime Minister against Ministers involved in poor ministerial performance, conduct and conduct unbecoming of a Minister.
>
> Activities on strengthening parliamentary practices in Trinidad and Tobago Report completed with consideration of the adequate remuneration of members to curb the potential for corruption."

These are the actual achievements, Mr. President.

We on this side are concerned that this Government's plan is merely to say that they have passed legislation. It is not a plan to say that they have actually done something to impact the lives of the citizens of Trinidad and Tobago.

Sen. Lambert: That is not fair.

Sen. C. Robinson-Regis: It is true.

Sen. Lambert: So many things have been done.

Sen. C. Robinson-Regis: What have you done Sen. Lambert?

Sen. Lambert: I will speak to you on it.

Sen. C. Robinson-Regis: Oh, you are speaking on this Bill?

Sen. Lambert: Not tonight. [*Laughter*]

Sen. C. Robinson-Regis: Mr. President, it is clear that the effect of ILP former leader continues to linger in the UNC. [*Interruption*] So, not tonight and you would tell us on another occasion.

But, Mr. President, tonight I say to this Government that we cannot support this legislation because it tramples on the rights of the citizens of Trinidad and Tobago. Yes, we understand that certain things must be done, but we reiterate that you are not ready to deal with the crime situation. You have let the crime situation run away in Trinidad and Tobago. In fact, in the first few days of this year alone there were 19 murders in Trinidad and Tobago.

Mr. President, the current murder toll is 244 persons. And it is interesting that Minister Cadiz is sitting in the wings because we remember his action with the Keith Noel committee. As a matter of fact, he should be on the street now dealing and asking this Government to act in these circumstances.

Sen. Maharaj: "When it was 500 and it was not bothering all yuh".

Sen. C. Robinson-Regis: It bothered us. It bothered us greatly. [*Crosstalk*] It bothered us greatly and as a matter of fact, that is a situation that was saddening for the Government of Trinidad and Tobago at the time.

And no matter how political the Opposition—as they then were—tried to make murder, we, whether in Government or in Opposition, have said to the sitting Government and to the Government as it then was, crime is not a partisan issue. Crime is bipartisan, it affects all citizens of Trinidad and Tobago, and that is why we presented ourselves to the Panday administration and said, "let us work together on trying to solve this crime situation. It is affecting all citizens." And that is why we also presented ourselves to this administration and said, we would like to work with you. The Opposition leader contacted the Prime Minister on more than one occasion, and it was only latterly that she accepted our invitation for us to try and work together, and none of the points that we made, and we made 10 points to the Government and said, "look at these issues and let us try and work with you on them. If you bring the legislation we will support it."

And, Mr. President, if I may, the 10 points were—[*Interruption*] This is a dynamite piece of legislation dealing with crime, the criminal justice system, and I am linking this to our attempts to assist this Government in dealing with crime in Trinidad and Tobago.

Sen. Lambert: Yeah, but you were there for forty-five years, you could not even handle it, but in four years—[*Interruption*]

Sen. C. Robinson-Regis: And you were there with us for part of that time, what did you do to assist us? [*Desk thumping*]

8.00 p.m.

Mr. President, I want to make the point that one of the issues has been dealt with by this legislation, and that is the issue of tampering with witnesses and tampering with juries. As a matter of fact, what we said, that there should be a witness protection programme, witness tampering must be a serious offence and that there should be—something must be put in place to deal with witness tampering. We did not include juries and we are happy to see that jury tampering is also included.

But one of the things that was raised, and we said we would support it, Mr. President, was the issue of—I just want to refer to my notes—right, the issue of persons whose homes were being invaded by criminals, and they were being evicted by the criminals. And we also said that issue of home invasion is a serious issue, particularly in certain sections of the country, and we would like that to be included as part of the legislative agenda. And we were of the view that this particular piece of legislation, because it deals with miscellaneous provisions, may have been a very good opportunity to put that piece of—that amendment in.

And, Mr. President, the Attorney General came to the teams with an amendment. And I would like to quote it. Among other things it said, and I quote:

If any person—

This is the Attorney General's proposed amendment.

> If any person by force, unlawfully and without a claim of right made in good faith, deprives the residential occupier of any premises or part thereof, he commits an offence. A person who commits such an offence under this section is liable on summary conviction to a fine of $50,000 and to imprisonment for a term of two years.

Mr. President, this proposal was—this was the proposed amendment made by the Attorney General, and we are of the firm view that this was an excellent opportunity to include it as part of the legislative arsenal to deal with the crime situation in Trinidad and Tobago. But even the home invasion continues unabated and we mourn the fact that this simple amendment was not included in this legislation, and we also mourn the fact that the points that we made in cordial discussion with the Government's team and the Opposition's team were totally ignored. We continue to maintain the view that crime is not a partisan issue, [*Desk thumping*] because it affects all of us as citizens of Trinidad and Tobago.

Sen. Lambert: You make a good Opposition Leader, you know. Rowley picked a good choice. [*Laughter and desk thumping*]

Sen. Maharaj: We would keep you there for a few years.

Sen. C. Robinson-Regis: Sen. Lambert, [*Desk thumping*] the last person who sat in this seat and attempted to be Opposition leader—

Sen. Cudjoe: "Oh, gosh."

Sen. C. Robinson-Regis: Okay.

Sen. Al-Rawi: Did a good job as well.

Sen. Cudjoe: Did a good job as well.

Sen. C. Robinson-Regis: Yes.

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

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

Question put and agreed to.

Sen. C. Robinson-Regis: [*Desk thumping*] Thank you very much, Mr. President, thank you very much to the Leader of Government Business in the Senate and particular thanks to Sen. Devant Maharaj and Sen. Lambert. [*Laughter*] I appreciate it, I appreciate it.

But, Mr. President, the Opposition is of the firm view that on each occasion that we as parliamentarians present ourselves to deal with legislation, we must deal with the legislation fairly and in the full and best interest of all the people of Trinidad and Tobago. [*Desk thumping*] This crime legislation is essential. We

admit that. But we also want to caution the Government that despite the fear or the overarching concerns about the state of crime in the country, we cannot, in trying to fix one problem, create another problem, Mr. President. And despite the fact that, between 2009 and 2013—and as you see I include some of the years under the administration of the People's National Movement—the total reported murders were 2,117 murders.

Sen. Al-Rawi: Wow!

Sen. C. Robinson-Regis: 2009 to 2013. Two thousand of our citizens were murdered in this country. It is said that there were 662 gang-related and 247 drug-related. Mr. President, I am concerned, because as a citizen of Trinidad and Tobago it is sad to see so many people murdered in this small country of ours.

Sen. Al-Rawi: What should be our paradise.

Sen. C. Robinson-Regis: So, it is not that we do not want to see crime dealt with. It is not that we do not want to see that aspect of the Government's arsenal being successful, because we do. Because we want to see crime at least reduced significantly in Trinidad and Tobago. And when my colleague Sen. Cudjoe has to stand up and lament the fact that there were four murders in Tobago, that is a sobering thought for any of us in this Senate. And we want to see crime go down. At one time we were even saying that—remember we got a lot of flak for it—that we want to see crime disappear, when one of my former colleagues in the Government, as she then was, said that we would be able to sleep with our doors and windows open, she got a lot of flak for that.

Sen. Maharaj: Sen. Beckles.

Sen. C. Robinson-Regis: No, it was Sen. Baboolal, and she was MP Baboolal at the time. But it was a wish and a hope, and at that time we had not crossed the threshold of 500 murders, at that time. So it has always been an overarching concern of the People's National Movement. But even with all of that, we cannot support legislation that oversteps the bounds of propriety. And I ask the Government to examine the legislation. I ask the Government to look at those clauses again.

Mr. President, with those few words I commend, what we have said on this side to the attention of the Government. [*Desk thumping*]

Sen. David Small: Thank you, Mr. President, for giving me an opportunity to join in on this debate. I appreciate the opportunity to speak. Let me at the beginning of my contribution allow the Minister of Finance and the Economy to

relax, that I am not going to be talking about tax-free saving bonds tonight, so you can relax. And all the members of the SRC can also relax, because I am here to talk about the Administration of Justice Bill.

Mr. President, I am probably a bad example of somebody who should really be talking about this Bill because I think that, again, I may be offering some slightly contrarian views based on largely personal experience, but I think they may be relevant.

I want to go back to something that Sen. Lalla spoke about when he said that crime has reached a stage in the country, where there are several people who have decided that their children can study overseas, and when they are done, probably stay overseas. And that is a real issue, that is happening. But, of course, by dint of the wonderful SRC provisions, my children will never be so fortunate. So I am planning on GATE for them, and that GATE—once it exists, that is it for them.

Mr. President, we also have—I generally support the broad intention of the contents of the recommendations in the Bill. I have serious concerns with enforcement, and then I have serious concerns about things being evenly applied given the experience in Trinidad and Tobago. And then what I call "friends and family arrangements"—there are friends and family arrangements in everything in Trinidad regarding enforcement of the laws. On a daily basis I am on the road, and now and again you run into a police road block, and depending on who is in a car without the proper permit, give them a bounce or they salute, you just go. And here is what I have no problem with members of the protective services using, but give them the authority to do it. Here is what happens: as a random citizen you are looking at that—you know that if you are stopped you are going to get a ticket. So you ask yourself, well, how many rules are there? And it happens with impunity, every day.

And so, when we think about, when we put legislation in place, we need to be aware that it has to at least appear even-handed. It must appear even-handed, otherwise you lose credibility in what you are trying to do and it runs to the core of a lot of the problems that we have in the society now, that people understand their roles, but people are seeing other parties, by whatever association, friends and family are able to break those rules and flout those rules. And then they are saying, well, if they can do it, why are you trying to pressure me or penalize me? And while it may be wrong to take that view, it is something that is pernicious in society.

I think that my other concern, Mr. President, has to be with what I call the administrative issues. Having been a part of the administrative system I know how difficult it is to get something started. And I am extremely concerned about how the security of people's personal information is going to be managed. I am extremely concerned.

Mr. President, I do not want to talk out of turn, but in another room in this same building I had cause to speak to a senior executive of a very major organization. And when they were asked about the security of clients' data, the CEO and all the vice-presidents could not respond. And my jaw dropped, and I am like—because they could not give a coherent response. When I asked that question I am expecting, yes, this is the process. Instead you have the CEO and the VPs asking one another, what is the process? And that scares me; that scares me.

So that, I think a lot of the concerns have been expressed about the—I think nobody would necessarily have an issue about your data being kept, but what are the security protocols? How is it going to be protected? What are the protocols in place to make sure that unauthorized access is flagged and punished—not just flagged, but punished! It has to be punished. And there are no provisions right now for that. Unauthorized access has to be punished, and punished harshly; otherwise you will run into a major problem. And I am a bad example. My biometric data is on several countries' databases—my iris scan, my fingerprints—I mean, during this debate I am starting to wonder, what are they doing with my data?

8.15 p.m.

I have had unfortunate cause, or fortunate cause, to arrive in places—I remember some time ago when the global bird flu epidemic was going on, when you land in a particular place, they came on the plane, they fingerprinted you. They came and stuck something in your ear to check your temperature. They made you say "ah" on the plane before you can get out. And you sit there and you endure it because you go there to do the business that you go there to do, and that is just part of the process.

My biometric data is on several countries—in their database, and I am wondering—I am just trying to be—and I have had unfortunate experiences going to places and being put in little rooms in a corner and they say: "Sir, your documents are not in order. Sir, could you have a seat, please? We will get back to you." I am, like, "Okay". [*Laughter*]

Sen. Al-Rawi: Six hours later.

Sen. D. Small: Yes, a couple hours later, like, "Sir, okay, you checked out. You can go. Have a nice trip". I have had several of those experiences, some in English and some in other languages that I am just like—I recognize things are going bad when they are telling me to go this way and all the other passengers are going this way, [*Demonstrates with hand*] and I am going this way to another room. I am, like, "Okay, what is it now"? So, I have had those experiences and I understand about, you get into a country and there are requirements when you enter the country and if you do not like the requirements you can turn around and take the next flight back out. That is the option. I have some concerns about the way in which the immigration portion of the thing is being—I have a question about the rationale, but I think that I have had probably too many of those experiences going to places, and that is the requirement. If you do not like the requirement, do not go.

One important thing I think that, I am not sure that it was mentioned so far. I think Sen. Lalla spoke to the fact that with the DNA proposals, we could have a situation where cold cases are going to be coming out. There may be things sitting down in the police files that, now that they have the—potentially, they have the DNA database, you could solve a lot of those crimes. But also, I hope the State is prepared that there may be the reverse of that. There may be several people sitting in prison now, and now that the DNA—they would love to be tested and say, "Listen, I really did not do that crime. I really did not commit that crime. Could you test me and then go back and check the evidence to see if it was not me?" So I am not seeing where there is provision in the Bill for that, but I fully suspect that there are several attorneys—I know attorneys are—[*Interruption*]

Sen. Al-Rawi: A dime a dozen.

Hon. Senator: "Look one right in front yuh."

Sen. D. Small:—that if you pass this legislation, there may be people sitting now, having been convicted and can claim—rightly or wrongly can claim—that they are innocent: "Please take my DNA sample, and could you compare it with the evidence that was collected at the scene, and on that basis, please free me." I think that is something that I am not necessarily seeing how that is going to be treated within the Bill that is before us. I think that it is something we probably need to think about; that it could be a real something that could get out of control if it is not properly—there are not proper measures to manage it. In the AG's

wrap-up, he may point me in the direction to which that could be handled, but in my reading of the Bill, I did not see anything necessarily to treat with that—the reverse of what you are trying to do.

We are trying to make sure that we have the DNA database so we can make sure that we can get convictions; help the police to have the systems in place to get the convictions. I am saying, you have people who are convicted who may decide—who may say, "Listen, I think I am innocent. Please test me and clear me". And that may further cause additional backlog in the judicial system. So I think this is something I would like us to think about.

Mr. President, regarding the Jury Act amendments, I think that trial by jury has been the cornerstone of our judicial system for a long time and I think that it is an important safeguard in preserving our democratic system of government. Many times it is inconvenient, but it represents one of the most important civic duties of citizens.

However, I think there were also two concerns. Whether people agree or not, I think that those concerns at least need to be aired. And one is that juries may—we have a concern that perhaps—perhaps—juries may not be as representative of the community as they could be. Secondly, there is the potential that the burden of jury service is being placed unevenly on some parts of the community. Again, I probably have had bad personal experience. I was called to jury service four times in 12 years. Every three years I am called for jury service. Perhaps I am seen as a nice person to be on a jury, working in the civil service, but four times in 12 years is a bit regular. My ID card says that I am a resident of Laventille, so I do not know if that makes a difference. But for me, something is not—I do not buy it. I did not buy it. Four times in 12 years is not regular. I am not saying any system is perfect, but I am pretty sure that that system is imperfect. [*Interruption and laughter*]

So, I think that there is a concern about that, having been called on these four—up until last year. Around January last year I was called again. I am, like, they like me or what? I am a popular guy.

Sen. Al-Rawi: How many exemptions you got?

Sen. D. Small: Every single time I beg—I may come and try to get an exemption on the basis of whatever—once I served.

Hon. Senator: So that is why they call you.

Sen. D. Small: That is why they keep calling me?

Hon. Senator: They did not believe "yuh".

Sen. D. Small: Clearly. I think one other issue, Mr. President—and I remember this because I got a cheque about six weeks ago for $60 for some jury service I did in 2000 and—[*Interruption*]

Hon. Senator: So much?

Sen. D. Small: Yeah—2008 or something like that.

Sen. Al-Rawi: And $10 a day in transportation.

Sen. D. Small: And I think this is something that needs to be addressed. Remuneration for jurors is woefully inadequate, and that may be part of the reason why people are asking for exemptions. A lot of people necessarily cannot get time off from their jobs, or do not want to take time off on their jobs, and then you may be living in San Fernando and have to come to the Port of Spain High Court. There is a travel cost. You do not even get reimbursed for that properly, and then you get it three or four years later. I think that is something that I have not seen treated in the Bill—[*Interruption*]

Sen. George: If you ask for an increase, they will say—

Sen. D. Small: Well, they probably will say I am the money man. I only want to increase everybody, but I am going to go with it.

You see, not many people could afford to sit on a jury and we tend to get people who are either civil servants or employed by large corporations that give them paid leave to do it, but not many other people. It is a fact that a lot of people do not wish to serve on juries, and they attempt to find any way to get out of it. As someone mentioned earlier, on the day that they normally have requests for exemptions, it is standing room only, and then flowing out into the corridor. Everybody is trying to get an exemption to get out of jury service, and you sit there and you listen to all the excuses and, wow, Trinidadians are creative. [*Laughter*] Okay?

Too many people view jury duty as an onerous obligation, to be avoided. And while financial compensation does play into that, I think the serious crime situation in the country is the real issue in there. I do not think anybody necessarily wants to sit and be on a jury panel on a serious criminal matter.

Sen. Al-Rawi: Regulations, section 3, $10 a day.

Sen. D. Small: Well, all right. I got a cheque for $60—[*Interruption*]

Hon. Senator: For six days.

Sen. D. Small:—and it was for something that happened four or five years ago. [*Crosstalk*]

Sen. Al-Rawi: The SRC set that—

Sen. D. Small: Probably the SRC set that one. [*Laughter*]

I have heard the arguments also, Mr. President, about whether or not a judge or jury system is the best chance for a fair trial, and today, based on the empirical evidence I have been able to look at in several locations, I think both systems have managed to produce a relatively fair, effective criminal justice system. In this part of the world there seems to be wide acceptance of the relevance of jury trials and the notion that it provides a way for ordinary citizens to participate, and in that way you get greater acceptance of the law and legitimacy, and fairness of the law when you have that kind of citizen participation. But I think the jury is still out. I think there are a lot of discussions going to happen about the relevance or the practicality of continuing with jury trials. But there may be need to be some mix or further consultation.

I also looked at the provision to increase the age to allow persons up to the age of 70, and I tend to support the view expressed by Sen. Mahabir that—I am not sure to the extent that senior citizens—my mother is very happy, jumping a hoop because she was just 70 a few days ago. She says, like, "Wow, I am of out of this forever". People are not excited, retired or otherwise, to serve on juries. That is a fact in Trinidad and Tobago.

So I am not sure—I understand that the move to the age 70 is not necessarily unusual. It is happening in many other jurisdictions that I checked, but I am not sure if it will yield anything significant, other than more people asking for exemptions, especially at that age people may have real reasons—health reasons—why they may not be able to attend.

So that increasing the fine for employers, I think it is an important issue because a lot of employers put pressure on you. Even in my former place, you know, there was always a process about, you know, "Did you serve", and "which days" and it turned out to be an unnecessary drama.

I am suggesting the Government looks at the quantum and the timing of the payments. Mr. President, if for example, you say, "Listen, if you have been selected to serve as a juror, we pay you $100 a day", and the Government says that once you have completed that service you will be paid within 90 days of

completion of the service, I think that adds some rigour to the process, and at least people who have to do the travelling and have to get there, will know that they will at least get back the money that they have to spend to-ing and fro-ing, driving their vehicles, or whatever, to get there and to get back. You cannot expect a salary, but at least you have to give people some reasonable payment, and it has to be timely. Giving me a $60 cheque for service I did four or five years ago, I put the cheque in a frame and I say, listen, I will keep it because of—no point.

Mr. President, the inclusion of spouses of several groups of exempted persons has to be considered, I think, in more detail. I say this because, given the fact of the relatively—what I consider to be the leaky confidential information system in the country, the fact of an MP's or mayor's or an attorney's spouse being empanelled would very likely be known to many unauthorized persons very quickly.

I think this proposed amendment, while I support its intent, we may not have fully considered the incestuous, sieve-like nature of our administrative information systems, and I am troubled. I understand the logic. I understand that it is done in a lot of other places, but Trinidad is a funny place where information is just not secure. It is just not secure. We need to get over the hoop and understand that, yes, it is confidential, but for how long, and that there are disruptive people in the society and we need to be careful how we treat with that.

I have seen legislation in a couple of other places where they have said, listen, spouses of these other officials who are exempt, they say that they are on the list, but once they can give any kind of reasonable reason, just like everybody else, they will be exempted. And that can still happen, but I am concerned about it because at the stage where, perhaps they are actually empanelled, we may be putting people at risk, and people have been placed at risk in Trinidad and Tobago on the basis of family relations for smaller issues. So I am really concerned about it. I really think some more thought needs to go into it.

Mr. President, on the Criminal Offences Act, I am happy to see that jury and witness tampering are really finally being addressed. I have a question, though. What happens in a case where jury tampering has been established? Is there a retrial with a new judge? Or does the matter continue without a jury? I am not sure what the process is. Should the accused in the matter have the option of requesting a jury-only trial? I am not sure what the process is, and the process for that has not been spelt out. I am not sure if it needs to be, but that is for me, as a layperson looking at this, that is the obvious question that jumps out in my mind.

While we have several things about intimidating, I think that what I found interesting, in several jurisdictions and certainly in several states in the USA, they have a statute to deal necessarily with something called, influencing a juror or a witness by writing. Now it is very interesting because what they say is that in this social media, very sensitive world that we live in, you can send influencing communication—sending influencing information to a witness or juror is outlawed in the USA—information. You do not even have to threaten him.

The communication may not be intended to intimidate or to dissuade the witness, but may be intended to provide information to sway their thinking. So for example, if someone writes to a juror and says, "Johnny is on a murder trial, but Johnny is a good boy. He is the best boy in the world. He is a lovely father and, you know, sending him to prison would be the worst thing ever". That is not a threatening or intimidating letter. I think that there is no provision that—how people—it should not be allowed to communicate with somebody who is a witness in a trial on that basis about the people who are on that trial.

Those are issues that, in other jurisdictions, certainly in several of the US states, there is an actual provision in the state statutes that deals with—outlaws communication in writing. So do not send any email, do not send any letters to say, "Well, listen, David is the best boy in the world. He is an excellent father, and even though he has been charged with this, we do not think that that is the right thing to do. We think you should consider that, listen, he is a pillar of the society, contributed to the church."

We may want to discount the effect of that, but in the USA it is outlawed. You cannot do it. It is an offence. It is a felony. You get locked up. And while we have text in the Bill to deal with trying to intimidate the witness, intimidate a juror, there are other softer ways of getting people to your view because if you get to one and you sway one person, then you have a challenge with your trial. Just something to think about, Mr. President.

8.30 p.m.

On the Dangerous Drugs (Amdt.) Act amendment, the only comment I have on this is that I think the fines still appear to be too low. Fifty thousand dollars for drug trafficking, in my mind, will not necessarily deter perpetrators. I think last year—I do not know if you all remember—we had a widely reported trafficking case, where the estimated street value was like $600 million. I do not know if anybody remembers that case. But my argument is that the kind of cash generated by this illegal activity means that $50,000 is a mere nuisance. It is a

nuisance fine. I agree that we should not really be sitting here randomly throwing numbers across the floor. I think that if we are really serious and we understand the scale of the business, $50,000 for the average person like me, I scream, but there are some people for whom $50,000 is nothing.

Hon. Senator: Street value.

Sen. D. Small: I understand three times the street value, but here is what will hurt. If you were caught with half a pound of cocaine and the minimum fine is, let us say, half a million dollars, you are in trouble. It is a deterrent.

I understand why that is in there, but there needs to be a high threshold to really deter. That is my thinking. I think there needs to be a high initial threshold that sends a clear message that it is not on, and if you take the chance be prepared to deal with severe consequences.

Mr. President, regarding the Immigration Act amendments, I think that ever since the awful tragedy in the USA—9/11 and the subsequent roll-out of their fingerprinting to all visa holders, as I indicated, the world of international travel has changed forever. I remember the good old days. I had an extremely pleasant experience on my first flight. There was a guy flying an aircraft and the name of it was Sun Jet St. Lucia and the tail number was 9Y TGN. I remember it well. I was 11 years old. The captain was a guy called Bobby Thomas and he was taking us going—I had that sweetheart flying experience.

Hon. Senator: Captain Bobby Thomas.

Sen. D. Small: Captain Bobby Thomas, my first flight ever. I was like on the plane and the wonderful Tri-Star, 9Y TGN. I always remember it; fabulous flying experience: I arrive and it is all wonderful and you can take what you want in the aircraft. I am probably spoiled from that history. They took me into the cockpit and I am like, wow. You know, as an 11-year-old that is burned in the memory here. [*Senator touches his temple*]

Hon. Senator: Pre-9/11.

Sen. D. Small: Certainly. Pre-80s. This is ancient history.

Hon. Senator: I heard you could have smoked.

Sen. D. Small: Yes. Smoking was allowed in rows, I think the last three or four rows to the back of the aircraft. You could have smoked on the aircraft. And those were the days when we were in the old Piarco, and you had to come out the departure lounge, then walked so and you walk into the majestic aircraft and my

mother is like, "Okay, enjoy". It was just a different experience. Now, travel is painful. I have to do it a lot for the business I do and it is painful. But I see the proposal in the Bill and I think that in the case of the USA, there was a clear and present danger of further attacks and they saw this measure as a way of securing their borders from, what they considered to be, undesirables. I am not sure or entirely convinced about the clear and present need to do so in Trinidad, even though I know that the Minister can, by order, exempt persons or countries from this.

I am not convinced of the clear and present danger, the clear and present need. There are other countries that have done it and they have espoused why they have done it. I am not sure we have been told why. Given the reality of our administrative structures, creating a process to manage this requires a lot of time and a lot of resources that right now are not in place. Certainly, the pool of persons who develop the protocols to administer this does not yet exist in its entirety and, as Sen. Dr. Mahabir had indicated, we may need to find ways to improve the skills pool in the country to deal with that.

Mr. President, in other jurisdictions I have looked at a key principle in the collection of personal biometric data, that it must be proportionate for the issue for which it is being used. I do not want to say that I am repeating from anyone else, but that is what my research has shown. People in other countries, they have legislation to protect what is called personal information. There is personal information protection legislation in place, so that there is legislation to protect people's personal information.

While, in principle, I support the measure, I am unconvinced about the rationale that has been put in place for its introduction. I am very concerned about the fingerprinting and the keeping because as I mentioned earlier, unfortunately or fortunately my biometric fingerprints, my iris scan and other things are in several databases in several countries. When I arrive, I am like, okay, there is good and bad with that. At least in my iris scan they know it is me regardless of what the passport says. But I am concerned about how that is being applied in Trinidad and Tobago, and the rationale for why we are doing it in Trinidad and Tobago.

Mr. President, I asked a lot of these questions and I put these on the table because of personal experience; my understanding of how administrative systems work; what is required to get administrative systems up and running; and then several other issues have to do with the way in which we have done legislation here that there are several administrative, structural people-resource

issues that have not necessarily been spelled out how we are going to treat with those things. What is the time schedule? How are we going to resource this organization, these people, this group going to create this? I think there needs to be some more details on how those things are going to be created to give everybody comfort to understand and, most importantly, the security protocols for collecting whatever information is being collected, whether it be the DNA information or the biometric information like your fingerprints and whatever else, it is very important. Protecting people's personal information—is mine, it is mine.

Now, on the issue of people returning and having been deported—okay, if you are deported for a crime, I have no challenge with that. I think there was an argument earlier that, well, if someone overstayed their visa by one day in another place, they overstayed their visa. They committed an infraction and they have been sent back. So that you are sure of one thing, in the country that they have been deported from their biometric data is on file. I do not understand what the issue is with having their biometric data on file here. They have committed an infraction one place, it does not automatically mean they are going to do it here.

But if they have been able to give it there, I do not see what the issue is giving it here, for me, because I do not buy the argument that I accidently overstayed—I am probably a very meticulous traveller and if I say I am going to be in your country for—I am here. I have had the unfortunate experience of being put in a room because I was rude to the wonderful border agent and—"How long are you going to be here?" "I am going to be here for two days." "You flew all the way to be here for two days?" "I don't want to live in your country. I came. I have a meeting today, I have a meeting in the morning and I am leaving in the afternoon. I do not want to live in your country". Rude! They pressed the button and put me in a room [*Laughter*] because I was rude. And that is the truth.

I did not want to stay in their country and I was tired. Every now and again, I am rude. So they put me a room, Sir why—that is what happens. I do not want to live in their country. I come, I do what I have to do and I then leave.

Hon. Senator: First one to give trouble.

Sen. D. Small: [*Laughter*] I will not tell you about the time I went to Tehran and what happened to me in Tehran. I have had some fond experiences, but all of those experiences in those places they take your fingerprints. It is not a discussion. In places where they do not speak English, it is not a discussion, and

I have learnt one thing if nothing else when I am travelling: in an airport you are under the control of the airport authority. You virtually have no rights. You are in a stateless place, you have no rights. So I have learnt to try to be respectful and not be rude.

So that in the situation where we have people who have flouted the legislation in another place and for whatever reason, however small it might appear, they have broken the rule in that place and they have been sent back to Trinidad; when you come back to Trinidad we are saying, "Listen, just out of an abundance of caution, please give us your fingerprints because we want to make sure"—because if you had no problem giving it there, I do not see what is the problem giving it here. I am probably looking at it too simplistic and I am contrarian to other views, but this is the package with me. I tend to be contrarian.

So, Mr. President, I think that several of the things that are in the Bill, I am supportive of the general thesis. I have outlined several concerns. My other big concern I spoke to is about the reverse of the—what is going to happen—likely to happened with the DNA legislation once it is passed, you are going to have people who are sitting in the jail now saying, "I did not commit this crime. Please take my DNA evidence, get it to my lawyer and can you please match it to the evidence to the crime and make the arrangements for me to be freed or get it before the courts", and I think that is something we really, really, need to consider. I did not see it anywhere captured in the legislation. Perhaps I am not legal. I look at these things with a completely different view than most people.

So, Mr. President, with those short few words, I want to thank you for the opportunity to talk. [*Desk thumping*]

Sen. Rev. Joy Abdul-Mohan: Thank you, Mr. President. Thank you very much for giving me the opportunity to speak briefly on this Bill, Miscellaneous Provisions (Administration of Justice). I know much has been said already, but after review of the Bill there are really just a few issues that caught my attention and I want to briefly ventilate my views on the Bill.

In particular, I want to draw your attention to Part I, Administration of Justice (Deoxyribonucleic Acid), and I just wanted to make sure I could say it better than my dear friend there, Sen. Al-Rawi. I know we have been running away from the pronunciation, but in context permit me, Mr. President, to use the abbreviated form of this DNA concept. I want to speak about this particular Bill in the context of the human factor and it is because I have some questions like many of my colleagues, and I hope even if I miss the committee stage, the questions may be addressed then.

We know that DNA is very special. It is special because science has shown to date that no two humans have the same DNA profile, and every DNA profile has indeed, you know—is unique in other words. Every DNA profile is unique. Let us leave it at that. And even when parents pass down their combined DNA to offspring, no two sets of DNA passed down are the same and we do not want to get into the technicality of the conversation or the debate, but when humans were created the mould was broken.

DNA is so special that it is used by various jurisdictions around the world as evidence in criminal cases, paternity cases, private testing, forensic testing, testing for health issues, testing for animals and can even be used to determine drug use. So it is essential, it is important, especially in the areas of justice and the fight in crime.

DNA samples can be taken anywhere and anytime through both invasive and non-invasive means as we heard—skin cells, hair follicles, saliva and so on. But firstly, as I reviewed the Bill, I wondered, "What is the control on all of this?" DNA is everywhere and it is easily collected unknowingly, and DNA can be collected with or without consent, and I can be corrected. I stand to be corrected. But in other words, when I thought of it carefully, under what circumstances can DNA really be collected and held in a database?

8.45 p.m.

Where does the legality of collection start and stop? And I think my colleague, Sen. Vieira, asked a question similar in this case: if a police officer finds a piece of gum, in other words, in the vicinity of a suspect, can DNA be collected? If so, can the DNA be placed in a database? Can a police officer offer a suspect a soft drink, as it were, knowing full well that DNA can be extracted from that can? And that is a question I have, whether it can be answered or not, well, we will wait and see.

Secondly, as I look at section 26, subsections (11) and (12) and I think most speakers previously would have had some concern regarding this particular section and this particular matter. I wonder if 20 years is too long or too short to retain samples in a database. On the one hand, DNA kept on file has the potential to be improperly or illegally exploited by the dubious. On the other hand, biosurveillance is an effective way to track down criminals. So the question is: how do we find the balance between the two? And that is a question that I have.

Thirdly, how do we share this data, if at all? Do we share it regionally with our Caricom neighbours? Do we link up with the First World nations as it were, Canada, USA or the UK? Do we link up with local police agencies or federal agencies? Where do we safeguard our citizens' private information without sacrificing the fight against cross-border crime?

A fourth concern I have—and all my concerns are in the form of questions and I think most of us would have asked questions like these. What standards do we follow before we store DNA data? How do we measure whether our practitioners are adhering to standards? What technologies do we adopt as a developing nation? Do we adopt the latest technologies and try to keep up with the rest of the world or perhaps do we take baby steps and incrementally develop our expertise? On the other hand, we want to be on par with international capabilities, but on the other hand, do we have the infrastructure to support state-of-the-art processes and procedures? It is not that I am underestimating our ability as a nation but we have to ask the question: are we ready? If we are, then we have to put mechanisms in place to ensure that these methodologies work in the benefit of fighting crime.

Fifthly, Mr. President, what kind of corroborating evidence is required in court? Is DNA a silver bullet, so to speak, special as it is? A sixth question: will DNA databases be used for other purposes than solving crime? Seventh: will requests from foreign agencies for information be accommodated? And I think that is fundamental. Eighth, who will guard the guards? And that is a concern I have. Who will guard the guards? We have a database of private information. Is there a higher and reasonable expectation that this information is safeguarded from, let us say, hacking, theft and other unauthorized infiltration?

And last but not least—because as we all said, I think, Minister, Leader of Government Business, we are all tired. Last but not least, where do we place our safeguards? And for me, that is essential. Where do we place our safeguards? In legislation where it is enshrined or in regulations that can be changed quickly and easily without parliamentary scrutiny? And that last question really concerns me. These safeguards, are they going to be enshrined, perhaps, in legislation or in regulation? And how? How are they going to be changed if necessary? How are they going to evolve, especially when we think about our responsibility as legislators?

So, Mr. President, these are some of the questions I have and forgive me if the concerns I have are better suited for committee stage which I may miss, so I lay them on the table together with some of my colleagues. And I would hope that the true intentions of this Bill, in particular this aspect of the Bill regarding DNA, we will look at carefully and with the necessary structural changes in the legislation, it will be beneficial for the whole community as we fight crime with urgency. Thank you very much, Mr. President. [*Desk thumping*]

The Minister of National Security (Sen. The Hon. Gary Griffith): Thank you, Mr. President. I am trying to ensure that I adhere to the wishes of the Senator in parliamentary seat number 45, Sen. Mahabir, who wanted to leave here by 23:00 hours. [*Laughter*] I would try to be as short as I can. I was not planning to speak but through Sen. Camille Robinson-Regis, my name was called more times than how many goals Brazil got in the last 180 minutes of football. [*Laughter*] So I got called more than 10 times.

Mr. President, I thank you for giving me the opportunity to contribute in this House on this Bill. Firstly, I would like to state that—and again, I wish to clarify the situation of this concept we keep hearing about crime plan. And again, what I said, it is a crime plan: just like an agricultural plan, it is a plan for agriculture, so a crime plan is a plan to commit crime and I do not think anyone here, no political party that I know, has any intention for a plan to commit crime. I think all individuals here, we have the common interest of the nation and the good of the nation at heart. We may have different directions on how we want to go ahead to deal with law enforcement policies and how we deal with policies to assist the citizens of this country with their fundamental right to safety and security. What is important is that we put the right policies at the right place at the right time to ensure that we are successful.

Mr. President, this Bill is just part of a process in dealing with national security and, well, to ensure the security of our nation. In the concept of criminology, there are three specific areas for crime prevention: the primary, secondary and tertiary. There is a reason why I am bringing this forward because this actually has to do with the Bill itself; one of the three arms of crime prevention. The first especially deals with the Ministry of National Security and that has to do with law enforcement, and that involves hard-targeting, deterrence, intelligence gathering, policing and that is probably the catalyst and the most fundamental aspect you have in national security which is what I put the focus on in national security.

However, there is also a secondary aspect to crime prevention and that has to do with using the energies for persons away from the life of crime and making sure that their energies are put in the right direction and they are provided with the opportunity to ensure that they can actually turn away from a life of crime. The reason I use the secondary crime prevention, Mr. President, it has to do with, again, I heard the mention about the LifeSport Programme over and over. And again, I wish to state that whilst this Government remains here from now until 2020 and beyond, and whilst I remain here until whenever, I wish to assure you that what we would do is to ensure that we have the political will to do what is right. [*Desk thumping*]

The political will, Mr. President, was shown when the Prime Minister decided, as soon as intelligence came to hand, she did exactly what was required. It was not a matter of being the proverbial ostrich, putting your head in the sand and hope that the problem goes away, and that is what we have seen far too often. What she did was immediately call an audit, had it transferred to the Ministry of National Security, and we also ensured that no funding was actually sent forward in any other direction until my comrade on my left, the Minister of Finance and the Economy, when the audit is completed, we will know exactly where we need to go from here.

With that, Mr. President, the concept that I have is I never have an intention to pay people not to commit crime. I think it is very important that what we do is to utilize resources to ensure that youths, especially in at-risk communities, they can be provided with the opportunity to turn away from a life of crime, not paying them not to commit crime.

With that, what we are looking at now for the LifeSport Programme has to do with putting the arms of the defence force to assist in the development of youth. The arm of the defence force, it should not just be seen that the defence force being that of muscles and flexing and going in there. It has to do a lot with the character traits that one can get in the military. The character traits that one can utilize even in sport and they can then utilize in other arms in their life, and that has to do with character—the proper character building of good leadership, it has to do with timing, with punctuality, and paying adherence to detail, teamwork, discipline, uniformity, and a lot of these character traits that you can get in sport, a lot of these character traits you can get in the defence force, and this can be used with the youths in the LifeSport Programme.

Additionally, there have been several persons who have shown their interest. I am talking about international sport icons who have now retired and they intend to also assist us in this programme. Additionally, if it is that we have LifeSport, or whatever it is we intend to call it after, and it involves sport, it must—the sporting communities; those affiliate bodies must have a part to play in it, so all of the relevant sporting bodies would also be involved in this.

Finally, in the LifeSport Programme, we also have to look at the at-risk communities. There are many community groups, sporting bodies in at-risk communities, that they just need that support, and the support we give them, they can be the ones that can provide, they can become the catalysts to go into those other areas and help the youths in achieving that objective of secondary crime prevention.

The tertiary crime prevention has to do with the criminal justice system, and there is a specific reason why we now have a Ministry of Justice, because prior to which, we had the Ministry of National Security and you had prisons and you had everything all in one. But, again, as I mentioned, with crime prevention, you have primary crime prevention and that has to do from dealing with the detection rate and intelligence gathering, law enforcement and the arrest. As soon as the arrest comes about, we then move to the criminal justice system which then comes into the Ministry of Justice and that involves a vast amount of dealing with matters to reduce crime. We can look at even, with the prison service, the concept of recidivism and proper rehabilitation, and it goes right here in the whole aspect of the Miscellaneous Provisions (Administration of Justice) Bill, 2014.

Mr. President, just looking at some quick ones here, in Part I, clause 3 of the Bill, we seek to amend the Administration of Justice, the DNA Act. I know too often I keep hearing about the rights of everyone else and somehow it gives me the impression that we are always looking at the rights of the criminal rather than the rights of the law-abiding citizen, because we always find some avenue as what if, what if this happens. You can never have perfection in the criminal justice system but we always find an avenue to say, "Well, listen, we are looking after the fundamental rights of the citizen". But, my concern is the fundamental rights of the law-abiding citizens. We are trying to give them a level playing field and too often, the criminals themselves, they have one-up and sometimes, they have actually used the criminal justice system to escape, and through this aspect we have with the DNA Act, we can now ensure that their get-out-of-jail-free card would be lost and they will stay where they belong, which is in jail.

Mr. President, this clause seeks to amend several sections of the DNA Act. I could just speak briefly on a few of them. The Bill seeks to amend including the interpretation section of the DNA Act to include the definition of a "private security officer", and to mean:

"…a person licensed under any written law to provide security services…"

—such as:

"(a) static or patrol services;

(b) property for hire;

(c) private investigations;…

(f) monitoring or surveillance services,…"

There is a reason for this because what we are putting now is ensuring that the law enforcement officers, or any individual who has some aspect of security, we can now make sure that—there is something now that we can put checks and balances to make sure that they can be of benefit to the system and not be a liability to the system and this can easily happen if persons who are involved in security can actually compromise a situation and even affect the evidence in that area.

9.00 p.m.

So, Mr. President, I also heard about the concern that persons—if it is that they may be found guilty—I think that was Sen. Small, who spoke—that if—I think it was Sen. Small—if someone is guilty and they have been convicted, if this can now provide them with that opportunity for a second chance, and the answer should be yes. Because what this is actually showing now is, if someone actually feels that he did not come commit a crime, and he has this opportunity, and this is done worldwide, but again, this is not a case of every single person now who believes—because on most occasions—we are not saying—on most occasions, the person would be guilty.

So using the DNA is not going to be a get-out-of-jail-free card for them. The DNA can only prove that person being innocent, if there is DNA, say, for example, a sexually based offence, and we have the evidence from that, this can now be used to ensure that people—we do not want—I do not think anyone here, even in the criminal justice system, wants anyone who is innocent to be in prison. So this can be of value to us, Mr. President.

While under the DNA Act, the persons who are authorized to take samples, I just want to clarify, it will only be a police officer in the context of non-intimate samples, and a qualified person. So this is not to change in any way, it will still be the police officer who will be involved. But, Mr. President, I am certain that every Member of this honourable House appreciates the concerns associated with DNA testing, particularly in the area of protecting one's right to privacy.

Mr. President, while this Government is committed to doing all that is within its power to deal with crime in this country, our initiatives would obviously take into consideration, the need to balance crime detection, against the human rights and privacy protection afforded to all of us.

And this is where I will go to—Sen. Young actually made a very good point pertaining to *S and Marper v the United Kingdom*. But again, Mr. President, you know, we can look at different views and then make a decision to say, well,

should this be justification for us to go one way or the other, but I think we could all agree that it is important that this Bill goes in the right direction. But going back to the *S and Marper v the United Kingdom*:

> "In England, Wales and Northern Ireland, since 2004, any individual arrested for any recordable offence has had a DNA sample taken and stored as a digital profile in the National DNA Database. Even if the individual was never charged,…"

Now. Mr. President, I will continue. Now, based on the matter with *S and Marper*, the charge was not pressed because Marper and his partner became reconciled before a pretrial review had taken place. Now, the submissions that we would look—however, Mr. President, yes, it is that they were awarded. But it also continued:

> "When the matter was before the European Court of Human Rights'…the non-governmental organizations…"

—for example—"…stressed…"—and hear this quote, Mr. President:

> "…that general principles of European human rights law dictated that interference by a member state with an individual's rights under the Convention must be "necessary in a democratic society" and have a legitimate aim to answer a 'pressing social need';"

Now, Mr. President, again going back to this *S and Marper*, it is very interesting to note that they also stated that this case of *S*—as he was a child at the time—of having his samples taken, and relied on Article 40 of the UN Convention on the Rights of the Child of 1989, which states that it is:

> "…the right of every child alleged"—to have—"infringed the penal law to be treated in a manner consistent with the promotion of the child's … dignity and worth…"

Additionally, Mr. President:

> "In response, the United Kingdom submitted that the use of the DNA samples was permitted under the Police and Criminal Evidence Act 1984 and did not fall under the scope of Article 8 of the Convention. According to the United Kingdom's government retention of the data did not"—and hear the quote:
>
> "…did not impair the physical or psychological integrity of a person, restrict personal development, inhibit ability to establish personal relationships, or the right of self-determination. The DNA profile was merely a"—and this is

> what the DNA profile is—"sequence of numbers which provided a means of identifying a person against bodily tissue and was not materially intrusive; the retention of data was a legitimate aim because it assisted in the identification of future offenders."
>
> "The Court"—additionally—"did therefore not go on to consider whether the retention of DNA was also a breach of Article 14…"

And what is Article 14? "prohibition of discrimination"—

> "…6 months after the court decision, the Home Office"—in the United Kingdom—"announced a consultation on how to comply with the ruling. The government proposed to continue retaining indefinitely the DNA profiles of anyone convicted of any recordable offence…"

Now, Mr. President, I am going back to the concept with the private security officer—there should be no reason to complain with persons in the law enforcement agency or even private security officers because they have to do the level of accountability. I think all of us should look at that situation. I personally would have no problem if I go to the United States and—fingerprinted, and it goes even more, [*Desk thumping*] there is even the retina test as well, there is a reason for that. This is not because we want to find you guilty, but this has to do simply, Mr. President, with a database, it is a database for national security.

Mr. President, if I can go on now to—looking at the—if we want to stick on the DNA:

> "The past decade has seen great advances in a powerful criminal justice tool:"—that being the DNA—"DNA can be used to identify criminals with incredible accuracy when biological evidence exists. By the same token"—this goes again right back to Sen. Small, in the same token—"DNA can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes. In all, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system.
>
> DNA is generally used to solve crimes in…two ways."

And both are critical towards trying to reduce crime, and making sure the right persons are apprehended and found guilty.

> "In cases"—one—"where a suspect is identified, a sample of that person's DNA can be compared to evidence from the crime scene. The results of this comparison may help establish whether the suspect committed the crime. In

> cases where a suspect has not yet been identified, biological evidence from the crime scene can be analyzed and compared to offender profiles in DNA databases to help identify the perpetrator. Crime scene evidence can also be linked to other crime scenes…
>
> When used to its full potential, DNA evidence will help solve"—crime—"and may even prevent some of the Nation's most serious violent crimes."

Mr. President:

> "Since every person has unique DNA, the discovery of particular DNA evidence at a crime scene can help law enforcement…determine who was involved in the crime. On the other hand…"

As I said, it can determine if the suspect was not.

> "DNA fingerprinting":—as well—"has considerable advantages over conventional means…"

If you recall—I do not know if they still have it—if you are trying to get a certificate of character, you cannot walk into a police station with a white shirt. You have this thing, "and yuh put yuh hand", and it is messy and—we are talking, time for us to move forward in the 21st Century, Mr. President, and in addition to all of the mess:

> "Conventional fingerprints attach only to hard surfaces, can be smeared, or avoided by the use of gloves. Even a clear print requires a significant degree of interpretation by investigating officers."

However:

> "The use of a DNA fingerprint can scarcely be regarded as an affront to civil liberties. The procedure for taking a sample of DNA is less invasive than that required for the removal of blood."

Mr. President, I could go on from now until 23:00—that is 11.00 p.m. civilian time—but, Mr. President, DNA evidence is most commonly used in solving sexual offence cases, homicides and drug offences. It has the potential to be useful in other types of crimes: home invasions, burglaries, assaults, and stalking cases.

It can be used to identify criminals within—as I said, with incredible accuracy. It can be used to clear suspects, it reduces the reliance on witness identification, because we have this concern where citizens are afraid to come forward—bam! DNA, there may be no reason for it as much as before. Wrongful convictions can occur with mistaken identity as well, which is something we also need to take into consideration.

Mr. President, we can link cases now which could not otherwise have been connected, such as gang crimes, serious sexual assaults, murders and other offences. It also allows the police officers to solve crimes quickly and allows better use of our law enforcement resources. The use of DNA evidence in court, can reduce all the time taken up in court proceedings by limiting the contesting of evidence in court. If there is a DNA evidence, and the person has the same DNA, there is very little for you to say after that. "Yuh busted!"

It can also be used in solving older, unsolved cold cases, and I will come to the cold cases later on, Mr. President. Sometimes we ask the question about why 20 years or why 10 years? I will just give you two quick examples of major cases where DNA evidence was used.

In New York, 1999, Mr. President, the police linked a man, after over 12 years, to at least 22 sexual assaults and robberies that terrorized the city of New York. They held on to that DNA, they found it, and then they were able to link that individual with 22 cases. I think the Attorney General mentioned it. Sometimes you may have 22 rape cases, there may not be 22 persons who are sexual offenders out there. It could be one, but through DNA now, you can solve 22 cases immediately, and it will go to the detection rate that we keep hearing. I hear Sen. Al-Rawi always speaking about the detection rate, but tonight, Mr. President, I will give you the true facts of the detection rate in Trinidad and Tobago from the data of SAUTT to 2013.

Sen. Ramlogan SC: Always absent from the Chamber, boy, "oh gawd". [*Laughter and crosstalk*]

Sen. The Hon. G. Griffith: Mr. President, additionally, in 2001, in the United States again, the Green River killings, where in a series of crimes that remained unsolved for years, despite the use of a budget of US $15 million, it was solved through the use of DNA evidence. Mr. President, January 2000, the New York Police Commissioner at the time announced the reopening of 12,000 unsolved rape cases that took place in the city within a five-year period. In an effort to solve these crimes, he used DNA testing.

Mr. President, as I said, DNA is a genetic fingerprint. It is present in most human cells. So this is not a matter of—you cannot "ratch" DNA. You cannot set up someone with DNA. I think sometimes we are a little—we watch too many movies where, "yuh figure, yuh will go and yuh will take de DNA, yuh take de person's blood, and yuh drop it on de piece of cloth"; that is in the movies, Mr. President. [*Laughter*] Because I could tell you, if I ask anyone: give me a

situation where "yuh jump through ah forensic centre, yuh got de blood, yuh took it, and yuh drop it in", that is Cinemax channel 260. [*Laughter*] In real life, give me an example to show where DNA has been "ratched", where it has been used, where it has been deliberately manipulated to try to bring an innocent to justice.

Sen. Cudjoe: Mr. Minister, thanks for giving way. Are you aware of the case of *Commonwealth* v *Annie Dookhan,* Massachusetts 2013, where the chemist [*Interruption*] interfered with some 34,000 cases, by going in and falsifying these samples, putting cocaine in samples, changing samples and so on? 34,000, she is in prison right now. [*Crosstalk*] [*Desk thumping*]

Sen. The Hon. G. Griffith: And, Mr. President, therein lies the problem. You will always find an incident and say, well, because of that, let us not—let us throw out the baby, with the bathwater. [*Interruption*] Let us not look at the benefit and the value of DNA that has been proven worldwide.

Mr. President, and, in fact, when we are actually even looking at the concept of DNA, we speak again about the detection rate and with the reduction of crime, something that is very difficult to deal with in trying to solve crime has to do with murder. Because at times there may not be a witness, but through DNA testing, Mr. President, there can now be a statement that dead men can tell tales, because through that individual, you can use DNA testing to verify if someone was actually involved and part of that crime.

Mr. President, the DNA evidence is found—it is biological material; some of the common types of the material in which DNA can be found: the blood, saliva, sweat, urine and skin tissue. The evidence is most commonly used in cases of sexual assault, child sexual assault, sexual abuse and homicide, this is a very powerful tool that can assist us.

I would like to just go back, Mr. President, to certain other aspects of the Bill. I have been informed that, well, there is also an implementation—a DNA implementation team that will comprise stakeholders from different Ministries involved in looking at the administrative measures that need to be put in place to give effect to the intent and purpose of the DNA Act whilst, at the same time, identifying any deficiencies that may take place.

Sen. Camille Robinson-Regis also spoke about the training of law enforcement officers. Well, I wish to assure her, Mr. President, that we are doing exactly that. The plan of the police service is to train as many as 1,000 police officers to be able to recover DNA samples from suspects or from a crime scene.

To date—she did ask the question, and this is the answer—over 400 police officers have been trained in DNA recovery. Out of this figure, 149 have been trained as crime scene investigators. So we are prepared for it. [*Desk thumping*]

9.15 p.m.

Mr. President, 305 have been trained and certified to be able to recover DNA samples where CSI is unable to be at the scene. I have also been advised that there are 34 prison officers who are also trained in DNA recovery as well.

Mr. President, we recognize that there must be a holistic approach to deal with national security. Our initiatives are only as good as our human resources. We have recognized this, and we will continue to do what we can as Government to continue to train and equip our law enforcement agencies with the necessary resources—that is training or otherwise—in order to bolster and improve our crime-fighting capabilities.

Mr. President, I could also refer to Part VII of the Bill where it seeks to amend the Police Service Act. In this part, one of the proposed amendments seeks to expand the category of persons from who police officers are allowed to take and record for the purposes of identification such as the measurement, the photograph or fingerprint impression of a person.

Under the existing Police Service Act, a police officer can only do these things to a person in lawful custody. So, it means that a person who has been arrested and charged or arrested and not charged, but with the proposed amendment, particularly, as it relates to the taking of fingerprint impression, a police officer, once he has lifted a fingerprint from a crime scene and has reason to believe that a person was involved in the commission of an offence related to that crime scene, he can take the fingerprint impression of that suspect, and that person does not have to be charged or even arrested, which is the position under the existing Act. So it means, therefore, Mr. President, that police officers will no longer be hamstrung in their investigation in detecting crime and ensuring that perpetrators are brought to justice.

Mr. President, I am sure you will agree that for all these initiatives to work, we must create the supporting infrastructure to assist us in this task. The real value that the DNA evidence or even fingerprinting impressions would have is, if there is no database or it is limited, then it is going to affect the whole process, and that is the reason why the database is so important, Mr. President. I can even look at Trinidad and Tobago.

Mr. President, over 100,000 nationals from Trinidad and Tobago, they leave here annually to travel—we love to travel apparently. So, you are seeing in a few years we could almost have half of the database, and why should I not want to do this? In fact, I would want to have a database. I would want the law enforcement agency to have my fingerprint. Do you know why? Because if anything happens, at least, I could say check it, it was not me. I could move like Shaggy and say, "It wasn't me", and I think that is why it is important. [*Crosstalk*]

Mr. President, and, again, with the database it helps, because if we do not have this, Mr. President, what we then have is a database only with persons who have committed a crime. So, for example, an individual who may have been involved in a sexually-based offence and several, and he was never caught because he was good at his job, it means that he will continue to do it and there is no database for the police to pinpoint and see who the individual is. So, why should this be of any problem or concern to us because the DNA in relation to the crime, you can now have a database of the individuals and you can then pinpoint the crime to that individual based on the database. So, the database is not in any way going to infringe on your rights. The database is not going to set you up, because it has to have a link with the crime to the DNA of the individual.

Mr. President, if I look at Part VI of the Bill, it seeks to repeal and replace section 7 of the Young Offenders Detention Act. Under this section, before a person age 16 to 18 can serve his or her sentence under this section, the sentence can only take effect once approved by the Minister of National Security. Now, Mr. President, I am quite aware of the problems faced in this context, as I have been advised that on many occasions there would have been situations where young offenders would start to serve their sentence without the approval of the Minister of National Security. So, by going through the magistrate making the decision it becomes effective immediately, and there is no need for the Minister of National Security to get involved.

Also, Part IV of the Bill, which seeks to amend section 5(7B) of the Dangerous Drugs Act—I think Sen. Small, again, he spoke about the increase in the fines from $25,000 to $50,000, yes but this provides a deterrent. And, more important, Mr. President, where there is evidence of the street value of the drug, the fine would be three times the street value, and also the term of imprisonment has also gone up from five years to 10 years. But, Mr. President, with this amendment, it gives the recent drug bust conducted by our law enforcement agencies—you could imagine the amount of money that can be put into the State's resources when these perpetrators are brought to justice?

I could give you a simple example. Look at the $640 million cocaine drug bust that was made in December last year, or the situation where our intelligence agencies have been involved in major drug busts. Recently, we had over $100 million in marijuana that was actually burnt; $22 million worth of compressed marijuana was found in June last year. So, this might very well act as a major deterrent, Mr. President.

Mr. President, just quickly, just to deal with certain statements that were made. Again, going back to the OPVs, the OPVs seem to be some kind of a road march, a regurgitated road march over and over and over. Mr. President, that is where it is we have the difference with crime plans and policies. If I am involved in a business and I am the buyer, and I am looking to buy something, and then there is something wrong with the item, I then go to court—I go to court and the court says, "Listen, give that man back all his money."—it is called in the arbitration, Mr. President—the reason why the court said give you back all your money is because the thing was a lemon, and there was a reason for that. So, it was proven that if an item is defective, what is the reason for us to continue to go ahead with this OPV story? And I could go further.

The concept of an offshore patrol vessel has to do with securing your exclusive economic zone, which is in the north and east coasts; that is the deep water which runs 12 to 200 miles in the north and east coasts. The deep water, Mr. President, it is not where we have the biggest problem with the illegal entry of drugs, weapons and human trafficking, that has to do with the exclusive economic zone dealing with our deep water.

So, to deal with securing our borders, what we have to do is to put the proper mechanism, not offshore patrol vessels that are 90 metres because they would have never been patrolling the Gulf of Paria. That was set for the exclusive economic zone on the north and east coasts. What we have and we have put in is hovercraft interceptors, upgrading the radar, UAVs, helicopters and making sure that it is all fed to the National Operations Centre to have real-time response. In addition to which, Mr. President, we can put 100 OPVs or a million UAVs, it makes no sense unless you have intelligence, and the importance of intelligence has to do with what we have done.

There was a Security Cooperation Agreement with Venezuela and Colombia and we sat on in—it was in 2005 and 2008—for several years. We have reignited it, and by doing that we now have a proper working relationship with Venezuela and Colombia. When last have we heard Venezuela actually state that their Guardia Nacional at no time must they be involved or do anything outside than

what is within their role and function? They now stay in their area of responsibility; they now work with us; they collaborate with us. They are now involved in joint operations called Ven-Tri. They are now involved in joint training situations as well and the same thing with Colombia, and that is what is important, Mr. President.

Again, we also need to understand the importance of utilizing your manpower strength to equate with your national security assets. Because you purchase three OPVs, where was the manpower strength? It is not plasticine that you just make it up and you put a sailor there. Every OPV requires at least 80 sailors—the 80 sailors, you also had to have rotation—rotation of 80 plus 80, 160—but then with the coast guard, with a vessel of this size, you need to look for the changeover from persons going on training, resettlement training, sick leave, retirement; that is an extra 50 per cent of the tandem of the manpower strength at one time—that is 200 trained sailors you require, by three—so you needed 600 trained sailors to have three OPVs out at the same time.

We had less than 150 being trained, Mr. President. So, what it would have meant, we would have spent over $2,000 million, and most of it would have been parked up there in Staubles Bay because we were not able to have the training to equate manpower strength with the use of national security assets. [*Crosstalk and desk thumping*]

Mr. President, again, there was also the concern about CCTVs. I wish to assure you, Mr. President, this is not the concept of where over $500 million purchased in CCTVs, quick bash, and you say, "Right, because we need it because Barack Obama is coming here", and then the cameras could not have been used; wasted money. What we have now, Mr. President, is the concept of the CCTVs working through the Ministry of Works and Infrastructure, the Ministry of National Security, the National Operations Centre where we are getting real time—I would advise all of you all, please do not race when you leave Wrightson Road because it is there and, it is watching you in real time.

Sen. Cudjoe: What about in Scarborough? [*Crosstalk and laughter*]

Sen. The Hon. G. Griffith: There are no CCTVs there. Mr. President, it is not just the fact of technology; it is not just cameras because we had the same situation with the blimp. You could have the blimp and you are getting a feed; unless you have real-time video footage moving directly on the ground with an immediate operational response, all that you will get is something after the fact. What we have now, Mr. President, is based on the technology, we have real-time

video footage being fed to the National Operations Centre. The National Operations Centre now has the Rapid Response Unit, the highway patrols, all with GPS tracking, we can see exactly where these vehicles are. They stay in their area of responsibility and then you can lock them in as quickly as possible to get to the scene of the crime.

Mr. President, there was also mention made about the use of the army patrol. Mr. President, I wish to clarify once and for all—I have said it several times but let me say it one more time—that the Trinidad and Tobago Defence Force, their role and function is not just to fight wars, contrary to what many may think. Mr. President, they are also trained in peacekeeping. I should know because I was there in the United Nations Mission in Haiti for six months living in a virtual desert, and the Trinidad and Tobago Defence Force, they were commended by the United Nations. So they are fully trained in doing exactly what they are doing right now. They have been recognized and commended by the United Nations. What they did in Haiti they can do here, and they are also trained in that concept of peacekeeping, Mr. President. However, it is to be known, it is to be noted that their role and function also involves something known as the aid to civil power where they can deal with situations such as patrols.

The Trinidad and Tobago Defence Force cannot and should not be involved in arresting procedures, definitely, which is why when they have operations they work in tandem with the Trinidad and Tobago Police Service. It does not mean that if a soldier is patrolling the street, a police officer must hold his hand and escort him going along on the patrol. It does not work like that, Mr. President. The reason I could say that is because I was there for 17 years. We would go on an operation, we would go into the forest, burn the marijuana, bring the individual and he would then be handed over to the police officer.

Mr. President, I have spoken to the Deputy Commissioner of Police, we have spoken to all the individuals. The Trinidad and Tobago Police Service, they are fully involved in this operation. This operation, what we are doing now is ensuring that there is some type of stability in areas, and most of the citizens there, the law-abiding citizens, they are very pleased with what the soldiers are doing.

If at any time any soldier would break the law, well then they will pay the price, but let Peter not pay for Paul and say if one situation takes place, we figure that the defence force should not be there, because, what? If one police officer breaks the law or does something wrong, we should shut down the police service? If one politician does something wrong, we would shut down

Parliament? The needs of the many must outweigh the needs of the few. The defence force is doing what is required, and I ask that we trust the system. If at any time somebody does something wrong, I could assure you that the Trinidad and Tobago Defence Force will not turn a blind eye; it would not be covered; and they are working with the Trinidad and Tobago Police Service to ensure stability in hot spot areas. [*Desk thumping*]

Mr. President, there was also the situation, again, the importance of this DNA, it can also assist us with impacts in regional security, terrorism, having a watch list, being able to pinpoint. So, if someone may use a passport, having that passport logged with the individual through that DNA—through that system now of fingerprint DNA—you could make sure that the person does not enter our country under the radar.

Mr. President, I would look to wrap up here shortly. I could go into all the other aspects; the other aspects of cold cases that many persons who are hoping that—they want to put some sense of stability to say. "Listen, I want to find out what happened." Cold cases now, Mr. President, through this, it can open some sense of hope for many citizens of this country, and that I think is very important. Even when we have situations with individuals, even a body may be found, through DNA now, we might be even able to pinpoint and find the individual and find out who the person was.

Mr. President, I keep hearing the situation about the detection rate, but I just wish to clarify, Mr. President, the concept of the detection rate again. Sen. Camille Robinson-Regis mentioned that there were over 2,000 murders in the last five years. The sad thing about it, Mr. President, is that it is a proven fact that in most developed cities with law enforcement agencies, DNA testing has proven to be a catalyst towards solving many cases. What we have, over 2,000 murders in the last five years, 39 out of the 2,000 were based on DNA testing. That is a very small percentage. The DNA testing, Mr. President, obviously means that we are behind the eight ball. We need to get there because, even again, going back to the situation, there may be 10 murders, but it might just be one individual, and that DNA can match with that individual and all of a sudden, the detection rate goes up. But, you see, we keep speaking about the detection rate. I wish to clarify a point here with the detection rate, Mr. President.

In 2008, the detection rate was—I would just round off the percentage—16 per cent. This is when SAUTT was at its finest. In 2009, it was 17 per cent; in 2010, 16 per cent; in 2011, change in Government, 18.79 per cent; [*Desk thumping*] in 2012, 16.6 per cent and in 2013, 18 per cent.

9.30 p.m.

Mr. President, I do not know where Sen. Al-Rawi has been getting his stats, but the stats I have here are from the Trinidad and Tobago Police Service, the Crime and Problem Analysis Branch, CAPA. So I do not know where Sen. Al-Rawi has been speaking about 95 per cent detection rate under SAUTT. [*Desk thumping and crosstalk*] It is here, Mr. President, right here. I will give them a copy. [*Minister Griffith lifts document*]

Sen. Ramlogan SC: Misleading the House; misleading the House!

Sen. The Hon. G. Griffith: Mr. President, again, we are not there as yet, but we are getting there. We can look at, again, 2009 to 2013, there was a percentage reduction of woundings and shootings, 23 per cent; reduction of rape, 26 per cent; reduction of serious indecency by 56 per cent; reduction in kidnappings, 27 per cent; kidnappings for ransom, reduction 87 per cent; robberies, 52 per cent reduction; general larceny, 38 per cent reduction; larceny of motor vehicles, 40 per cent reduction. I could go on and on. This is not to say we have reached, but the thing is we are getting there. We have seen a reduction in all major crimes by 37.99 per cent; it is there. [*Desk thumping*]

The one aspect that we need to reduce—from 2009, when SAUTT was at its finest, to now, the percentage reduction of murders has gone down by over 20 per cent. It can go down much more with the use of this Bill being approved. [*Desk thumping*] With that, all I ask is let us do what is right. Let us make a difference. This Bill can play a very big part in us having that same detection rate increase that we have asked so long about. Let us do it, and let us do it right.

I thank you, Mr. President.

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you, Mr. President. I rise with a sense of appreciation for my colleagues who contributed on this important omnibus piece of legislation, which seeks to amend several laws that have existed for quite some time, the most important, which attracted a lot of attention, being the amendments to the DNA Bill and the fingerprinting, and rightly so. I think one common thread which connected everyone's contribution was the fact that there is an accepted need for reform.

The fact that we came to Parliament before on this matter—I think Sen. Al-Rawi raised the issue of why are we here again—and I was at pains to point out that the implementation committee which was put in place with all the stakeholders, as with everything else, when they started trying to implement and put in place what we had passed in good faith, they realized that there were some

shortcomings and there were some areas they felt needed to be reinforced, and that is why we are here again. It is better to come again to try to rectify whatever shortcomings exist, than to go forward with it, because we have seen where that has got us.

Sen. Al-Rawi made the point that DNA laws do, in fact, exist in this country; that is true, they have always existed. But I think Sen. Vieira might have the dubious distinction of being one of the very few practitioners in the legal profession to have actually gotten a successful plea bargain for a client—one of the very few practitioners. [*Desk thumping*]

I say that, not only to compliment him, but to highlight the fact that someone who is not known to be a criminal defence lawyer was able to get that. But, by and large, if you speak to the criminal bar, you will find that whether it is plea bargaining or DNA, the fact of the matter is what we have passed just is not working. Sen. Al-Rawi said talk about statistics, one does not need to resort to statistics when the evidence is there every single day on the front page glaring at you, when you wake up to have your breakfast. The statistics are there every single day. So we are here to look at what is not working, to ensure that we improve upon it and make it work.

It is with that in mind that I start by thanking all Senators for their well-intentioned contributions, and I think in principle they demonstrated some support for this. I would take the opportunity to continue tomorrow with this reply, so that I might better address some of the concerns that have been raised during the debate, to allay the fears that there is nothing to worry about.

Thank you very much.

ADJOURNMENT

The Minister of the Environment and Water Resources (**Sen. The Hon. Ganga Singh):** Thank you very much, Mr. President. It has been a pretty long session. Before I move the adjournment, if there are any amendments that you need to circulate prior to tomorrow's sitting, please engage the Clerk of the Senate and we would deal with that.

So in those circumstances, I beg to move that this Senate do now adjourn to tomorrow, Wednesday, July 16, at 1.30 p.m. when we will continue the debate on the Administration of Justice Bill and also the amendment to the Motor Vehicles and Road Traffic Act.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.36 p.m.