SENATE

Tuesday, July 04, 2017

The Senate met at 11.30 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Dennis Moses, who is out of country and to Sen. Taurel Shrikissoon who is ill.

SENATOR'S APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

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

President.

TO: MS. ALISHA ROMANO

WHEREAS Senator the Hon. Dennis Moses 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, Alisha Romano, to be temporarily a member of the Senate with effect from 4th July, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Moses.

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 29th day of June, 2017."

OATH OF ALLEGIANCE

Senator Alisha Romano took and subscribed the Oath of Allegiance as required by law.

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I am awaiting another Instrument of Appointment from His Excellency, and when I receive it we will revert to this item on the Order Paper.

PAPERS LAID

1. Ministerial Response of the Ministry of Works and Transport to the Fifth Report of the Public Accounts (Enterprises) Committee on the examination

2. of the Audited Accounts, Balance Sheet and other Financial Statements of the Point Lisas Industrial Port Development Corporation Limited for the financial years 2008 to 2015. [*The Minister of Works and Transport* (*Sen. The Hon. Rohan Sinanan*)]

3. Ministerial Response of the Ministry of Finance to the Fifth Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Accounts, Balance Sheet and other Financial Statements of the Point Lisas Industrial Port Development Corporation Limited (PLIPDECO) for the financial years 2008 to 2015. [*The Minister of Energy and Energy Industries* (*Sen. The Hon. Franklin Khan*)]

4. Ministerial Response of the Ministry of Finance to the Sixth Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Accounts, Balance Sheet and other Financial Statements of the Trinidad and Tobago Solid Waste Management Company Limited (SWMCOL) for the financial years 2008 to 2013. [*Sen. The Hon. F. Khan*]

JOINT SELECT COMMITTEE REPORTS

(Presentation)

National Security

(Port of Spain Prison Break)

Sen. Paul Richards: Good morning everyone. Madam President, I have the honour to present the following report:

Fourth Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on an Inquiry into Prison Security and the Status of the Investigation into the Port of Spain Prison Break of July 24, 2015.

State Enterprises

(Vehicle Management Corporation of Trinidad and Tobago)

Sen. David Small: Thank you, Madam President. Madam President, I have the honour to present the following report:

Fourth Report of the Joint Select Committee on State Enterprises, Second Session (2016/2017), Eleventh Parliament on an Inquiry into the Operations and Administration of the Vehicle Management Corporation of Trinidad and Tobago with specific focus on the repair and acquisition of vehicles for State Bodies.

Cybercrime Bill, 2017

Sen. W. Michael Coppin: Madam President, I have the honour to present the following reports:

Interim Report of the Joint Select Committee appointed to consider and report on the Cybercrime Bill, 2017.

Gambling (Gaming and Betting) Control Bill, 2016

Third Interim Report of the Joint Select Committee appointed to consider and report on the Gambling (Gaming and Betting) Control Bill, 2016.

Insurance Bill, 2016

The Minister of Agriculture, Land and Fisheries (Sen. the Hon. Clarence Rambharat): Madam President, I have the honour to present the following report:

Fourth Interim Report of the Joint Select Committee appointed to consider and report on the Insurance Bill, 2016.

Public Accounts (Enterprises) Committee(National Gas Company of Trinidad and Tobago Limited)

Sen. Wade Mark: Madam President, I have the honour to present the following report:

Eighth Report of the Public Accounts (Enterprises) Committee for the Second Session, (2016/2017), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheet and other Financial Statements of the National Gas Company of Trinidad and Tobago Limited (NGC) for the financial years 2009—2015.

Social Services and Public Administration

(Geriatric Care Facilities/Old Age Homes)

Sen. Dhanayshar Mahabir: Madam President, I have the honour to present the following report:

Third Report of the Joint Select Committee on Social Services and Public Administration for the Second Session (2016/2017), Eleventh Parliament on an Examination of existing arrangements and possible options for regulating Geriatric Care Facilities/Old Age Homes in Trinidad and Tobago.

URGENT QUESTIONS

Lifeguards

(Increase of)

Sen. Wade Mark: Thank you, Madam President, to the hon. Minister of Tourism: In light of recent drownings at our nation's beaches and the absence of lifeguards, can the Minister indicate what measures are being taken to increase the number of lifeguards at said beaches?

Madam President: Leader of Government Business, you have two minutes.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, it is with regret that we

mourn the passing of several people who drowned over the last couple days. As you are aware, it is impossible to have lifeguards on all beaches in Trinidad. As we speak, there are lifeguard services available at Maracas, Las Cuevas, Manzanilla, Vessigny, Mayaro, among others. Lifeguards really falls under the Ministry of National Security.

One of the drowning took place at a pool in Matura and obviously it is hard to police all these pools in the Northern Range that are the result of waterfalls. So, what we plan to do is, I saw an article on the papers today where the parents of one of the persons who drowned asked for more signage, and I think that is a very fair request to have warning signs and to tell you the depth of the pools and where there may be rip currents, and what have you. So we will take that on board, and try, where we do not have lifeguard facilities, to provide the relevant signage and warnings so that the population can be more careful when they are exercising their recreation on weekends in particular. But, having said that, there is no immediate plan to increase the number of lifeguards that are currently on the payroll.

Sen. Mark: Madam President, is the Minister aware that the duties of lifeguards end at 5.00 p.m. in the evening? And with our thrust towards increasing tourism, whether the Government is contemplating extending the period that lifeguards would be on duty at these beaches?

Sen. The Hon. F. Khan: It is something to consider, especially, I would have no problem in at least making a plea to extend it for about possibly two hours beyond 5.00 p.m., because 5.00/5.30 is when probably just people taking their last duck, so to speak, and a lot of things happen when you take that last dip. So it is a point that we will take on board, most definitely.

Sen. Mark: Madam President, is the Minister in a position to indicate to us what is the total complement of lifeguards in the country?

Sen. The Hon. F. Khan: I am not in a position to so do, but that information could be easily provided.

North West Trinidad Residents
(Assistance for Flooding)

Sen. Paul Richards: Thank you Madam President, to the Minister of Rural Development and Local Government: Can the Minister indicate what is being done to assist the residents of North West Trinidad who have been affected by the severe flooding over the past three days?

Madam President: The Minister of Rural Development and Local Government, you have two minutes.

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Madam President, thank you for the opportunity to address this pressing issue that our country is facing with this inclement weather, and thank you Sen. Paul Richards for the question.

According to the reports issued by the Met Office, the country is under code orange, which means heavy rains and flash flooding. The Ministry of Rural Development and Local Government is in constant communication with all disaster management units of the corporations to engage in speedy response to the onset of any hazards.

In the event that our situation is escalating to the level code red, which means heavy rains, severe flooding and gusty winds, the Ministry of Rural Development and Local Government will collaborate with the ODPM and other stakeholder agencies to ensure that we launch the most comprehensive effort to tackle any issues arising.

Reports coming to the Ministry over the past three days were street flash flooding in Port of Spain, Cascade, St. Ann's, Woodbrook, Maraval and Diego

Martin areas. We are continuously working with the engineering teams of both the Ministry and the respective corporations to handle these issues. We have identified, the blockages, debris which wash down in watercourses and have since rectified these issues using the resources of the corporations.

There were blockages in St. Ann's, Cascade, East Dry River and Carenage watercourses which are all under the purview of the Ministry of Works and Transport. However, due to the urgency of the situation, the Ministry of Rural Development and Local Government and the corporations have acted to address these blockages.

Madam President: Minister, your time is up.

Sen. Richards: Thank you, Madam President. Through you, Madam President, Minister, it seems that the situation is getting worse and worse every year. In addition to rain and the debris that sometimes end up in the watercourses, unfortunately, has the Ministry done any pointed research to determine the cause and contributors in addition to rain and debris, given the frequency and increasing severity of this phenomenon?

Madam President: Sen. Richards, I would not allow that question.

Sen. Richards: Thank you, Madam President. Is there any comprehensive plan for remediation, medium to long-term?

Sen. The Hon. K. Hosein: Thank you very much, Madam President. The Ministry of Rural Development and Local Government, in conjunction with the Ministry of Work and Transport, which include the corporations, are feverishly working on a plan to ensure that this does not happen every year. But no matter what we do, we always have to maintain the river courses and the persons who are developing the lands above, that is why the debris come down into the river and cause the blockages. I saw it first-hand. I left San Fernando and came up Sunday and I saw it

first-hand and the water ran off very quickly. I want to urge developers to be—unlike what happened in the Penal/Debe, that area, and so on. Okay?

Madam President: That is it.

ORAL ANSWER TO QUESTION

Pornographic Photographs of Minors

(TT Police Service Investigation)

99. Sen. Paul Richards asked the hon. Minister of National Security:

With regard to reports that pornographic photographs of minors are being posted on a local website, can the Minister inform the Senate:

a) whether the TTPS has conducted an investigation into these reports, and if so;

b) is the investigation completed; and

c) has anyone been charged as a result of the investigation?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, today I ask to crave the indulgence of Sen. Paul Richards. I know this question has been deferred for two weeks already. Unfortunately, the Minister of National Security is out of the Port of Spain jurisdiction and he has promised to answer it at the next sitting of the Parliament.

Just so say that he is in Point Fortin because for the first time in the history of the country, a student of Point Fortin has won the first prize in the SEA examination. Her name is Lexi Balchan and she attended the Point Fortin ASJA Muslim Primary School. [*Desk thumping*]

Sen. Richards: I would comply, Madam President.

Question, by leave, deferred.

JOINT SELECT COMMITTEES

(Extension of Time)

Cybercrime Bill, 2017

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, having regard to the Interim Report of the Joint Select Committee appointed to consider and report on the Cybercrime Bill, 2017, I beg to move that the committee be allowed an extension of 11 weeks in order to complete its work and submit a final report to Parliament by September 15, 2017.

Question put and agreed to.

Gambling (Gaming and Betting) Control Bill, 2016

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, having regard to the Third Interim Report of the Joint Select Committee appointed to consider and report on the Gambling (Gaming and Betting) Control Bill, 2016, I beg to move that the committee be allowed an extension of 11 weeks in order to complete its work and submit a final report to Parliament by September 15, 2017.

Question put and agreed to.

Insurance Bill, 2016

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, having regard to the Fourth Interim Report of the Joint Select Committee appointed to consider and report on the Insurance Bill, 2016, I beg to move that the committee be allowed an extension of 11 weeks in order to complete its work and submit a final report to Parliament by September 15, 2017.

Question put and agreed to.

CRIMINAL PROCEDURE

(PLEA DISCUSSION AND PLEA AGREEMENT) BILL, 2017

[Fourth Day]

Madam President: Hon. Senators, the committee stage of a Bill to establish a system of plea discussions and plea agreements and for matters incidental thereto was in progress when the Senate adjourned on Thursday, June 29, 2017, and will now resume. The Senate will now resolve into committee.

Senate in committee.

Mr. Al-Rawi: Thank you, Madam Chair, and good morning to all. Madam Chair, just as matter of housekeeping, just to indicate that I had asked the Parliament to circulate four documents for the benefit of hon. Senators in continuing the consideration of this committee of the whole. Hon. Senators should have, through you, Madam Chair, a marked up version of the Bill, which would show in green text the matters which we have completed by way of consideration and also proposed in red text, matters for further consideration, which relates to matters of two categories: firstly, matters which we have stood down or yet to complete; and secondly, in relation to a few clauses, matters which I propose, through you, Madam Chair, to ask for further consideration on, bearing in mind the observations which we reflected upon post the adjournment of the committee of the whole.

The second document would be proposed amendments in the classic form, which is the first column/second column, as are usually circulated during committee stage.

The third document would be a matter where we have considered, on a landscape version, that is the manner of printing, four columns, one first column for consideration, the reason for review, the proposed amendments which we are suggesting and then the capped off reason for them.

So hon. Members would see, in relation to that landscape version, a bit of a rationale as to why we are proposing the reconsideration of a few matters and what

our views are, in relation to the matters which are (a) stood down and (b), still yet to be considered.

The last document, just for housekeeping as well, were the matters which were left outstanding for consideration on the circulated amendments proposed by Senators Ramdeen and Mark, there only being a few extra clauses left. So that, in terms of housekeeping, is where we are, Madam Chair, as we sit in committee of the whole.

Madam Chair, for your guidance, may I enquire? We had stood down clauses 8 and 11 on certain issues of disclosure. We had paused for a reflection on clause 30. We were at last call, if I remember, at clause 31, then to continue.

Madam Chairman: Attorney General, let me just tell you what our records reflect. Clauses 4 and 29 were already dealt with.

Mr. Al-Rawi: Yes, Ma'am.

Madam Chairman: So it seems that we will have to revisit those two clauses. And clause 30, which you just made reference to, that was also dealt with. So, is it that we are proposing an amendment to clause 30 as well; a new amendment, so that I will have that clause to be revisited?

Mr. Al-Rawi: Yes, Madam Chair, for the issue of competence, which we had, the language in respect of which we had not certified. So whilst we had conceptually dealt with the fact that we needed to put in the reflections of competence, the specific wording coming from the drafting team, I do not think had been put forward in its final sense, so we have proposed, for completeness sake, that clause 30 do come back under consideration.

Madam Chairman: Okay. Right. Hon. Members, having listened to the presentation of the Attorney General, are we ready to proceed? So, I think we will start with the revisiting of clauses 4 and 29. So let us—

Mr. Al-Rawi: Should it please you.

Clause 4 recommitted.

Question again proposed: That clause 4 stand part of the Bill.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, the drafting team brought to my attention, for consideration by hon. Members of this committee, a distinction in the phrases "in the interest of justice" versus "for the good administration of justice". And the proposal for treating with clause 4 in a reconsideration sense, is solely for that distinction to be factored.

It is proposed that we do take care of the amendments, which are shown in green as circulated in the draft marked up Bill. We have been through that in the committee. But I am asking for consideration, the views of the hon. Members of the Senate as to whether we should, instead of keeping with the phrase "in the interest of justice" in clause 4, as the Senate had considered, if we could shift to "for the good administration of justice".

The argument coming from the drafting team is that whereas a ground for setting aside a plea agreement can be placed in the phrase "in the interest of justice" as a ground for setting aside or for appeal, that when one was considering what one should do in entering a plea agreement, that a plea agreement should consider instead "for the good administration of justice". Because it may not always be the case that a plea agreement is entered into in the interest of justice, but that instead it is done to facilitate the quickening of justice, which is the good administration of justice.

12.00 noon

So a plea agreement for a stated purpose, according to the drafting team, is that it should be done "for the good administration of justice" which is separate from the concept of "in the administration of justice" where you can set aside a plea agreement. I welcome, of course, the views of the Members of the Senate, through you, Madam Chair, on this particular suggestion.

Sen. Sturge: I am wondering if there is some learning which makes a distinction. For the benefit of the Senate, if there is learning which shows a marked difference between the words "in the interest of justice" and the words "for the good administration of justice", if there is, if we can be edified?

Mr. Al-Rawi: Madam Chair, I looked for learning on the point. Because some of the jurisdictions that we are referring to really deal with this on an informal basis, I could not come across something which had specifically defined in terms of a judicial consideration, a distinction between "in the interest of justice" versus "for the good administration of justice". But what we did come across from a policy perspective was that it is more that these agreements are fashioned to facilitate an administration of justice from a process point of view, and then if there is any turpitude that it is considered on the grounds to set aside, withdraw or appeal.

Sen. Sturge: Can I ask then: where the words "for the good administration of justice", in terms of a precedent, where those words were lifted from?

Mr. Al-Rawi: We lifted it from the Canadian Law Reform perspectives.

Sen. Ramdeen: Thanks, Madam Chair. Madam Chair, through you, to the hon. Attorney General, my understanding is that "the good administration ofjustice" really comes from public law background. With respect, it is one of the omnibus phrases that are used, especially in the delay provisions under the Judicial Review

Act. I do not respectfully, through you, Madam Chair, do not quite agree that with respect to the reason for the review that it says, however, it is arguable that plea agreements are by their nature not in the interest of justice. I want to be cautious about that, and I think we should be cautious about that, because whereas one can understand that there is difference between the terminology, I think all agreements that are entered into ought to be in the interest of justice and the distinction or the practical distinction that one may be foregoing—the prosecution of someone—I think that even in foregoing the prosecution of someone, it is in the interest of justice that we are doing that because we are doing that in the advancement of prosecuting someone else, or for the advancement of the criminal process.

I would have thought that if we had used "in the interest of justice" [*Interruption*]—one is wider, you are correct. But, secondly, I think "the good administration of justice" falls more on the procedural line, and I think what we are doing here is really interfering or determining the way in which we proceed, not only procedurally, but affecting the substantive rights of persons, and I would have thought that in those circumstances, we use the phrase that would be wider in capturing what we are doing which is "in the interest of justice".

I think we should be cautious that when we treat with matters like these, especially in the criminal jurisdiction, dealing with the prosecution of people, that we are careful that whatever we do, at the end of the day, should be labelled "in the interest of justice" to all of those involved, whether it be the accused, the administration of justice itself or the victims as we have done in this throughout. So that would be my suggestion.

Sen. Sturge: Madam Chair, just one—

Madam Chairman: Just a second, Sen. Sturge. Any other member wants to

comment? Sen. Solomon.

Sen. Solomon: Through you, Madam Chair, to the hon. Attorney General. I agree with my fellow Senators. Also, I want to add that it is because there is large amount of jurisprudence, in particular, in our jurisdiction, in relation to this criminal process, the interest of justice is a better protection for the entire process and, as such, I think that I can understand where the hon. Attorney General is coming from, but I think that for all parties concerned, in particular the person who enters into this plea agreement, the interest of justice is a protection that is necessary.

Sen. Sturge: Through you, Madam Chair, as I understand it, when one is dealing with accomplice vel non generally, and quite apart from accomplice vel non, the term "in the interest of justice" is used across the jurisprudence of the criminal law, and for good reason.

When one uses the term "in the interest of justice", as Sen. Ramdeen has said, it is wider and it also takes into account that it is not one-sided. If you are looking at the good administration of justice that is very limited, whereas when we are dealing with accomplice vel non, as in the case of this statute, what is paramount is what is in the interest of justice as the cases have decided because it is in the interest of both the accused and the fair administration of justice. So I am wondering if the common law cases you may have looked at would have given some explanation as to why they have developed along the lines of "in the interest of justice".

Mr. Al-Rawi: First of all, may I thank hon. Senators for their very carefully put considerations. It is out of deference to the CPC's team, and certainly the experience in the team, that I felt compelled to bring this to the attention of the Senate so that we could at least consider it on the record when we are looking to a

Pepper v Hart aid to be the statutory interpretation. My own personal view is coincidental with Sen. Ramdeen's. I actually think that "in the interest of justice" is a wider catchphrase and includes the procedural safeguards that the good administration of justice—but I felt that there was a repeating loop that had to actually have it, but I certainly do want and appreciate, through you, Madam Chair, the views of hon. Senators on the point.

To answer Sen. Sturge's enquiry, the common-law cases pretty much are a blur insofar as the literature that arises out of them. I have not considered an actual common-law case itself, but we have looked at the literature behind it. I think that Sen. Ramdeen, Sen. Solomon and Sen. Sturge captured the overall parameter. I think that we are in a better place, Madam Chair, for having had the fulminations on the record, and unless Sen. Chote or any other Senator had a point of the view to the contrary, I would actually then move away from the expression "for the good administration of justice".

Madam Chairman: So that, are you going to withdraw the proposed amendment?

Mr. Al-Rawi: Yes, Madam Chair.

Question put and agreed to.

Clause 4 again ordered to stand part of the Bill. Clause 8 reintroduced.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, we had entered into a very important discussion which resulted in a consideration of both clause 8 and clause 11, side by side, and it really had with the grounding of the issue of disclosure. The reflection shown for consideration of clause 8 really requires us to now consider almost side by side this position.

Clause 8 specifically really now proposes that:

"A prosecutor shall not initiate or participate in a plea discussion or

conclude a plea agreement that requires—

(a) the accused person or suspect to plead guilty to an offence that—

(i) is not disclosed by the evidence;"

That is at (i) of clause 8(a). And then we went into:

"(ii) does not adequately reflect the gravity of the provable conduct of the accused person or suspect unless, in the discretion of the Director of public Prosecutions, the charge is justifiable having regard to—

(A) the benefits that will accrue to the administration of justice; and

(B) the protection of society from the prosecution of the accused person or suspect; or

(b) the prosecutor to withhold or distort evidence."

The material aspect of this consideration is (a)(i) which is the:"is not disclosed by the evidence;"

We looked to see whether we should have treated with the qualification or consideration of what the disclosure of evidence should be, and we felt that we should maintain the separation of the nature of disclosure into clause 11, but we have sought to amend clause 11, as you will see later when we come to look at it, by adding into clause 11—I should say, by putting into clause 11, a better description of the state of the common law as it is right now into statute.

So we propose, Madam Chair, in clause 8, to maintain the parameters for the prosecutor's inability to participate in a plea discussion, setting out the reasons as

we have here—we believe that the reasons are fairly widely stated—and we deal specifically with the nature of disclosure in clause 11 as contemplated. This does require, of course, Madam Chair, hon. Senators to consider, first of all, the policy maintaining the separation. We just think it cleaner from a drafting perspective, but I am of course wide open to receiving hon. Senators' views on the matter, through you, Madam Chair. I do not know if it is apposite to the best interest of the Senate to facilitate the discussion both between clauses 8 and 11 insofar as that might be the case. Would you permit me, Madam Chair?

Madam Chairman: Just bearing in mind that the question has been put with respect to clause 8—

Mr. Al-Rawi: Correct.

Madam Chairman:—and, you know, we try to keep it as clean as possible for the records. So you are free to discuss clause 11, but remember that ultimately we are dealing with clause 8. Okay?

Mr. Al-Rawi: Understood, Madam Chair. Insofar as clause 11 materially affects clause 8, if I could just flavour the discussion by pointing out that we propose at clause 11 to qualify the disclosure, both in subclauses (1) and (2) such that there is a general requirement for disclosure of evidence in a written summary and that it must include the evidence that favours the case for the suspect or injures the case for the prosecution.

I took the opportunity to reflect with the Law Association on the view, and the recommendation coming from the Law Association was the terminology that I have just read, which is that if a plea discussion is initiated, that there must be disclosure by a written summary of the evidence against the accused or suspect, which includes the evidence that favours the case for the suspect, or injures the

case for the prosecution. I know that hon. Members had suggested on the last occasion that there should be full disclosure of every matter.

Madam Chairman: Just one second, Attorney General. [*Interruption*] Whoever has that device that I just heard, I would ask you to just step out of the Chamber, see to it and you can return in two minutes. Continue, Attorney General.

Mr. Al-Rawi: Yes, Madam Chair. So the deliberations on the last occasion included a suggestion that there be a blanket statement for disclosure of all evidence. The discussions which were had in relation to this Bill in the policy work that brought the work forward, et cetera, did not go as far as a full statement of all evidence, and in the balancing of the considerations, theGovernment proposes that we consider, and certainly discuss, that we keep with the common-law standard as expressed in clause 11 which we will come to in a while. May I invite reflections, through you?

Sen. Sturge: Madam Chairman, I believe I may not have expressed myself as clearly as I ought to have expressed myself on the last occasion. I have seen the amendment; there is reference to what is the test of disclosure at common law. Now, the focus at this point should be on clause 11, keeping in mind, of course, what the President has indicated, but what I see appearing now by way of amendment in clause 11, is the test at common law with respect to disclosure generally. And generally what is to be disclosed would be evidence that favours the case for the accused or suspect, or the word really should be "undermines" the case for the prosecution. But I think—and maybe the Law Association missed it. Well it is obvious that they missed it, because what I argued on the last occasion was this—and I understand why the Attorney General was hesitant. The Attorney General did not want a disclosure regime under this statute that was different to the

common law and I understand that. But what this amendment does is actually undermine what the common law is with respect to accomplice vel non. Generally, the amendment circulated here applies to the rules of disclosure, generally at criminal law, but when you are dealing specifically with an accomplice vel non, the rules of disclosure move past the general common-law rules, which is evidence which favours the case for the suspect or undermines the prosecution.

At common law, the rules of disclosure, with respect to the accomplice vel non is full disclosure because of the nature of the person you are dealing with. So if the DPP decides that he is not proceeding under this Act, and he is proceeding at common law where he gives an immunity, either an absolute immunity or conditional immunity to the accomplice vel non, the DPP at common law has to give full disclosure. He has to give to the defence everything—every utterance and every statement that was given by the accomplice vel non, but this amendment put forward actually takes away from what the common law says.

Yes, it is common-law disclosure, generally these rules, but when you are dealing with accomplice vel non, the common-law rules that apply generally do not apply. The common-law rules specifically dealing with accomplice vel non requires full disclosure. So, all I am asking—I am not asking for two regimes—is that this statutory regime be on par with what the common law is which is full disclosure.

Sen. Chote SC: Thank you very much, Madam Chairman. My concern is a little different from that of Sen. Sturge, even though I do see the importance of the point he has made. I am looking at what is required to be provided to an accused person in terms of disclosure and 7.2 of the Criminal Procedure Rules says that:

"(1) The complainant must serve initial details of the prosecution case

on the court officer"—and so on.

And the content of these details are set out in 7.3(1) which I suppose we could call the disclosure rule. Madam Chairman, (a) says:

> "(1) Initial details of the prosecution case must include—(a) a summary of the evidence on which that case will be based;
>
> (b) any document or extract setting out facts or other matters on which that case will be based; or
>
> (c) any combination of such a summary, statement, document, extract or criminal record, if any."

So already, we see that there is a distinction between the application of the procedure as to how to deal with disclosure in the summary courts as set out in the rules and as set out in this proposed piece of legislation.

I am trying to look at the rules to see whether there is anything different with respect to—or here we are. Rule 14. It says:

"Directions given by the court pursuant to rule 10 should include—

> (a) fixing a date by which the prosecution must disclose to the accused all the evidence they intend to rely upon at trial;
>
> (b) fixing a date by which the prosecution must disclose any material in its possession that they do not intend to use at trial which materially weakens the prosecution case or assists the accused; and
>
> (c) fixing a date by which the prosecution must confirm if any material in its possession that they do not intend to use at trial, which materially weakens its case or assists the accused, has been served on the accused."

And 14.2(1) says:

> "The prosecution shall disclose material under rule 14.1(b), unless the Magistrate or Judge orders that such material should not be disclosed in the public interest."

So it seems as though there is a pretty wide or deep, I should say, responsibility given to the prosecution by these rules which will govern the way cases are administered in summary matters and indictable matters. I would suggest, very humbly, that there should be some sort of compatibility with what we are creating here and these rules.

Mr. Al-Rawi: I think I may have a solution, Madam Chair. Thank you, hon. Senators, for providing us with the benefit of your expertise in the area of law. I think we have done well to paint what the mischief to be avoided is which is noncompliance with the laws in relation to disclosure; both in terms of written law and the common law and, specifically, also not to cause in the creation of this law different regimes for the compliance of disclosure. Perhaps it may help—and I am just thinking aloud here, subject to the drafters, because I have not yet given them this thought—if we were to attenuate the language, amend the language at 11 as it would be incorporated into 8, to say that:

> "You must provide the attorney-at-law with a written summary of evidence against him including the evidence that shall be disclosed both at common law and/or under any written law"

Something to that effect. It would allow us to maintain the common-law provisions as they evolve and/or the catching of written law would allow us to take care of subsidiary legislation as well which rules are pursuant to the Supreme Court of Judicature Act. So if hon. Members are okay with the concept floated, I

could ask the drafters to tighten that language—that is, that we give the written summary as we have indicated, but that the evidence to be disclosed should comply with written law which would take care of rules and also the common law.

Sen. Sturge: I was wondering, if perhaps, 11(1), we can insert the words "after a written summary of" we can put "all of the evidence against him" and that would be keeping with what is the common-law position. If I may explain the position, because at common law the prosecutor is the person providing the immunity and so on and, therefore, he is a party in essence to the proceedings then and, again, because of the nature of the person who is making a deal and gets a benefit hence accomplice vel non, that is the reason why they have removed the discretion from the prosecutor which exists at common law generally, because at common law, generally, the test to determine whether something is disclosable is a test that is carried out by the prosecutor, and the prosecutor determines in his view whether evidence advances the case for the suspect or undermines the case from the prosecution.

So whilst generally at common law the prosecutor makes this decision, when you are dealing with an accomplice vel non, they have removed that discretion from the prosecutor and, therefore, all evidence in relation to the accomplice vel non is disclosed. So, perhaps, Sen. Ramdeen may have a better way of wording it, but I see we may get some distance if we insert the words "summary of all of the evidence against him".

Mr. Al-Rawi: Thank you, Sen. Sturge. Through you, Madam Chair, my alarm bell just rings on the concept of "all evidence" if I work my way outside of vel non scenario.

Sen. Sturge: No, it would not apply to outside of the vel non scenario. This here

deals specifically, 11(1) narrows it down substantially by saying what you are dealing with is a suspect. So the subject of 11(1) would be the suspect and his attorney. So you are disclosing to the suspect and his attorney and no one else. You are not disclosing evidence at common law generally. You are disclosing to him because of the circumstances in which he finds himself as a possible accomplice vel non. In those circumstances, by way of interpretation, it must be limited to the rules of disclosure with respect to accomplice vel non. It must be limited to this situation. It would not extend across the board. By putting full disclosure in this clause, it does not necessarily mean—in fact, it does not mean at all one would have to embark on serious mental gymnastics to stretch it to say that it stretches to disclosure generally, because what you are dealing with here specifically is just the accomplice vel non unless the drafters have a different view.

Madam Chairman: Sen. Chote, you wanted to add something?

Sen. Chote SC: Madam Chairman, I listened to the proposal of the hon. Attorney General, but I am of the view that the formulation is a bit too wide for it to work. I think the exercise we should be engaged in is trying to pull the words of the legislation closer to other written law as they exist. The reason for this is, at common law, for example, disclosure at a committal stage or a preliminary enquiry stage would be in the hands of the prosecutor. The magistrate has no power there. In a summary trial, the magistrate has the power. At the High Court, a judge can make an order upon an application for disclosure of relevant material which the prosecution has not handed over. So it is a bit difficult to look at the common law to say that whatever is disclosable according to common law should govern any fact situation. So, what I am respectfully suggesting or proposing is this. That after the words "written summary", we have the words "of the relevant evidence

including any material in the possession of the State which materially weakens its case or assists the suspect or accused". So it brings it in line with the existing Criminal Procedure Rules.

Mr. Al-Rawi: Do you mind repeating?

Sen. Chote SC: I can try. [*Laughter*]

Mr. Al-Rawi:—which materially weakens the—

Sen. Chote SC:—its case—meaning the prosecution's case—or assists the accused, because this is what currently you are entitled to under the Criminal Procedure Rules when you go before any judge or magistrate.

Mr. Al-Rawi: Madam Chair, thank you, hon. Senators. My initial reaction before the gear kicks in on the intellectual level is the use of formulating into the parent law now, this principal piece of law, something which is essentially subsidiary legislation which are the rules, because the rules are subject to change and evolution as the courts progress, by a relatively easy mechanism of negative resolution as the Rules Committee shape over time.

Clause 36 of the Bill itself allows for the Rules Committee—well, we propose that clause 36 be amended from what is actually here. We are taking up the invitation of the Opposition in the House to put the Minister to create rules. On reflection, we believe that that clause 36 should in fact be amended to allow for the Rules Committee to make rules.

12.30 p.m.

So I am wondering if there may be a danger in using the current terminology of the rules themselves, part 17 of those rules in the parent law. And I am also wondering—perhaps you can help me to think that through, Sen. Chote, I am wondering about the inapplicability of the common law/written law approach.

Could it also help us that the common law would assist us at the various stages, that is the distinction between prosecutor, summary court and High Court, because would it not then fall to reason that it is the common law at the respective stage that would apply?

The drafters had actually passed to me a version for reconsideration which could read as follows, in clauses 11(1) and (2) insert after the words "against him" the words, "including the evidence that the"—but this would have to be amended because it now speaks to only the prosecutor right—"including the evidence that the prosecutor is required to disclose by the common law or any other law". The things to pull out of this would be (a), reference to common law across the various stages, but (b) any other law would catch the rules as they evolve from time to time.

I am a little bit cautious about formulating the present terminology of the rules, mainly because we are still working out the rules in terms of practice. I believe that there is a gap between what the rules actually say right now and what they may settle into, if I were to borrow from the experience of the Civil Proceedings Rules themselves, which evolved over time to settle a little bit more the grey areas of practice. May I ask for deliberations on this, Madam Chair?

Sen. Chote SC: Well, Madam Chairman, if I may, we still have the problem with the articulation of two regimes for disclosure which are not the same. So we have a written summary of the evidence and then we have the inclusion of what the prosecutor has to disclose according to common law, and according to any other written law. Well, it would mean that if a case does not fall under the rules for management, let us say the judge or magistrate decides that the rules will not be used in the management of this particular case, you must have something to fall

back on, because judges and magistrates are less likely to use the rules for case management for guilty pleas simply because the process is much quicker. So you need to have in the legislation a clear definition of what you intend to be considered as disclosable material so that the judge being called upon to make an order under this regime will have a clear idea. I do not know if I am making sense. I hope I am.

Mr. Al-Rawi: I think that the intention is that policy, if I could put it that way, of the proposal is understood, and I thank you for it, Madam Chair. Madam Chair, may I ask now, having had that discussion, it seems to me that we could cleave clause 8 from clause 11, because the mischief that we are really speaking to is going to reside in clause 11. I think that clause 8 as drafted is safe because 11 filters into 8, and I propose that we work on some wording now that we have had some more fulminations from the Senate on an improvement to the language of clause 11. May I ask, through you, Madam Chairman, whether the Senate considers that we still need to bind consideration of 8 and 11 together, or can we press on with 8, pause on 11, and then perhaps, tidy up with the rest of the considerations we have? Subject to your view, Madam Chair?

Madam Chairman: Members, the question that was posed was in respect of clause 8, can I now therefore put the question?

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 10 reintroduced.

A. Delete subclause (1) and substitute the following subclause:

"(1) A prosecutor shall not initiate a plea discussion with an accused person who is not represented by an Attorney-at-law unless-

(a) the prosecutor has informed the accused person-

(i) of his right to be represented by an Attorney-at-law during plea discussions;

(ii) of his right to apply for legal aid and advice under the Legal Aid and Advice Act, where the accused person cannot afford to retain an Attorney-at-law;

(iii) of his right to protection against self-incrimination;

(iv) of his right to be presumed innocent;

(v) of his right to remain silent;

(vi) of his right to seek a sentence indication from the Court of the maximum sentence that the Court may impose if the accused person pleads guilty to an offence; and

(vii) that he may elect to have a third party of his choice present during the plea discussions;

(b) the accused person has informed the prosecutor, in the form set out as Form 1 of the Schedule, that having been advised by the prosecutor of the matters referred to in paragraph (a), he desires-

(i) to enter into plea discussions; and

(ii) to represent himself in those plea discussions; and

(c) The Court-

(i) has been informed of the matters set out in paragraphs (a) and (b);

(ii) is satisfied that the accused person is competent to enter into plea discussions and conclude a plea agreement; and

(iii) approves of the initiation of plea discussions."

A. In subclause (2), delete paragraph (a) and substitute the following:

"(a) the prosecutor has informed the suspect-

(i) of his right to be represented by an Attorney-at-law during plea discussions;

(ii) of his right to apply for legal aid and advice under the Legal Aid and Advice Act, where the suspect cannot afford to retain an Attorney-at-law;

(iii) of his right to protection against self-incrimination;

(iv) of his right to be presumed innocent;

(v) of his right to remain silent; and

(vi) that he may elect to have a third party of his choice present during the plea discussions; and"

Mr. Al-Rawi: Madam Chair, I wish to thank hon. Senators for the very excellent discussion we had on clause 10 on the last occasion. We had agreed to expressly provide for the cautionary activity of the prosecutor informing the accused person of the various rights, which we have faithfully set out in the draft circulated by improving that to include (i) to (vii).

We have also dealt with the caution as it repeats a little bit lower down. What was outstanding—sorry, with respect to the suspects, so you see that in subclause (2) where we have now repeated the rights, the difference between the rights expressed as needing to be told in the suspect case versus the accused case would drive squarely in (vi), because we have left out the sentence indication because at the suspect stage we did not need to repeat that there. When you came to actually being charged that would kick in, so that is the difference between the two, but what we have added in here is the concept of competence, in particular,

which was something that we had expressed the view needed to be established by the court. So, clause 10, I believe, now captures the deliberations which we had on the last occasion. I, of course, through you, Madam Chair, welcome the views of Senators as to anything that the Government should consider further on this clause.

Madam Chairman: Members, we are dealing with clause 10, the amendments circulated. Sen. Ramdeen?

Sen. Ramdeen: Through you, Madam Chairman, Attorney General, I would like you to consider in clause 10(1)(a), "the prosecutor has informed the accused person", and then you have a list, you have included all of the rights that we have suggested. We have had the occurrence with respect to the right to be informed of the courts extending the right to an attorney, to the right to be informed of an attorney, on the basis that informing somebody that they have a right to an attorney may not capture the policy that the Constitution wished, or the protection that the Constitution wished to give to that person, because the mere fact of saying you have the right of an attorney without knowing what that right or what the content of that right entails really means nothing.

I was wondering whether you would consider after the words "informed", "the prosecutor has informed", if you would consider inserting thereafter the words "and explain to", because the classic example of that is that we have an expressed right not to self-incriminate under the Constitution. I do not think nine out of 10 people in this country understand what that means, so by simply telling someone, and you could understand in the situation that we currently exist in, a prosecutor telling someone, you have the right to be represented by an attorney-at-law, you have the right to protection against self-incrimination, and the person has absolutely no idea what is this, it really does not flesh out the protection that we

wish to give by the clause, so I was wondering whether you would consider adding in the duty to just explain to the person what that right is.

Madam Chairman: Sen. Ramdeen has made his comments, are there any other comments on the proposed amended clause?

Sen. Dr. Mahabir: Madam Chair, on the very last subsection, to the plea discussions being recorded, from my recollection we had a discussion that there needed to be some clarification with respect to whether it was going to be audio, video, digital or both, and it remains hanging, so I need to get some kind of feedback from the Attorney General with respect to what is the appropriate recording mechanism that we are now going to recommend to the court for this particular plea discussion. Thank you.

Madam Chairman: Sen. Chote.

Sen. Chote SC: The defence attorney, Madam Chairman, side of me tells me that I ought to fully endorse the proposal suggested by Sen. Ramdeen. The prosecutor side of me is saying that perhaps we are edging into being too prescriptive. I mean, we cannot expect the prosecutor to do more than simply be a minister of justice in these circumstances, which will include, depending on the case, an explanation. But to say that it must be given in every single case, I think that is not appropriate. It is not in sync with the law, generally speaking, because you do not have any explanation required under the law of your rights as a general rule. So I do not know that it is necessary in this case.

Mr. Al-Rawi: Madam Chair, thank you, hon. Senators, through you, Madam Chair—yes, please.

Sen. Ramdeen: AG, before you respond, just following from the comments made by Sen. Chote, perhaps you would want to consider in your response that there is a

right under section 5(2)(h) of the Constitution, which is where the Whiteman principle was grounded in, that you have the right to such procedural provisions to ensure that the rights to that conferred by section 4 and section 5 are given effect to, which is the general omnibus clause that you have. But it does have a substantive element in that clause that procedural provisions is defined in Whiteman as being any provision that will allow that right to be better enforced.

Madam Chairman: Attorney General—Sen. Chote.

Sen. Chote SC: Yes, Madam Chairman, and the thing is how that operates in real life is that it means you cannot put up a sign on the wall and say that this is your right; you have to have some indication or a record that the police officer has told the person that he is entitled to have an attorney-at-law, a friend or a relative present, for example, if he is going to take a statement from him, and so on. So, as I say, I mean, I am simply making the comment that it may be considered overly prescriptive. At the end of the day it is a policy decision as to how the Government wishes to proceed.

Madam Chairman: Attorney General. Sen. Mark, yes—may I just, though, before Sen. Mark makes his intervention, what I am trying to achieve in committee stage, is, as we go through with the clauses, I am trying to let everyone who has an issue, raise the issue, and then the Attorney General will address it, so we do not have this toing and froing because we need at some point in time to settle on what we are doing. Sen. Mark.

Sen. Mark: Yes. Madam Chair, I wanted to ask the Attorney General, how would we be treating under this clause 10 with those persons who might be physically challenged—mentally challenged, I should say, and who are very vulnerable? What kind of safeguards are we going to be establishing in this particular clause to

provide them with some comfort in terms of their rights? And, Madam Chair, if you recall we were referring to the whole question of psychiatric evaluation at the last sitting, right? So if you could probably tell us where and how we are going to address that, Madam Chair, I would appreciate it.

Madam Chairman: Sen. Sturge.

Sen. Sturge: I just had one suggestion, I believe it is under 10(1)(a), which is different to what is being advanced. I was wondering, perhaps, if 10(1)(a) can be amended to read, "the prosecutor has first informed the accused person", and then (i) to (vii) would follow.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chairman. Okay. In terse format there are three substantive issues—well, four positions if I recap them, one is this concept of explain as a qualifying, perhaps prescriptive element to information; two, the issue of recording raised by Sen. Mahabir; three is the issue of competence, if I put it that way, physical, mental or other capacity issue; and four is the suggestion by Sen. Sturge that we improve the organization of words and qualify them in (a), in (1)(a).

May I start with the concept of explanation. I shared the same view that Sen. Chote expressed on the need for caution as to information versus explanation and what really jumped out at me was when is an explanation going to be deemed to be adequate, who is the qualifying entity to say that an explanation in the nature of this accused was an adequate explanation? That flows into the concept of competence.

Sen. Mark, what we did, to answer the issue of competence, you will see in (c), in (1)(c)—that is, the proposal is that the court has been informed of the matter

set out in (a) and (b). That is the information with respect to rights, et cetera, having been put to the accused, he being informed of it. Subsection (b), that the accused then elected to go in a particular route, and, (c), what we are saying here is that the court, not only has been informed of the matters that I just referred to, but is satisfied that the accused person is competent to enter into plea discussions and conclude a plea agreement. The use of the word "competent" there catches all of the elements of competency, that you are physically and mentally, and in terms of age discretion aspects, competent to be making the decision that you have made. So the court has that supervising role to ensure that the vulnerables are caught in the situation. It arose directly out of the recommendations that Sen. Chote had put to us on the last occasion, and, indeed, in her debate itself, and repeated by Sen. Ramdeen as well, and Sen. Sturge.

So I think that we can safely feel assured that competence is there. Relative to Sen. Mahabir the concept of recording, we deleted actually the concept of recording for the accused person on the recommendation of Sen. Chote. We have kept it in respect of the suspect. The intention there being that it is a safeguard because that suspect is not quite yet in the category, may be perhaps viewed to be a bit more vulnerable than an accused person. The question as to whether it is going to be audio recorded, visually recorded, et cetera, would be to condescend into specificity on technology. Many, many, many years ago the only way you could record something was by written-hand information, which then evolved into audio recording, which then evolved into video recording, and then one ought to prescribe oneself against being technologically specific as to the methods by which recording can happen. So we have just said recording. It takes care of the vicissitudes as to the availability of specific equipment at that point in time.

Remember, evidence is always considered by the court, firstly, as to whether it is admissible, and, secondly, what weight the evidence will carry, because it is not that every piece of evidence that is admitted is given the same weight. Hearsay evidence is different from first-hand evidence and carries a different weight, circumstantial evidence is different. So the court takes care of the balancing exercise. From a Government policy perspective I prefer not to qualify, even though I understand Sen. Ramdeen's good caution as to—it has been explained. I am fearful of opening the door a little bit too wide on the explanation being adequate or not in the circumstances, and I prefer that we consider that the court, in its supervisory function of considering the competence of the accused, and the fact that the court is being bound to consider that the accused or suspect was made aware of rights, that that can be factored out in the balance.

Sen. Sturge offered a formulation in respect of (1)(a), which is that the prosecutor has first informed the accused. I think that that flows from the fact that the court had to be informed in any event. When we look to the language of (c), (c) says the court has been informed of the matters at (a) and (b), and, therefore, it flows from that, that you had to have a first information. You had to be informed first, because then the court is told, well, I did inform. So I think it flows naturally there. In all of the circumstances and in the round, I prefer not to include explanation. I believe, Madam Chair, that Sen. Ramdeen may have a further view for me to consider.

Madam Chairman: Well, just one second, is that correct?

Sen. Ramdeen: Yes, Madam Chair.

Madam Chairman: Yes.

Sen. Ramdeen: AG, would you consider, instead of the formulation that I

suggested, I had just looked at Whiteman and I was wondering whether you would consider after the word "person", so it reads, "the prosecutor has informed the accused person", and you add the words there, "in a manner that he understands it". That comes straight out of Whiteman, instead of putting a burden of having to catch whether it was explained properly or not.

Mr. Al-Rawi: Madam Chair, I thank Sen. Ramdeen for that further consideration. Again, I come down to the expressed statement in the parent law of something which the common law can take care of in its deliberations, and which the court would have to satisfy itself of when it gets down to the issue of competence or understanding of the accused. I think that the law can work itself out that way. I do understand the good intention behind the submission, but if it is a matter of decision at this point, I would prefer to leave it the way it is expressed, but I do welcome the thoughts. In all the circumstances, we are proposing that the clause as circulated, subject to your putting it to stand part of the Bill. I do not know if there is anything else to discuss.

Madam Chairman: Sen. Mark, I indulge you, yes.

Sen. Mark: With the indulgence of the Chair, AG, I am still not satisfied and happy with the kind of circumstances that vulnerable persons can be exposed to even though you directed us to the section that deals with the competent and the Court. I am dealing with the situation prior to the court being informed, and if you have, for instance, persons who are vulnerable and they do not have representation, you know, all kinds of activities can take place at that point, and then court will be informed subsequently of these developments. So it does not take away from the critical importance of ensuring that those persons who might be vulnerable, whoever they may be, mentally challenged, physically challenged, you know,

juveniles, how do we ensure that they are not compromised at the early stage before the court is informed. I am not seeing any provision there to safeguard those persons.

Mr. Al-Rawi: Madam Chair, thank you, Sen. Mark, I understand the mischief that you are trying to protect against. May I assure you that the vulnerable in certain categories are dealt with under other pieces of law, for instance juveniles, you must have a child advocate attorney present. That is now a feature of our law since 2014, so that has been introduced. In respect of persons with diminished capacity, et cetera, when the court is conducting its consideration or analysis of competence, it is at that point that it does flow backwards and it may vitiate all events, so it is void ab initio, potentially.

In respect of persons with physical incapacities, et cetera, a physical incapacity does not necessarily affect your competence, it may affect the manner in which things work themselves out, but I feel confident that the supervisory jurisdiction of the court on the consideration of the inherent principles of justice can manage the situation. But rest assured that there are other articulating laws which work together with this, and that it is not legislatively the course to follow that you provide for every single example there. That word "competence", in and of itself, is a very powerful concept for the court to consider.

Madam Chairman: Hon. Senators, the question is that clause 10 be amended as circulated.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11 reintroduced.

Mr. Al-Rawi: Could I ask you, Madam Chair, to defer clause 11 for a while?

Madam Chairman: So clause 11 is deferred, stood down.

Clause 11 deferred.

Clause 29 recommitted.

Question again proposed: That clause 29 stand part of the Bill.

Mr. Al-Rawi: Madam Chair, we had stood down clause 29 on the last day to address the issue with respect to the "right" of the DPP to appeal.

Madam Chairman: All right, let me just stop right there, we are actually revisiting, because my records show that we had in fact amended clause 29 in terms of the 14 days, the time frame, to 28, so that we are actually now revisiting clause 29.

Mr. Al-Rawi: My record did not reveal the same, Madam Chair. We did amend the time frame but then we went into a substantive discussion as to whether the leave aspect dealt with the core aspect of whether there was an actual right to appeal, because there was not a pure right of appeal expressed.

Madam Chairman: Okay, well, yes, we have it recorded that it was put to the, as amended, stand part of the Bill—

Mr. Al-Rawi: I am corrected then.

Madam Chairman:—so I need now to just—we are now revisiting it.

Mr. Al-Rawi: Sure. Thank you, Madam Chair.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, thank you for the guidance on the record. Clause 29, after having been considered, put and voted upon, an important issue arose on the floor of the committee which was whether we needed to better express the right of the DPP to an appeal. We considered that and we thought that there was definitely merit in a re-expression of the clause. We

propose now in the clause 29, as it stands part of the Bill, clause 29 deals with the Director of Public Prosecutions' right of appeal against rejection of a plea agreement. Now, I should point out, 28 dealt with the accused person, the right for the rejection of the agreement; clause 29 then went to the other side of the equation, which is the DPP's right for an appeal against rejection; clause 30, which we will come to, dealt with the grounds for withdrawal and it was mixed with an appeal by the accused person; clause 31 then dealt with the application of the prosecutor to set aside conviction or sentence, and then clause 33 dealt with admissibility, et cetera. So we were dealing with if there is a rejection, what happens on either side of the coin, accused and DPP. If there was something to the core of the agreement in the High Court, what happens on either side, and then if there were something that dealt with the core of what should be appealed, so we dealt with the various stages.

In clause 29, we are proposing that it be redrafted, that we delete subclause (1), which said, "the DPP may appeal to the Court of Appeal against the court's rejection of a plea agreement", and instead we put, "the DPP may, with leave of the Court of Appeal or a Judge thereof"—so that deals with both the Chamber and full-court approach—"appeal to the Court of Appeal against the Court's rejection of a plea agreement." And that in subclause (2):

> "Where in accordance with subsection (1), the DPP is granted leave to appeal, the DPP shall give notice of appeal in the form set out as Form 10 in the Schedule within twenty-eight days"—not 14 again—"of receiving written notification of the Court's reasons for rejecting the plea agreement under 25(3)."

There was a mistake in the old version where we had reference to 25(2) and it

should have been 25(3). So we are proposing that the right to appeal be passing through a leave stage, and that that find expression in the new (1) as circulated, and that we agree with the amendment to change the day time from 14 days calculation to 28 days, and then we correct the inadvertent reference to 25(2) to 25(3).

1.00 p.m.

I welcome hon. Members' views, through you, Madam Chairman.

Madam Chairman: Members, please, may I just ask, to catch the attention of the Chair, please just put on your mike and indicate your intention to ask something. Sen. Ramdeen, you want to raise an issue?

Sen. Ramdeen: Yes, Madam Chair. Madam Chair, through you, AG, in clause 28, we have the accused having the right to appeal limited to the rejection of the plea agreement.

Mr. Al-Rawi: No. I am going to treat with that in clause 30. This clause here in 29 we are dealing with is just the DPP, and this is on if the judge rejects the agreement, go and seek leave to appeal, and if they tell you yes, then appeal.

Sen. Ramdeen: Why are we inserting the requirement for leave? That is the question.

Mr. Al-Rawi: Well, that came about as a result of suggestions on the last occasion. So it was as a result of the recommendations of the Members of the committee that the request for a bifurcated approach happened, that there be a leave to appeal. In a sense, it fuels the argument that these agreements, where there is an inequality of bargaining power, i.e., where the DPP is potentially better resourced than the average person, that the DPP be put through a certain level of, how should I say it, hurdling to get there. The request for leave really did come up. As I understood it in the discussions on the last occasion, that is what I understood the request for

leave to be.

Sen. Ramdeen: I am just concerned that where we are dealing with the rejection of the plea agreement, the accused has a right to appeal without leave, and the DPP has to cross that hurdle of leave, and it just seems to be a degree of inequality in terms of the test or the threshold that has to be satisfied by equal parties who wish to challenge the same decision which is limited to the rejection.

Sen. Chote SC: Madam Chairman, if I may. I think that there exists a disparity because—

Mr. Al-Rawi: Yes, in the 1996 Miscellaneous Provisions Act.

Sen. Chote SC: The DPP already has a very narrow ambit within which he has the ability to access the Court of Appeal, and that is to say where there is a no case submission which has been upheld. So this does not really philosophically clash with other criminal law legislation. By putting in the leave process, you are simply saying that you have to show that you are entitled to appeal because of certain conditions being satisfied, and section 30 preserves the right of appeal which someone would normally have in any event.

Mr. Al-Rawi: Madam Chair, Sen. Chote is again spot on. We went back to the 1996 amendment in the miscellaneous provisions and we mirrored the exact terminology of the leave approach. So, in fact, I think that the Bill in the original form had moved away from that and we would have had a different regime under this particular approach. So what we did is we went back to the 1996 version of the leave requirement.

Sen. Ramdeen: But that does not answer the question as to—this is not—

Mr. Al-Rawi: An unfettered right on the accused part versus the fettered?

Sen. Ramdeen: No. The DPP has a right under the 1996 Act to appeal on the

refusal—on the grant of a no case submission, to appeal to the Court of Appeal. That has nothing to do with this. This is limited as per the section to an appeal to the Court of Appeal, having nothing to do with a no case submission on something that deals solely with the rejection of a plea agreement. Now, the accused has a right to appeal that finding of a court, independent of any no case submission or Act No. 28 of 1996. So that I do not see what it is we are achieving, if it is independent of the limited right of the DPP to appeal as provided for in the statute, because he does not have the right to appeal anything beyond that; as to why we are putting a leave provision here, when we have already in subclau (1) limiting it to the rejection of the plea agreement. The right that you are giving the accused does not hinge on the fact that the accused has an unlimited right to appeal on a conviction.

So that unless we understand that the threshold that we are inserting for leave must satisfy some purpose, what is the purpose that you are trying to satisfy, that you must cross when the court comes to determine the application for leave? When the DPP goes and files an application for leave to appeal, what is he satisfying? What is the test that the court has to be satisfied when the DPP exercises this right?

Madam Chairman: Before the Attorney General answers, is there any other Senator who wishes to comment?

Sen. Chote SC: Madam Chairman, I am not quite sure that I follow all of the complaints being advanced by Sen. Ramdeen, and I do want to try to understand what he is saying because he makes very valid contributions on matters such as these.

I thought that one of the factors which influenced us on the last occasion was

to ensure that we did not make a plea deal less attractive. So we were saying that if you give the Director of Public Prosecutions the full right to appeal, in certain circumstances, it means that the person who is pleading guilty is worse off, because if he pleads not guilty or if he goes to trial, there is no right of the DPP to appeal anything at all.

I know that I had formulated what I had said, based on a suggestion of Sen. Heath, which is to say that if we want to make this whole thing acceptable or—the word that comes to mind is not a word I can use in the Senate.

Mr. Al-Rawi: Prone to usage.

Sen. Chote SC: Yes, absolutely. What we do not want to do so is to say that, listen, if you plead guilty, the Director has the same right as you to access the Court of Appeal to have that set aside. I thought that was the public policy consideration.

Mr. Al-Rawi: Madam Chair, I understand it from that perspective, but I understand what Sen. Ramdeen is saying from the converse perspective because this is now on the rejection of the agreement. Where the court considers the plea agreement and says, sorry, I do not agree with any of you all. I am going to reject this plea agreement, let us go to trial. So I welcome the views that Sen. Ramdeen has put forward here.

Sen. Ramdeen: Let me just intervene and share you with you a thought that comes to mind. The fact that the DPP may appeal the rejection of a plea agreement, does not necessarily mean that that appeal will be adverse to the accused. It may be an agreement that the accused and the DPP have come together on, that they both agree with, and the court of its own volition decides that we are not accepting that. So it may be that both parties may be in favour of challenging the decision of the

court. One does not necessarily have to follow that the fact that the DPP appeals is, in the normal course of events, adverse to an accused, which is different from the case of a conviction.

You might have the DPP and the accused saying, well, we think that this is what should happen in this prosecution, and the judge saying no. So I think it shies away a little bit differently from what would happen on a right of appeal that will flow from a conviction. I think it is really a policy position.

Mr. Al-Rawi: I am with you on that. We brought the recommendation, through you, Madam Chair, on account of the discussion. So this flow of recommendations came in an attempt to make our work move a little bit faster today. So, through you, Madam Chair, I welcome all the views on this so that we can move to a better piece of law.

We have, in fact, treated with the setting aside an appeal on an agreement where there is an improper motive or purpose or other aspects, by a leave stage as well. On this particular point, I have no principled objection to there being no qualification on the rejection aspect, because it would (a), match up to the proposal for the parity between accused and prosecution, but (b) insofar as having had the benefit of Sen. Chote's thoughts just expressed, I think that the mischief really lies—and I think Sen. Chote is perfectly correct—where there can be a disadvantage in a story not ending and therefore people may shy away from the utilization of the law.

I think, however, that the ability to appeal on a rejection of the agreement can be disaggregated and distinguished from the setting aside or appeal on one which has been accepted, and which either party is now doing. I could certainly see that we would want to have the State a little more restrained than the accused in

setting aside an agreement which the State participated in, which we treat with in clauses 30 go down.

May I ask the question through you, Madam Chairman? The Government's perspective on clause 29 really can go either way. As originally expressed, the Director of Public Prosecutions may appeal to the Court of Appeal against the court's rejection of a plea agreement. That can stand as it is. I am very concerned, bearing in mind Sen. Chote's observations and in particular her area of practice, and distinguished practice, to hear Sen. Chote's views on the point as to whether there is any objection in maintaining 29 as it was amended originally and in not treating it with the way I have circulated, which was circulated to catch the discussions which we had and to crystalize them.

May I ask that through you, Madam Chairman? Does this discussion help us, Sen. Chote, in advocating that clause 29 stay as we had originally passed it?

Sen. Chote SC: Madam Chairman, my difficulty is that I only walked with the amended version so I am going to have to pull it up to see what it looked like before.

Mr. Al-Rawi: So 29 read, very short subclause, 29(1):

> "The Director of Public Prosecutions may appeal to the Court of Appeal against the Court's rejection of a plea agreement."

No requirement for leave at all. So the difference between 29(1) as passed on the last day and 29(1) as circulated now, because there was an undertaking to look at it on our part, is the lack of qualification, the no need for leave stage.

Sen. Chote SC: Sure. And does it include the reasons for rejecting the plea agreement part? Did it, 29?

Mr. Al-Rawi: Yes, at subclause (2).

Sen. Chote SC: Right, I am with you now.

Mr. Al-Rawi: Okay? Then in those circumstances may I do two things, Madam Chair? One, is to thank you for allowing us to have a fulsome discussion and two, may I withdraw the request that we reconsider clause 29?

Madam Chairman: Attorney General, did you indicate earlier that there was an issue with (25)(2), which is in subclause (2)?

Mr. Al-Rawi: Yes.

Madam Chairman: So it is supposed to be 25(3)?

Mr. Al-Rawi: It should be 25(3). So that if we are reconsidering it, then the reference to 25(2) instead be 25(3). I sometimes wonder if these things can be caught by consequential amendments, but out of caution perhaps we should do that.

Madam Chairman: The first thing we will do is to ask you to withdraw the circulated version.

Mr. Al-Rawi: So withdrawn—and instead to propose.

Madam Chairman: So hon. Senators, the question is that clause 29 be amended as follows:

Clause 29.

(2) The Director of Public Prosecutions shall give notice of appeal in the form set out as Form 10 in the Schedule within twenty-eight days of receiving written notification under section 25(3) of the Court's reasons for rejecting the plea agreement.

Mr. Al-Rawi: That is correct. So delete 25(2) and insert 25(3).

Question put and agreed to.

Clause 29, as amended, again ordered to stand part of the Bill.

Clause 30 recommitted.

Question again proposed: That clause 30 stand part of the Bill.

Mr. Al-Rawi: Madam Chair, first of all, I could not remember whether we had actually concluded the clause or not.

Madam Chairman: We did.

Mr. Al-Rawi: In those circumstances, I really wanted to just take up from the conversation that the honourable Senate in committee had expressed. As my notes show, we had deleted "or appeal against conviction", and I just wanted out of certainty to confirm the following in clause 30 as I had it, we deleted:

"or to appeal against a conviction or sentence based on the plea agreement"—and we added in—"there are any other grounds upon which the plea agreement should be set aside".

So I am just double-checking here. Just allow me one moment, Madam Chairman. [*Interruption*]

Madam Chairman, having confirmed, not having had the benefit of the *Hansard*, that we have made those amendments, may I invite that we leave the clause as it is, which is out of caution that we had raised it.

Question put and agreed to.

Clause 30 again ordered to stand part of the Bill.

Clause 31 reintroduced.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, clause 31 was quite an interesting one, or is quite an interesting one. We were dealing with clause 31 providing for the application of the prosecutor to set aside the plea agreement conviction or sentence. In 31, we said:

"Notwithstanding an accused person's conviction and sentence pursuant to a plea agreement, the Director of Public Prosecutions may seek the leave of the Court of Appeal to have the agreement, conviction or sentence set aside if the prosecutor was—"—(a) and (b).

We had contemplated adding in "any other ground on which it should be set aside". But it was here in clause 31 that it was pointed out that the right to appeal per se had not been provided for. Sen. Sturge had actually brought that to the fore in some clear sense.

We propose in the circumstances that we do some remodelling of the language of 31, and in the chapeau that we separate out the concepts. We are proposing that 31 read, new subclause (1). It should say:

Upon application by the DPP, the Court may set aside the plea agreement at any time before sentence if—

And we maintain paragraph (a) and paragraph (b) as shown, which would be, if:

"…in the course of plea discussions, wilfully mislead..."

The prosecutor was—"wilfully misled by the accused person or his Attorney-at-law;"—and—

"(b)"— if the prosecutor was—"induced to conclude the plea agreement by threats, force, bribery…"—et cetera.

And that we would also have the inclusion of "any other grounds upon which the plea agreement may be set aside by the Court".

We had used the terminology here in the consideration of "in the interest of justice". We had proposed in the new subclause (2), to delete the words: if the DPP appeals against sentence imposed in accordance with the plea agreement on the

grounds referred to in subsection (1); and substitute it with the words: "where in accordance with subsection (2) the Director of Public Prosecutions is granted leave to appeal to the Court of Appeal", and we continue. We are proposing to insert a new subclause (2), which would explain the flow that we are adopting.

So we will have the new (1) as we have amended and which I will reread for clarity. We would come to (2) which would say:

> The Director of Public Prosecutions may appeal to the Court of Appeal with leave of the Court of Appeal or a Judge thereof against an accused person's conviction or sentence pursuant to a plea agreement, where the prosecutor—
>
> (a) in the course of plea discussion was wilfully mislead by the accused person or his Attorney-at-law in some material aspect; or
>
> (b) was induced to conclude the plea agreement by threats, force, bribery or other means of intimidation.

And then we will renumber everything. So that is as actually spelt out. It is a little confusing when you try to do it in the drafting sense, which is where they say delete and substitute and do the other positions, but essentially what we are doing is providing for the right to appeal. We are saying that this is one of the cases where we should fetter the approach of the DPP by requiring for a leave to appeal provision. We are maintaining the narrow grounds for the prosecutor to make that appeal, that there was a wilful misleading by the accused or induced to conclude the plea agreement by some form of threat or bribery, et cetera.

The actual cleaned-up version of what we propose is in the circulated marked up version of the Bill that we have sent, and that should appear at pages—they are unnumbered—21 and 22, following the page which is numbered which is 20. So the clause as redrafted would read as follows:

Upon application by the Director of Public Prosecutions, the Court may set aside the plea agreement at any time before sentence if—

(a) the Prosecutor was in the course of plea discussions wilfully misled by the accused person or by his Attorney-at-law in some material respect;

(b) the Prosecutor was induced to conclude the plea agreement by threats, force, bribery or by other means of intimidation or influence; or

(c) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

The new subclause (2) would read:

"The Director of Public Prosecutions may appeal to the Court of Appeal with leave of the Court of Appeal or a Judge thereof against an accused person's conviction or sentence pursuant to a plea agreement where the Prosecutor..." and again we repeat—(a) and (b).

"(a) in the course of the plea discussion was wilfully misled by the accused person or his Attorney-at-law in some material aspect; or

(b) was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence."

And then in subclause (3) we will provide:

Where in accordance with subsection (2) the Director of Public Prosecutions is granted leave to appeal to the Court of Appeal, the Director of Public Prosecutions shall give notice of appeal in the form set out as Form 10 in the Schedule within twenty-eight days of the sentence passed.

That in long form is the proposal that we suggest here. [*Interruption*]

Madam Chair, I have just been speaking with the drafting team over my own

observation that the subclause (2) as proposed is deficient because we have not put the "any other ground" aspect. If I could just explain. We were working on these overnight, with the team working, et cetera, so that subclause (2) would need to repeat the ground in subclause (1) which is (c). Now it appears to be a little inelegant and that is because we cleaved out—subclause (1) deals with the application in the court before sentence, so we had to put those grounds. But subclause (2) separated out the appeal aspect. I welcome, through you, Madam Chair, subject to that modification the thoughts of the hon. Senators.

Madam Chairman: Before I invite comments, may I just ask, the (1)(c), that paragraph (c) is to be repeated at (2)(c)?

Mr. Al-Rawi: Yes, and for consistency with clause 31, the words appearing at the end of (c) which is "in the interest of justice", we may want to delete that because we did not use that terminology in clause 30. [*Interruption*]

Madam Chairman: Attorney General, can I invite comments at this stage?

Sen. Ramdeen: AG, in relation to the redrafted clause 31, this is envisaged to be an application that is going to be made to the court before whom the plea agreement is being entered.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: I was wondering, and it may sound—I do not mean to be very simplistic about it—but having regard to your version as drafted, which is to identify two specific grounds and then to have an omnibus clause the intention of which is to capture any other ground that may be advanced to set aside the plea agreement, and that is prescribed by "in the interest of justice", I was wondering whether it would not be more useful, to use your words, if we were not to excise (a), (b) and (c) and simply say that:

Upon application by the Director of Public Prosecutions the Court may set aside the plea agreement at any time before sentence on any ground in the interest of justice.

—for the purposes of not limiting the ground upon which you can set it aside, by capturing your policy position of allowing in addition to (a) and (b) the omnibus provision.

But my suggestion is grounded more in the fact that, as I understand it, subject to your correction, any court before whom a plea agreement is entered into will set aside any agreement between the prosecution or the accused in the interest of justice, once the interest of justice so requires.

1.30 p.m.

I think it is more to say, as you would understand it in civil terms, an inherent power that a court would have to dispense justice between the parties.

So, I was wondering if we are not doing an injustice to ourselves by specifying the grounds when those are grounds that inherently a court hearing a criminal trial or hearing any trial in the interest of justice, in civil law we would say in fairness to the parties, would have an inherent power to set aside. And it would leave it open enough for the accused, the prosecution or anybody to make an application where they think that they have been wronged in some way or some manner of unfairness has been perpetuated against them.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Thank you very much, Madam Chairman. I see the argument by Sen. Ramdeen, but I think the inclusion of subsection (c) here really affords a court very wide powers to consider setting aside a plea agreement in the interest of justice.

I thought that (a) and (b) really had been included as an indicator to the persons entering the plea agreement that the plea agreement was not sacrosanct, that it could set aside if accused person tried a "fast one" or if the attorney-at-law tried a "fast one" to mislead the prosecutor. I thought that it was a very useful bit of language to be included in the legislation so that when it is considered, automatically whoever is trying to make practical use of this will understand what is unacceptable.

The subclause (c) captures the situations that we cannot now contemplate and articulate, but it is grounded in the interest of justice test. So, I think it looks fine as it is.

Mr. Al-Rawi: Madam Chair, I thank hon. Senators. I see you are correcting me. Yes, please.

Madam Chairman: I just want to ask if any other Senator wants to raise any other issue on this clause, please? All right. Attorney General.

Mr. Al-Rawi: Madam Chair, thank you both Senators for the excellent fulminations, let me explain why. The unfettered approach was certainly one of the approaches which Sen. Ramdeen has put out for us.

When we reflected upon section 15 of the existing law, and we went back to the policy discussions on the amendments to the law in the period 2014 come forward, section 15 was felt to be a fairly robust piece of law which provided for signposts or mileposts along the way to the fact that there was no sacrosanctity in—that is a malapropism on my part, right?—that there was nothing sacrosanct in the plea agreement itself, it was subject to the review of the court. But also too it provided in maintaining some of these signposts along the way for some of the grounds that you would have to go through on the leave stage.

Sen. Ramdeen had asked very importantly a while ago, "What are you asking the court to consider in your leave application?"—and some of these grounds may be there. But I am driven by the fact that there was no real complaint in 15, section 15 of the existing law.

Section 15 was a little bit differently worded because it included an inducement to conclude the plea agreement by conduct amounting to an obstruction of justice which, you know, was a little bit hard to, how should I say it, to make clear in the context of the interest of justice argument which (c) has put in.

I must add that usually subparagraph (c) as proposed following after (a) and (b) could fall prey to the ejusdem generis rule, but we are saved from that because we have put in the broader context "in the interest of justice" which is different from clause 30 as we have put above.

In all of those circumstances I am of the view that the clause as circulated, the redrafted version, achieves the purposes of marrying policy, comment on the existing law, the need to put in a hurdle for the DPP by providing a leave position commensurate with the 1996 miscellaneous provisions amendments. And I do not know if Members of the Opposition in particular have any other contrary view to that, but our proposal is that the version as circulated should stand part of the Bill.

Madam Chair, I am going to ask you in light of the phraseology at the end of what we had just proposed in the last words "in the interest of justice" if you would, for consistency, add that into clause 30 which we already passed.

Madam Chairman: Yes. Clause 31, Attorney General, just one thing, in the amendments that were circulated, if you look at page 5 (b) on the top in subclause (2)—

Mr. Al-Rawi: Yes.

Madam Chairman:—you have it there, are we putting it as subclause (3) in the Bill with the track changes?—because it is a little—

Mr. Al-Rawi: Sure. I will confirm now, Madam Chair. Madam Chair, the reference to subsection (2) is correct because we are inserting a new subsection (2), and then we will renumber accordingly which is in paragraph (d) on page 5 of the amendments. What is missing from this would be in C(2), (a), (b), we will have to do some surgery here. We would be deleting the word "or", we would be, in subparagraph (2)(a) we would, (b) delete the "." include a ";" and the word "or" and then we would insert subparagraph (c) which would be the reference to the omnibus words that we used ending in the words "in interest of justice".

Madam Chairman: And then you would have a (3)?

Mr. Al-Rawi: And then we would have—well, no. The sub (3) would be the consequential renumbering.

Madam Chairman: All right. Hon. Senators, I ask you to bear with me because I am actually going to read out the proposed amendment. So—

Mr. Al-Rawi: One moment, please, Madam Chair, let me just get the drafting on the same page with you, because I think you were right when you said there would be a (3). Would you permit me a moment? Madam Chair, just to explain.

Madam Chairman: Yes.

Mr. Al-Rawi: What would appear as the new subclause (3) is what we amended first. So it is correct.

Madam Chairman: Let me read it.

Mr. Al-Rawi: So it is correct as subject to the (c). Being inserted in (c).

Madam Chairman: Yes. I think I have it, but I would ask all members to bear with me as I read it out to ensure we all on the same page with the amendments to

clause 31. Okay? So the question is that clause 31 be amended as circulated and as follows, 31:

"(1) Upon application by the Director of Public Prosecutions the court may set aside the plea agreement at any time before sentence if-

(a) the prosecutor was in the course of plea discussions wilfully misled by the accused person or by his Attorney-at-law in some material respect;

(b) the prosecutor was induced to conclude the plea agreement by threat, force, bribery or any other means of intimidation or influence; or

(c) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

(2) The Director of Public Prosecutions may appeal to the Court of Appeal, with leave of the Court of Appeal or Judge thereof, against an accused person's conviction or sentence pursuant to a plea agreement where the prosecutor-

(a) in the course of plea discussions, was wilfully misled by the accused person or his Attorney-at-law in some material respect;

(b) was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence; or

(c) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice.

(3) Where in accordance with subsection (2), the Director of Public Prosecutions is granted leave to appeal to the Court of Appeal, the Director of Public Prosecutions shall give notice of appeal in the form

set out as Form 10 in the Schedule within twenty-eight days of the sentence passed."

Question put.

Mr. Al-Rawi: Madam Chair, the drafters are just adding one small amendment because of the inclusion of (c) in subclause (c), it is just that in the chapeau in the new subclause (2) as read by you, we insert a "–" after the word "where". The words appearing "the prosecutor" would repeat in the first words in (a) and (d) and that is it. So it would resemble what we did in previous paragraph. So if I could just read for completeness sake, only this part in the new subclause (2), the words would read like this:

"The Director of Public Prosecutions may appeal to the Court of Appeal with the leave of the Court of Appeal or a Judge thereof, against an accused person's conviction or sentence pursuant to the plea agreement where—

(a) the prosecutor in the course of plea discussions was wilfully misled by the accused person or his Attorney-at-law in some material respect;

(b) the prosecutor was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation of influence; or

(c) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice."

Madam Chairman: Hon. Senators, I will reread subclause (2) and I ask you to bear with me because this forms part of the record and we have to be careful about it. Okay? So, I am going to reread subclause (2), the proposed subclause (2).

"The Director of Public Prosecutions may appeal to the Court of Appeal with leave of the Court of Appeal or a Judge thereof, against an accused person's conviction or sentence pursuant to a plea agreement where—

(a) the prosecutor in the course of plea discussions was wilfully misled by the accused person or his Attorney-at-law in some material respect;

(b) the prosecutor was induced to conclude the plea agreement by threats, force, bribery or any other means of intimidation or influence; or

(c) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice."

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the Bill.

Madam Chairman: Attorney General, you indicated that you wanted to go back to clause 30.

Mr. Al-Rawi: Yes, Madam Chair, in light of the amendment that we just did to cause a small inclusion.

Madam Chairman: What is the inclusion?

Mr. Al-Rawi: Sure. The revisiting I am requesting is that in clause 30(1)(d) where we added the words "there are any other grounds upon which the plea agreement may be set aside by the court" that we insert before the "." "in the interest of justice", and that is to make it in keeping and consistent with what we just did in clause 31. So, Madam Chair, in the circulated amendments specifically it would be in paragraph (a) that we amend paragraph (d) as shown by including—

Madam Chairman: No. Remember, hon. Attorney General, you withdrew those amendments as circulated.

Mr. Al-Rawi: Yes.

Madam Chairman: So what we are going to do is that I am going to put it that we revisit clause 30 and then we are going to simply insert the words.

Mr. Al-Rawi: "In the interest of justice".

Madam Chairman: Yeah. Okay?

Mr. Al-Rawi: Thank you.

Clause 30 recommitted.

Question again proposed: That clause 30 stand part of the Bill.

A. In subclause (1)-

(1) delete the chapeau and substitute the following:

"Upon application by the accused person, the Court may set aside a plea agreement at any time before sentence, if –".

(2) in paragraph (b), delete the words "; or" and substitute the word ";"

(3) in paragraph (c), delete the word "." and substitute the words "; or"; and

(4) after paragraph (c), insert the following paragraph:

"(d) there are any other grounds upon which the plea agreement may be set aside by the Court in the interest of justice."

B. Delete subclause (2).

Mr. Al-Rawi: Madam Chair, we proposed that in 30(1)(d), sorry, which should now just read as 30(d), that we insert at the end of the subclause (d) the words "in the interest of justice", "by the Court in the interest of justice". Sorry. After the words "set aside" insert the words "by the Court in the interest of justice." Thank you.

Madam Chairman: The question that clause 30 be amended by inserting the words at subclause (d) after the word "aside" insert the following words "by the Court in interest of justice".

Question put and agreed to.

Clause 30, as amended, again ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, I think at this stage we should suspend for one hour. Attorney General, we will have to do some sorting out on the particular clauses that we stood down, so we will resume in one hour's time. Actually, all right, hon. Senators, we will suspend and we will resume at 3.00 p.m.

1.47 p.m.: *Committee suspended*.

3.00 p.m.: *Committee resumed*.

Madam Chairman: Hon. Senators, I am now in receipt of the instrument so the Senate shall resume.

Senate resumed.

Madam President: Hon. Senators, I apologize. I am just trying to save you some time.

SENATOR'S APPOINTMENT

Madam President:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

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

President.

TO: PASTOR CLIVE DOTTIN

WHEREAS Senator Taurel Shrikissoon is incapable of performing his duties as a Senator by reason of 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, PASTOR CLIVE DOTTIN, to be temporarily a member of the Senate with effect from 4th July, 2017 and continuing during the absence by reason of illness of the said Senator Taurel Shrikissoon.

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 4th day of July, 2017."

OATH OF ALLEGIANCE

Senator Pastor Clive Dottin took and subscribed the Oath of Allegiance as required by law.

Madam President: Hon. Senators, we shall now resume into committee.

CRIMINAL PROCEDURE (PLEA DISCUSSION AND PLEA AGREEMENT) BILL, 2017

Committee resumed.

Clauses 32 and 33 ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

"Insert after the word "justice", the words "and the Court shall give written reasons for the order".

Madam Chairman: Sen. Ramdeen, you had circulated an amendment, as proposed amendment to clause 34?

Sen. Ramdeen: Would you just allow me one minute, Madam Chair?

Madam Chairman: Hon. Attorney General, you have also proposed an amendment?

Mr. Al Rawi: Yes, please, Ma'am.

Sen. Ramdeen: You want to go first?

Mr. Al Rawi: Yes, please.

Madam Chairman: Sure.

Mr. Al-Rawi: Madam Chair, we ended on the last occasion, but I had the benefit of receiving submissions from Sen. Ramdeen in writing as to clause 34. The proposal offered by the Opposition was that there should be a certain type of process for the court sealing the record, and then it essentially ended with a criminalization for an improper disclosure. That in a nutshell was the theory behind the amendments which I can understand quite clearly there is merit in that persuasion.

The Government had the opportunity to consider it. Regrettably at this stage we do not join in the recommendation that there should be a criminalization for a breach of a disclosure order in the terms recommended by the Opposition, but we certainly have no objection with the provision of reasons for the provision of the sealing of a record as proposed by clause 34.

So we propose to accept the recommendation of the Opposition that we do provide reasons for the sealing of records, but we respectfully are not in a position to agree with the criminalization or the more prescriptive approach for the sealing of records as recommended in the draft circulated by the Opposition.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Madam Chairman, thank you. Hon. AG, I have a question. If it is that there has been some sort of impropriety between the parties which resulted in

a plea agreement, it is not outside the realm of possibility that a court may have known about it. If these records are sealed, how is that impropriety going to be addressed?

Mr. Al-Rawi: Good question. I suppose the immediate frank response to that is that there is no guarantee that it can be addressed in any one of the circumstances. The proposal in clause 34, as stated, is that there must be an application by either party subject to the court's discretion that the records of plea discussions or agreements be sealed, so you are quite correct. It does not have to go as far as a plea agreement, it could very well just be a discussion. Because this thing is subject to courts, (a), consideration of an application, (b), exercise of its discretion, there is, at least, a process through that. They are actually in open court and not in camera unless an application is made for the proceedings to be in camera.

But we thought that the recommendation coming from Sen. Ramdeen was useful in this regard because the court would be bound to actually put reasons for the sealing of the records which will then allow for some degree of some other inspection or agitation.

So, I could not answer the question squarely to say there would be a guarantee in some way or fashion that the mischief of something could be cloaked under an order for the sealing of records, but there is generally the need to provide for the sealing of records for the other side of the equation where it would be in the interest of the administration of justice or in the interest of justice per se that records be sealed, for instance, as it relates to witnesses or certain other aspects which may impact upon other matters before the court. So, I know that I have not answered your question, but hopefully I have explained why.

3.10 p.m.

Sen. Chote SC: Madam Chairman, if I may, it seems to me that if we go with this clause 34 as it is, then we are placing a hamstring—we are cutting the hamstring of the legislation, because we are saying that there are all these provisions to deal with the situation where people use the system improperly, but we are closing the door to investigation of that. So what will be the point of all of those clauses?

Mr. Al-Rawi: (a) it is within the court's discretion at any point in time whether the legislation says so or not to seal a record. But (b), is it not always subject also to the exercise of a right to appeal in respect to the sealing of a record, whether it is rejected or not? Or a review? And by appeal, I mean there certainly is an ability to have a sealing of a record reviewed at any point in time. The order continues unless otherwise varied, but there is certainly room for the variation.

Sen. Sturge: Can I in responding to that, just pose a scenario. If this person's records are sealed, is a witness against other persons, when their trial comes up, who are they going to appeal to? When their trial comes up, they have at the trial a right to cross-examine the person. At common law they have a right to see all utterances made by this person or all statements made by this person, and all discussions or agreements made, which led to either a conditional immunity or an absolute immunity. That is the common law.

If we are to leave this clause as is and the records are sealed, when these persons are on trial, how are they to know what was said during plea discussions by this accomplice vel non, what was said in terms of the agreement. How are they to cross-examine on the terms of the agreement or anything that may have been said in the plea discussions if both the discussions and the agreements are sealed? It would mean, therefore, that they lose the right to cross-examine, and that has implications in terms of the fairness of the trial and, two, rights that they are

normally entitled to under sections 6 and 7 of the Evidence Act which is to compare what he may have said in the plea agreement or discussions with what he is saying now in court and make out a previous inconsistent statement. So that if the discussions on the agreement remain sealed as envisaged by section 34, then this may undermine the ability of persons to have a fair trial.

Mr. Al-Rawi: Madam Chair, would not the Evidence Act itself allow—I cannot remember the section, is it section 15?—and is it not also to in relation to the issue of character that applications can be made?

Sen. Sturge: Character, yes. I understand what you are saying Attorney General, but character would relate to, yes you would have to disclose whether this person has previous convictions or pending matters and an application can be made to the trial judge to determine whether he or she would admit evidence on the bad character of this witness. But that is quite apart from what this witness may have said during the plea discussions or in the terms agreed to in the plea agreement, and that is the part that would frustrate or stymie the ability of counsel for the accused persons who are on trial to cross-examine under section 7.

Mr. Al-Rawi: Can it not also be met by the request to subpoena the record, be met by the obstacle of it having been sealed and then ask for the unsealing of the record, have the reasons produced, and then to make submissions on the ability to achieve or not achieve the purpose?

Sen. Sturge: Well, the difficulty is, Attorney General, is that is not clear from section 34, unless that is expressed as a possibility open. That is one. And two, if one court has already made a decision to seal, then another court of equal jurisdiction cannot simply unseal unless there is a power to unseal, because they are of equal jurisdiction. One court is not a Court of Appeal for the other. So that,

the only way this can work is if we take out the requirement of sealing or if we put in specific provisions to deal with scenarios where there is an application—well, it should not even be based on an application. The common law itself means that we are entitled to everything that was said either during the discussions or the agreement as a statement made by this accomplice vel non. We are entitled to it as of right. So, if we are entitled to it as of right by the very provisions of clause 34, it means you are going to take away these rights at common law.

Madam Chairman: Sen. Roach, you indicated that you wanted to say something?

Sen. Roach: Yes. Thank you, Madam Chair. Notwithstanding what my learned colleagues have said, I think the court has an inherent jurisdiction all the time to unseal documents if need be if it is in the interest of justice. So, it is not necessarily that another court at the same level is acting as a court of appeal basically, but the court has an inherent jurisdiction to unseal records if need be. It goes on in matrimonial matters; it goes on in a number of matters or as the case may be.

Mr. Al-Rawi: That is as I understand it precisely that the inherent and/or implied and/or expressed provisions in other courts still prevail. All that we are providing for in this 34 is the fact that the court can actually seal a record, and it is done specifically so that persons who may otherwise be dissuaded from participating in these positions know that there is a positive right that they can ask to be exercised and considered, not guaranteed, by the court of record which is considering this point. So, I did not see that anything was in the way of another court entertaining an application under section 15 of the Evidence Act, or an application suitably posited for bad character, or an application for the unsealing of a record of its own volition or for the court to be invited to consider the evidence in a particular way in light of a refusal for the disclosure or subpoena to be honoured.

Sen. Sturge: Can I just interject —

Madam Chairman: Sen. Sturge, I was going to recognize Sen. Chote who had indicated that she wanted to speak.

Sen. Sturge: Sorry, I will wait. Sorry.

Sen. Chote SC: Thank you, Madam Chairman. The more I look at this clause 34, it seems to me that this really can be a rogue's charter. Because it says:

"A court may upon application by either party…"

So, if you have an accused person, let us say, who has concealed something or who has come about a plea bargain in some sort of improper way, then all he needs to do is make an application to the court for the records to be sealed—for the proceedings to be sealed. Then it would mean that he would benefit. He would be able to cover his tracks both from the prosecutor and from the judge, and there is no safeguard contained in this section to allow for that. So, I understand why you would want to have records sealed in certain circumstances, but I do not think—I respectfully disagree with my friend Sen. Roach—that the inherent jurisdiction of any court is going to be able to address that in any event. Magistrates' Courts do not have inherent jurisdiction.

So, perhaps you can change it around and say that a court in exceptional circumstances, perhaps. Because justice is supposed to be as transparent as possible. So, if we say in exceptional circumstances, and the judge then has to give reasons, at least we have some protection against persons who would want to use this clause for purposes that it was not intended to be used for.

Madam Chairman: Sen. Ramdeen asked, then Sen. Solomon—oh, sorry, Sen. Sturge.

Sen. Sturge: Madam Chair, I will wait.

Madam Chairman: Sen. Ramdeen, Sen. Solomon, Sen. Sturge, then the Attorney General—Sen. Roach and then the Attorney General.

Sen. Ramdeen: Madam Chair, through you, to the Attorney General. Attorney General the reason—first of all, thank you for accepting the amendment as proposed with respect to the written reasons. The difficulty that I have with the clause as is, is that it is the court which in the case of the High Court will be a court of superior record which will not be subject to judicial review, because it is a superior court of record.

So, I would have proposed that if we were going to keep as a matter of policy the idea of sealing records then what we should do is perhaps remove the court and let it be the registrar, so that that decision can be subject to judicial review. If the registrar makes a decision, you can challenge it. There is no purpose served by having a provision for the provisional reasons if those reasons are not going to inform either party, or provide that party with an avenue by which you can challenge those reasons, because you are not just going to impose the ability to give—or the duty, sorry, to give reasons in a vacuum providing reasons and the court not having, or the parties not having an opportunity to challenge that as a safeguard or to test the correctness of that decision to seal those documents, is going to be serving absolutely no purpose.

I would have suggested in accordance with what Sen. Chote has said about the inherent jurisdiction, and I come back to the point that I am not sure that if we provide by statute for these things to be done that the inherent jurisdiction will still survive, that we say "the Registrar" in the case of the High Court, or "the Clerk of the Peace", in the case of a Summary Court—well, we do not have to say the Clerk of the Peace, because a Summary Court will be subject to judicial review anyway.

I am sorry. So, we say, "the registrar", which is the procedure that it is now. It is the registrar that makes the application to, unless you have before the court, and the court wants to exercise that power to seal the documents. But you are very familiar with the fact that you make applications to the registrar in all of these matters to seal the records, so why not give that opportunity to either party? If they want to challenge it, to remove it, if there is some third party who is affected by it, they can make an application. If that application is turned down they can judicially review the registrar, so at least we have some form of protection. But, that is the only way that I can suggest in keeping the clause as a matter of policy, but providing some kind of protection to a party who wishes to challenge it.

Madam Chairman: Sen. Solomon.

Sen. Solomon: Much obliged, Madam Chair. Through you to the hon. Attorney General, I think that this entire matter of sealing documents and these plea agreements being private and done in dark rooms between parties and not being made public is a serious affront to justice. I think that justice must not only be done, it must be seen to be done as a principle and as a policy decision.

I think that if it is that the Attorney General is going to insist on this clause in its entirety then I will echo what the hon. Sophia Chote has said, and make sure that those exceptional circumstances are properly articulated, and that the protections of the evidential issues are also addressed, because those are major issues for persons down the line who will be faced with a situation where certain other persons may have entered into plea agreements to save their own skin, and the evidence would already be tenuous at best, and would be used to convict other persons and not be challenged, and have the benefit of this seal which would keep it in the darkness that it does not deserve to be, in my humble opinion.

And the issue of—if I may, Madam Chairman—jurisdictions are a major issue in this country; they often overlap between the High Court, the Family Court, the Industrial Court, and judges are very loath to interfere with one another's jurisdictions. So, I think that we need to give proper consideration and thought as to this entire concept, how we are going to implement it, how it is going to affect the justice in other matters, and how it is going to affect the jurisdictions.

Sen. Sturge: Madam Chair, through you, there are three issues I wish to raise that I have not touched upon, and I would seek to piggyback on what my friends have said. Firstly, as it stands, if the DPP is proceeding under common law, nothing is sealed. So, if the DPP is proceeding under common law, and not under this Act, then at common law he has to disclose all utterances made by this person, this accomplice vel non, or if it is videotaped, the videotaped interviews, the discussions, the agreements.

Everything that has been said by this person has to be made available as part of the package together with—you always get the package with a copy of the immunity given, whether it is conditional immunity or absolute immunity. But attached to the absolute and conditional immunity would be not only the statement where there is an agreement and he is giving evidence in accordance with these immunities given, but every other statement given before that, whether they are consistent or inconsistent, the defence is entitled to it as of right. It is not subject to the discretion of the prosecutor as to whether it is given or not. So, if that is the case where at common law we are entitled as of right to all of these statements and utterances, and interviews, all of the material, everything surrounding the history leading up to the granting of the either conditional or absolute immunity, then why are we in a worse position if the DPP decides that he is not going at common law,

but he is proceeding by way of the statute. That cannot be right. That is the first thing.

The second thing is, for the defence counsel to meet the allegations being made by this accomplice vel non, and to make an application to a subsequent court as suggested by Sen. Roach, he would first have to know of the existence of this plea agreement and the discussions and so on, or else he is shooting in the dark. So that if he does not know and therefore he does not ask, and the prosecutor does not say, then there is a possibility of a serious miscarriage of justice, because the terms and conditions and all the previous inconsistent statements or consistent statements, or whichever, which are normally given as a matter of right would not be available so that the accused persons can defend themselves, and that must be wrong.

Lastly, even if the prosecutor wants to act fairly the prosecutor once he proceeds under this Act, he does not have the ability once these records are sealed, he has no discretion or power to divulge the discussions, or interviews, or agreements, or utterances of this accomplice vel non to the defence. Under common law, you are entitled to it and the prosecutor must give it. Under this section it is quite clear that the prosecutor's hands are tied. So, that in itself cannot be right, because the prosecutor acting as a minister of justice must be able, in the interest of justice, to provide these agreements, discussions, and so on, to ensure that a fair trial takes place.

Sen. Roach: Thank you, Madam Chair. I heard what my learned friends have said there. But be that as it may, is it that we are getting difficulty with the fact that the record is to be sealed per se, and they are saying it ought not to be sealed? Is this where we are now? Because I am looking at the section itself, we talk about giving

the court, "the court may", it is not saying that—it is not shall. It is the court "may". The court has a discretion. And the court in any instance, in making a determination, the court is not going to be frivolously or easily persuaded to do something as significant as sealing a document. Whenever a case is to be sealed, it is a very serious discussion on the part of the court in determining whether or not it ought to be sealed or not, and it is very rare circumstances, and a lot goes into in making a determination whether it be sealed. So, is it that we are not trusting the discretion of the court in this instance to deal with something as this? Or is it that we are saying it is safer to not have the plea bargain sealed at all, and take out seal of it? If not, there is a discretion here for the court to deal with which is always to exercise.

Madam Chairman: Sen. Chote. All right, Members, Sen. Chote, but at some point in time I have to ask the AG to respond. And at some point in time the discussions will have to end with a decision being made. Okay? Sen. Chote.

Sen. Chote SC: Madam Chairman, thank you, I would try to be as brief as possible. The concern I have about the sealing of records in criminal proceedings as opposed to any other kind of proceedings is because I have witnessed the injustice which may flow from the sealing of a record. I will give an example of a case in which I had been involved in where there was an issue of jury tampering. An enquiry was held by the trial judge and there was sufficient material to suggest that that had in fact occurred. Now, instead of the matter being sent for further investigation to the police, the prosecutor in that matter asked that the records be sealed, and so they were, and as such nothing came out of it. So, I just want to bring that to your attention to show that serious criminality can be covered up by an order of this kind.

Mr. Al-Rawi: Madam Chair?

Madam Chairman: Yes.

Mr. Al-Rawi: My only fear in allowing the arguments to—well, the propositions to go is that it is very difficult to then keep the thread of response. So, without truncating, may I just be permitted to answer a few, because the longer the line gets the more the assumptions of submissions go. So, may I please interject?

Madam Chairman: Yes.

Mr. Al-Rawi: Thank you, please. First of all, I wish to thank all hon. Senators for the submissions. I understand the concerns raised which are genuine concerns, and certainly I rely upon the practitioners in the criminal arena for their own experience; that in the civil arena is somewhat different. I will try my best to respond as follows: Well, I do find it very attractive to include the qualifier of in exceptional circumstances. It would allow the court to have circumspection in the exercise of its discretion to actually seal records. Does not remove or fetter unduly, I think, the court's exercise in its own manner and accord to consider those circumstances.

In any event, I think it accords with when records are sealed in any event. Records are hardly ever sealed for other than good reason, so I think that we would be doing well to qualify it that way. It sort of ties in with Sen. Solomon's reflections that there may be dark rooms or recesses, and that justice must not only be done but seen to be done, and therefore it can assist us with the submission made by Sen. Solomon.

Sen. Ramdeen noted the circumstance where the application could be made, and reflected upon the fact that the accused may make an application and therefore deal with the covering up of serious evidence of criminality, which Sen. Chote has

given us her personal reflection upon. But I bear in mind that the application by either party is one to be made by both parties being informed. The application is not an ex parte application. It will always be an inter partes application. I found it a very novel and interesting perspective to consider the registrar as the officer specifically to allow for the application of judicial review principles.

I agree that the court of inferior record, the court not of superior record, the Summary Court, is not bound by the limitations of being a court of record, of superior record and therefore is reviewable. My fear in prescribing that the registrar should be the person to do the sealing is that you are going to automatically refer the matter away from the sitting judge.

Now, it is true that a judge can exercise all the functions of the court, including that of a registrar. But when statute steps out of its way to say that the registrar should consider the factor for the stated purpose of being a reviewable matter, because the registrar would be reviewable, it is to invite an application where the judge seized of the matter, and aware of all the circumstances, passes over the matter to a registrar who is not only not as experienced as the sitting judge is, but who is not blessed with the experience of having heard the entire matter of the plea hearing in its continuity. From that purpose, I would resist the urge to move to the registrar. In any event:

(a) The matter being inter partes;

(b) The judge having heard the whole of the plea agreement;

(c) The judge is always reviewable.

And the judge is reviewable by the Court of Appeal, so there is a check and balance to that process in the sealing of the record.

In the position of the three points proposed by Sen. Sturge, firstly this

relating to the common law. Secondly, the obligation to disclose in that the common law requires that the prosecutor must disclose the evidence. And thirdly, the observation that the prosecutor would be hamstrung and have no power to review discussions. It cannot be—and this is my own understanding of the situation—that the fact that a record is sealed is a bar to saying that there is a record but it is sealed. What the prosecutor who had sealed the record would be constrained by is divulging the contents of what has been sealed, not the fact that there was something. There would always be at the common law preserved the obligation on the part of prosecutor to say X and Y exist or may have arisen in a matter, but that matter is sealed. And that therefore raises the spectre of whether there has been full disclosure or not.

In all of the circumstances taking the submissions forward I would therefore, as novel, and I mean that in a complimentary way, as the registrar's approach may be, I would prefer to keep it as the court having heard the plea agreement, comforted by the process of the ability to have it reviewed upon appeal. I would agree that we consider the insertion of the concept of "in exceptional circumstances", because it would prescribe the caution which the court should exercise in relation to this matter. I still think that a court of lateral jurisdiction, a court of first instance would hardly be minded to move against another court of first instance, or worse yet, a court of inferior record, the Magistrates' Court, the summary court, would have a difficulty with a court of superior record having sealed a matter, but that still allows and does not prescribed against an application for the production of it in the manner in which I have suggested, which is:

(a) at the common law, or be it walking up to the wall of saying I cannot go further;

(b) of the application of the Evidence Act, section 15 in particular;

(c) the application of the rules and procedures by which we get to bad character admission of evidence; and

(d) certainly for any other application that would exist as an inherent function of the court.

So, Madam Chair, I propose that clause 34 in those circumstances be amended by inserting after the word "may", the words "in exceptional circumstances" in the first line of clause 34.

Sen. Sturge: [*Inaudible*]

Madam Chairman: Just a second, please. Sen. Mahabir wanted to ask something?

Sen. Dr. Mahabir: Yes, I needed clarification, Madam Chair, from the hon. Attorney General, because when I look at what he had proposed earlier in clause 4 and he then withdrew, "for the good administration of justice" and he kept "in the interest of justice", I see in an important matter as the sealing of records, he is keeping in, "in the interest of the effective administration of justice". I would have thought that something as important as the sealing of a record you would want to have the jurisdiction as broad in the interest of justice. Because from where I sit, the effective administration is procedural, but justice is broad. Justice may in fact overwhelm the procedural matters, and it may involve protecting witnesses, it may involve protecting victims. So that I simply need clarification from you as to why you withdrew for the good administration of justice in clause 4, but you are not keeping in consistency with the architecture of the law, that you still simply say "in the interest of justice" in this particular clause.

Mr. Al-Rawi: Madam Chair, I think that is a very excellent observation. Sen. Mahabir is making us lawyers look bad today.

Sen. Dr. Mahabir: Bribing me? [*Laughter*]

Mr. Al-Rawi: No, apart from sweetening the pot, [*Laughter*] I think it is a good observation in all sincerity, and we can perhaps attend to the language by keeping it to the interest of justice.

Madam Chairman: Sen. Mark, you wanted to raise an issue?

3.40 p.m.

Sen. Mark: Madam Chair, I understand what the Attorney General is attempting to do in terms of incorporating what Sen. Chote has submitted. But, in the interest of justice I wanted to ask him, what is preventing the need for us to incorporate language that would generate full disclosure to the defence in a situation where there could be irregularity in the system, and innocent individuals can be affected by this clause 34 that we are proposing.

Therefore, I would ask him to reconsider his position on the matter of simply incorporating exceptional circumstances which, as I said, I understand what he is attempting to do. But why not allow full disclosure in matters like those that are before the court, Madam Chair? So it is a concern that we have and on principle I am concerned about this incursion. I have seen it for the first time, something ago, where some things were sealed and I said but, this is looking like a secret society. I think that, for instance, we live in a democracy—

Madam Chairman: Okay, Sen. Mark.

Sen. Mark: There should be full transparency, there should be full disclosure and therefore I am asking the Attorney General to reconsider this clause 34 and allow full disclosure.

Hon. Senator: Madam Chair—

Madam Chair: No, Attorney General. Sen. Sturge, one final comment? Sen.

Sturge.

Sen. Sturge: Yes, Madam Chair, I just wanted some clarification from the Attorney General. The Attorney General said that one way of redress for clause 34 would be for an appeal, but when I look at clause 34, the parties for clause 34 would be the party who is asking, the accomplice vel non or the DPP asking the court to seal this agreement. So how does someone who is now on trial and has to answer the allegations made by the accomplice vel non where does he get the locus standi to appeal—

Mr. Al-Rawi:—in those proceedings. I understand.

Sen. Sturge: Yes. That is one. And I am wondering if the Attorney General has factored into the mix the fact that at present, at common law, the judge in a trial where there is accomplice vel non has no power or jurisdiction to seal any record of what may have transpired with respect to that accomplice vel non. Those are my two issues.

Mr. Al-Rawi: Madam Chair, in answer to Sen. Mark, if I accept Sen. Mark's considerations that there be full disclosure, what is to prevent us from requiring full disclosure? To do that would be to interfere with current judicial capacity where every judge has the right to seal proceedings. Sen. Chote just gave us a live example in the common law where you can actually seal proceedings. So to provide a statutory prescription to say that all records shall never be sealed so that there can be full disclosure would be to interfere with the separation of powers principle and to have imposed upon the Judiciary an outcome for a matter for which it should have its own discretion. That is to answer it in its most pointed of forms and fashion. So the reason for providing for that which exists already in common law, subject to what Sen. Sturge has just said, which I will come to that in

a moment, is to allow for the judicial exercise to be to put in on a discretionary basis as we now propose in a fettered way for exceptional circumstances in the interest of justice.

Sen. Sturge has raised two very important points, firstly the locus of appeal and secondly, the fact that there is no manner in which a person in the vel non category can seal or sequest the evidence away from somebody who requires that evidence. Relative to the locus to appeal, Sen. Sturge is of course perfectly correct. The person in other proceedings who is neither of the two parties, that is, the prosecutor or the person in the capacity of vel non, obviously does not have the locus for an appeal on the record of sealing.

However, that person has, in the other court that that person is before, a right to subpoena the records or call for the records once met with the opposition of a prosecutor saying there is a record but it is sealed. There is nothing to stop that person from making an application to that court to have the records subpoenaed or produced. And I could not see what there is in that court itself, that is the lateral court, to prevent the court from considering whether that matter should be opened or not in the interest of justice and that there are other routes and remedies to get there.

The other point raised by Sen. Sturge which is that—and I will take it this way, that the common law right now is that there is no way that these kinds of records for vel non can be blocked. I am not in a position of certainty as to that, not that I doubt what Sen. Sturge tells me. I am not a practitioner in that area of the law and I am not aware of that being the position. But I would imagine that there is always the ability, subject to the evolution of the common law in the courts, for that matter to be treated with. What we are providing here is, in my view, a need

for the court to consider whether records should be sealed or not. That is not exceptional or outwits the court's current jurisdiction. Secondly, I think that we are improved by the circumscribing of the clause, by the inclusion of "in exceptional circumstances" and also by the use of in the interest of justice formula.

I do not think that I can move much further beyond that position. I am, of course, still minded to hear further amplifications if you permit it, Madam Chair, but the amendments that we proposed beyond inclusion after the word "may" of the words "in exceptional circumstances" would be the deletion of the words appearing in the last line after the word "interest" delete the words "of the effective administration". So that it would read "sealing of the record is in the interest of justice".

Sen. Mark: Madam Chair, if I may indulge you again. If what I just heard correctly from the mouth of the Attorney General—the lips I should say—if this already exists, Madam Chair, within the jurisdiction of the judges in the courts, why do we want to incorporate this particular provision? It is already there. They already have this discretion.

You see, Madam Chair—[*Interruption*]

Madam Chair: I think—Attorney General, would you like to answer that?

Mr. Al-Rawi: Yes, Madam Chair. That is true for almost every other clause in the Bill. The point is to put milestones down for judicial understanding because when the law is going to be interpreted as a whole, each section is going to be read against the whole of the law as a rule of statutory interpretation and therefore, it is important in the mind of the court to have certain milestones, whether they are expressed or implied, put along the way of the legislative prescription.

Sen. Mark: Madam Chair, may I say finally, because I will not disturb you again,

it is our view that this provision is a very dangerous provision. We believe that this provision is very oppressive, and we also feel that this provision can be used to induce people to do certain things that can be very detrimental to their well-being and it would be an affront to justice and therefore I serve notice that this clause 34 is not acceptable to our side and we will ask the Attorney General once again to reconsider this provision. I close my case on this matter.

Madam Chair: I do not think there can be much more to be said in respect unless you are going to add something that is completely different, Sen. Solomon.

Sen. Solomon: I want to ask a question. If I may, Madam Chair.

Madam Chair: Sure.

Sen. Solomon: Attorney General, I am just wondering if you have consulted with the DPP on this, because it seems to me as though we are running into a real risk of fettering with the judge's discretion. I mean I can see situations where similar fact, evidence could come into play and the rights of an accused can be seriously hampered by this section. Perhaps, it is ironic that it is clause 34, but in any event through you, Madam Chair, it is a very dangerous proposition and I think that, I would urge strongly that the Attorney General hold on this for the time being. Perhaps we can reflect and come back to it given the wide ramifications of—so I repeat my question through you, Madam Chair. Has the DPP been consulted on this?

Madam Chairman: Attorney General.

Mr. Al-Rawi: Sorry, Madam Chair, there was just a small emergency. I apologize. To answer the question posed by my learned colleague, we did request submissions from the Office of the DPP and did so on many, many, many, occasions and we have not received any negative response from the Office of the DPP. We have had

some discussions but we have not have any pointed response to Schedules and we do communicate on a regular basis. I have received submissions on other material but not on this.

We did have very strong advocacy for the inclusion of this clause from the drafter of the Bill, which is Mrs. Elder, as to the need to include this position and again this did arise out of the policy considerations beginning in the 2014 workshop, et cetera. I do note for the record Sen. Mark's submission which I understand. I do not respectfully agree with the position. I think that there are adequate safeguards in balance to those observations made by the hon. Senator, but I simply agree to disagree at this point on that point.

Sen. Mark: May I just put on the record, Madam Chair. This is about the sixth time we are being told that the drafter, one, Pamela Elder has put this into the legislation. Mrs. Pamela Elder, with the greatest of respect, does not make law in this Parliament. So what I am saying is that to tell us—[*Interruption*]

Madam Chair: No, Sen. Mark, I think your comments are noted. I think it is time that we bring the discussion on this particular clause to an end and first of all, Sen. Ramdeen, you are proceeding with your amendment so I shall put your amendment to the committee. Yes?

Sen. Ramdeen: Yes, I am, yes.

Question, on amendment, [Sen. Ramdeen] put and negatived.

Madam Chairman: Hon. Senators, the question is that clause 34 be amended as circulated by the Attorney General and further amended as follows, and please allow me to read what I have taken as the proposed amendment.

Sen. Mark: This is another clause 34.

Madam Chairman: "A Court may in exceptional circumstances, upon application

by either party or in its discretion, order that the records of plea discussions or a plea agreement be sealed, if the court is satisfied that the sealing of the records is in the interest of justice and the court shall give written reasons for the order."

Question put.

Sen. Mark: We want a division.

The Committee divided: Ayes 19 Noes 7

AYES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan. R.

West, Miss A.

Henry, Dr. L.

Singh, A.

Coppin, W. M.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Mahabir, Dr. D.

Roach, H.R. Ian.

Chote SC, Miss S.

Raffoul, Miss J.

Richards, P.

NOES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Dottin, C.

Question agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35.

Question proposed: That clause 35 stand part of the Bill.

Madam Chair: Sen. Mark, you had proposed an amendment?

Sen. Mark: Of course. I did. Madam Chairman, I noticed that the Attorney General did look at the Jamaican legislation and I also recalled when he was sitting on my side he was very firm on this matter of an affirmative and I am just following in his footsteps. And I would say in the interest of justice and because of the serious nature of this piece of legislation, that lawmakers should have an eye and should have a view via an affirmative resolution when:

"The Minister may, by Order…amendment the Schedule."

And as you know, Madam Chair, there are several forms that we will have to deal with as we proceed to the Schedules and therefore we are suggesting that we as a Parliament should have sight of this matter, and not allow it to be subject to

simply, before today period where I can generate a resolution to have it annulled.

I believe that the Parliament is making laws, and we should have sight of these laws, particularly Orders to amend Schedules, before those things are done and we should debate them via an affirmative resolution. It is against that background that we are supporting that the amendment be accepted and consistent with the Attorney General's own position when he sat where I am sitting some time ago.

Mr. Al-Rawi: Thank you, Madam Chair. While Sen. Mark may have paid some attention to me whilst I was on the other side in Opposition I certainly never once advanced a position that forms be addressed by way of affirmative resolution and I will explain why. First of all, there can be no greater force of measure of subsidiary legislation or legislation which is not contained in full parent law causing an effect than the rules created by the Rules of the Supreme Court. Under the Supreme Court of Judicature Act, rules produced by the Rules Committee are subject to negative resolution.

Secondly, the forms which are annexed in the Schedule are the only things that are proposed to be changed and the forms must be guided by the parent law, and the springboard clauses which if they become law will become sections which guide the content of the form. Therefore, the risk of mischief crawling into a form would be hardly possible because the forms must comply with what the parent law prescribes.

So, I respectfully do not agree that the forms should be amended by way of affirmative resolution because that would be to engage the entire Parliament for the measure of amendment which could be rather innocuous each time they have to be done. There is a balancing act in this equation and it is the negative resolution

route. We have on many occasions participated in Motions of that type and so I respectfully beg to differ with the point of view offered by Sen. Mark and to maintain that the rules instead be by negative resolution.

*Question, on amendmen*t, *[Sen. Mark] put.*

Sen. Mark: Could we have a division as well.

The Committee divided: Ayes 6 Noes 17

AYES

Mark, W.

Solomon, D.

Ramdeen, G.

Sturge, W.

Samuel, R.

Ameen, Miss K.

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste Primus, Mrs. J.

Rambharat, C.

Sinanan. R.

West, Miss A.

Henry, Dr. L.

Singh, A.

Coppin, W. M.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Roach, H.R. I.

Richards, P.

Dottin, C.

Dr. D. Mahabir, Miss S. Chote SC and Miss J. Raffoul abstained.

Amendment negatived.

Question put and agreed to.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed: That clause 36 stand part of the Bill.

Madam Chair: Sen. Mark, you have proposed an amendment.

Sen. Mark: Yes, Madam Chair. We believe that the regulations—we are proposing that in clause 36—Madam, may I enquire. Is the Attorney General deleting this clause?

Madam Chair: No, the Attorney General has circulated an amendment as well. [*Crosstalk*] He has circulated an amendment whereby he is deleting and replacing with a new class saying that:

> "The Rules Committee established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make rules for the purposes of this Act."

That is the amendment that will be dealt with after yours. That is the amendment proposed by the Attorney General. Your amendment, Sen. Mark, that is 36(2), is to delete the word "negative" and replace it with the word "affirmative".

Sen. Mark: I am very clear, Madam Chair, on that one. I am suggesting that amendment be carried.

Mr. Al-Rawi: Madam Chair, I admire such a stoic approach to one's position, but may I respectfully perhaps put forward a hybrid. I understand the rationale offered by my learned colleague, Sen. Mark, that there be more scrutiny involved in the process. Lifting out of that submission, I would remind that the proposal for the inclusion of the Minister and the negative resolution actually came from the Leader of the Opposition herself. I did think, bearing in mind some of the fulminations in the Senate, that we could perhaps move to a more stout position, perhaps a more improved position by following the usual course to allow the Rules Committee, headed by the Chief Justice and the combined team of persons to sit on the Rules Committee to come up with these and then to put it in the normal course to say that, let the Rules Committee do it and let it be done by way of negative resolution as is consistent with the Supreme Court of Judicature Act.

So, I do understand the proposal by my learned colleague. I think I have perhaps met him considerably along the way by the proposals which we will come to when you put mine to the floor.

Sen. Mark: Madam Chair, because the Rules Committee is headed by the Chief Justice, I believe it is even more incumbent upon us—

Madam Chair: But Sen. Mark, no, I think you are going to have to—that—[*Interruption*]

Sen. Mark: No, no, no.

Madam Chair: Hold on, hold on, let me finish. That kind of comment infringes the Standing Orders.

Sen. Mark: No.

Madam Chair: No, Sen. Mark try and put forward your argument in a different way, please.

Sen. Mark: Well, first of all, let me put on the record your interpretation is at odds with mine. I never meant it in the way that you have interpreted it. And I have not even been allowed to complete my sentence. But anyway, Madam Chair, if you have misinterpreted my statement I want to disabuse from your mind any aspersions. I cast none on anybody's character. So I just wanted that to be recorded.

What I was simply saying, because of the importance of these rules that are being advanced and because we understand the separation of powers principle, we believe it is important rather for the Judiciary to make rules and then they come to us and we subject them to a negative resolution. We would prefer that when those rules are made, they be subject to an affirmative resolution. So that we go through this exercise once and not go through it twice, [*Desk thumping*] because we do not want us to clash with the Judiciary. We want the separation of powers to be maintained and that is why, Madam President, we are submitting that it be done affirmatively. [*Desk thumping*]

Sen. Dr. Mahabir: Madam Chair, may I come in.

Madam Chair: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair, for recognizing me. Madam Chair, in clause 35 it states that:

> "The Minister may, by Order subject to negative…"—and I agree with that because the Minister is a Member of the Parliament.

But as far as I am aware, in clause 36, members of the Rules Committee are not Members of Parliament and I want to support the position of colleague, Sen. Mark,

that since they are not, all of the individuals I am sure are very competent, they know what they are supposed to do, but if they are to establish rules to put into effect an Act to which I am a party to, I certainly would like to have sight of these rules and be given an opportunity independently, given the separation of powers, to also debate these.

4.10 p.m.

And so, I too would recommend to the hon. Attorney General, simply because they are not Members of Parliament, that I would like to have sight and to be given the opportunity for the whole Parliament to debate these Rules if need be.

Mr. Al-Rawi: Madam Chair, may I assure Sen. Mahabir that the current provisions of the law provide for exactly his concern. Sight is hard when it is laid; opportunity to debate is up to you. You can move the Motion to have the Rules negatived. I myself have moved a Motion to negative Rules when I was in Opposition. So you have exactly what concerns you.

Madam Chairman: Hon. Senators, so I will now move to deal with the amendment to clause 36 as proposed by Sen. Mark.

Question, on amendment [*Sen. Mark*] *put.*

Sen. Mark: Division.

The Committee divided: Ayes 8 Noes 18

AYES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Mahabir, Dr. D.

Dottin, Pastor C.

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Sinanan, R.

Rambharat, C.

West, Miss A.

Henry, Dr. L.

Singh, A.

Coppin, W.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Roach, H.R.I.

Chote SC, Miss S.

Raffoul, Miss J.

Richards, P.

Amendment negatived.

Madam Chairman: Attorney General, can we now deal with your proposed amendment?

Mr. Al-Rawi: Yes, Madam Chair. The Government proposes that the clause be amended by removing the reference to the Minister making any rules, and instead providing for that which is normal in the circumstances of the Rules Committee making the rules subject to the negative resolution of Parliament consistent with the Supreme Court of Judicature Act. We think that this will go some considerable way to allowing for the kind of safeguard and protection that hon. Members were concerned about in the submissions made on the last proposal for recommendation by Sen. Mark, which I do understand but respectfully disagree with.

Sen. Mark: I certainly appreciate your disagreement. Madam Chair, in light of what the hon. Attorney General has advanced and consistent with my earlier argument, may I respectfully suggest and submit that we delete in this amendment the word "negative" and replace it with the word "affirmative". Madam?

Madam Chairman: Oh, you are proposing to amend the Attorney General's amendment?

Sen. Mark: Yes, of course. I am amending his amendment.

Mr. Al-Rawi: I understood it constructively, Madam Chair, to mean whether I would consider amending it, and then in default, a proposed amendment on it.

Sen. Mark: No.

Mr. Al-Rawi: I understand.

Sen. Mark: All amendments are subject to amendment, and I am supporting you. You should be complimenting me.

Mr. Al-Rawi: I compliment you, Sen. Mark, always.

Madam Chairman: So, hon. Senators, what I would have to do— Sen. Mark, the Attorney General has proposed an amendment, Sen. Mark has proposed an amendment to the amendment, so I am going to propose the amendment to the

amendment first. So I will, in the interest of clarity, read the proposed amendment of the proposed amendment.

So hon. Senators, the question is that clause 36 be amended as follows:

The Rules Committee established by the Supreme Court of Judicature Act may, subject to affirmative resolution of Parliament, make rules for the purposes of this Act.

Question, on amendment [*Sen. Mark*] *put*.

Sen. Mark: Division.

The Committee divided: Ayes 8 Noes 18

AYES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Mahabir, Dr. D.

Dottin, Pastor C.

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

West, Miss A.

Henry, Dr. L.

Singh, A.

Coppin, W.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Roach, H.R.I.

Chote SC, Miss S.

Raffoul, Miss J.

Richards, P.

Amendment negatived.

Madam Chairman: Hon. Senators, the question is that clause 36 be amended, as circulated, on behalf of the hon. Attorney General.

Question put.

Sen. Mark: Division.

The Senate divided: Ayes 19 Noes 8

AYES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

West, Miss W.

Henry, Dr. L.

Singh, A.

Coppin, W.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Roach, H.R.I.

Chote SC, Miss S.

Raffoul, Miss J.

Richards, P.

Creese, S.

NOES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Mahabir, Dr. D.

Dottin, Pastor C.

Question agreed to.

Question put and agreed to.

Clause 36, as amended, ordered to stand part of the Bill.

Clauses 37 and 38 ordered to stand part of the Bill.

Sen. Mark: Madam Chair, before you proceed to Schedule—

Madam Chairman: I am not proceeding to the Schedule just yet.

Clause 11 reintroduced.

Madam Chairman: Hon. Senators, this clause 11 was stood down.

Mr. Al-Rawi: Madam Chair, should it please you, we have had an opportunity to consider the very helpful arguments and considerations offered by hon. Members. We propose that we modify the language of both 11(1) and 11(2) by deleting at the end of each of those sub-paragraphs the words "the evidence against him" and inserting instead the following words so that clause 11(1) would read in total as follows:

> "If plea discussions are initiated before charges are laid, the prosecutor shall inform the suspect of the allegations against him and provide the suspect or his Attorney-at-law with a written summary of the relevant evidence against him including any evidence in the possession of the prosecutor which materially weakens the case for the prosecution or assists the case for the suspect."

Similarly, in subclause (2), deleting the words at the end of the subclause "the evidence against him". The entire clause would read by an insertion of the similar words just refer to in subclause (1), but the full clause would read as follows:

> "If a plea discussion is initiated after charges are laid but before the prosecutor tenders evidence implicating the accused person, the prosecutor shall provide the accused person or his Attorney-at-law with a written summary of"—similarly the words—"the relevant evidence against him

including any evidence in the possession of the prosecutor which materially weakens the case for the prosecution or assists the case for the accused person."

We believe that that should capture the considerations offered by hon. Senators. I am, however, open to further considerations.

Madam Chairman: Attorney General, just before the discussions begin, subclause (3), are you leaving it as you had proposed—the amendment?

Mr. Al-Rawi: Yes, Madam Chair, and the rationale for that was that the last part read as if it was a qualification of the type of offence. Forgive me, I had omitted to look at the first version. Oh, I am sorry. Sorry. Madam Chair, no, I do not propose on the version that was circulated. I propose simply the version as just read out to you. So we are proposing an amendment to subclause (1) and subclause (2) in terms just read out, in large part coming out of Sen. Chote's excellent suggestion that relevant evidence was critical and that we include the type of language which married into Part XVII of the Criminal Procedure Rules as well.

Madam Chairman: Okay. Sen. Sturge, you wanted to say something?

Sen. Sturge: Thank you. Yes please, Madam Chair. I do not know if in the interim, since the time we stood down this clause to now, if the Attorney General consulted to understand what is the difference in treatment between the common law on disclosure and the common law on disclosure as it relates specifically to the accomplice vel non. By the amendment, I see that the words "relevant" and "materially" have been inserted. Now, the difficulty is who determines what is relevant evidence, and who determines whether it materially—

Hon. Senator: The materiality.

Sen. Sturge: Yes, the materiality. At common law the general rules of disclosure,

the prosecutor is the one who, on an objective appraisal of the material in his possession, will make a determination whether (a), something is relevant and, (b) whether it materially affects or undermines the case for the prosecution. But I was hoping that the Attorney General would have enlightened the Chamber, after having spoken with whoever might be considered the go-to person on this type of provision, to enlighten the Chamber as to what is the distinction to be made, because as it stands, whilst the prosecutor has a discussion, and the prosecutor is the one who makes the decision on an objective appraisal of the evidence as to what is relevant and what materially affects, the prosecutor has no such discretion at common law.

So we are once more placed in a position where a party who stands to benefit from the plea agreement is being called upon to make a determination on issues where he is a party and there is a party to be affected. That is why I indicated earlier, and the amendment I suggested earlier, disclosed all of the evidence in his possession at that point would bring this statute into line with what obtains at common law for the accomplice vel non. So those are the two observations I have with respect to the amendments.

Sen. Chote SC: Thank you, Madam Chairman. Just one small thing, hon. Attorney General. We are talking about disclosable evidence in the possession of the prosecutor. When disclosure became an issue in common law many years ago this became a bugbear because prosecutors started saying, "Well if it is not in my file, or it has not been sent to me, then I am not in possession of it", and sometimes very valuable material was kept away from the accused person as a result. So this is why when I had made my proposal earlier, I had proposed that we use the word "the State". So if there is medical evidence, for example, at one of the hospitals,

the prosecutor has a duty to get it and disclose it. So I would respectfully ask you to consider—

Mr. Al-Rawi: Agreed.

Sen. Chote SC:—changing that word.

Mr. Al-Rawi: Yes, agreed. So that we would delete the words "in the possession of the"—well, we keep the "prosecutor" and say "the State".

Sen. Chote SC: Yes.

Mr. Al-Rawi: In the "possession of the State".

Sen. Chote SC: Yes. Thank you very much.

Mr. Al-Rawi: Madam Chair, Sen. Sturge asked a very important question. First of all, I wish to thank Sen. Sturge for bringing his expertise in this area to the forefront. Madam Chair, the only persons that we could get a hold of really in the context of any form of reflection on this was the Law Association, and the Law Association's specific recommendation was simply with respect to clause 11(1), the prosecution should be required to make disclosure of the evidence that favours the defence or injures the prosecution. Nothing more and nothing less.

I think that Sen. Chote has taken us considerably further and I thank the hon. Senator for that. So unfortunately I do not have much more of a response than that, and I am hoping that we can take it forward at this stage with the balances that we have. I am quite comforted that this still has to go to the attention of the court. The plea agreement coming to the court's attention under Part IV still has to receive the court's attention and that there would no doubt be some form of judicial attention as to the sufficiency of evidence at that point.

Certainly, we are also capable of having agreements vitiated, set aside appealed, withdrawn, in a number of circumstances that we provided for. So I do

think that there is enough due processing, safeguarding in this for us to settle upon a version in the terms proposed by the last circulated amendment as further attenuated by Sen. Chote's observations.

So, Madam Chair, the words for insertion would be in the two subclauses, subclause (1) and subclause (2). Instead of the words reading "including any evidence in the possession of the prosecutor", we change the word "prosecutor" to the "State". So it would be "State". Substitute the word "prosecutor" for "State".

Madam Chairman: So, hon. Senators, the question is that clause 11 be amended, as proposed by the Attorney General as follows:

In 11(1), to delete the words "the evidence against him" and substitute the following words:

"the relevant evidence against him including any evidence in the possession of the State which materially weakens the case for the prosecution, or assist the case for the suspect."

And in subclause (2), by deleting the words "the evidence against him" and substituting the words "the relevant evidence against him including any evidence in the possession of the State which materially weakens the case for the prosecution or assist the case for the accused person."

Question put.

Sen. Mark: Division

The Committee divided: Ayes 21 Noes 6

AYES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

West, Miss A.

Henry, Dr. L.

Singh, A.

Coppin, W.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Mahabir, Dr. D.

Roach, H.R.I.

Chote SC, Miss S.

Creese, S.

Raffoul, Miss J.

Richards, P.

Dottin, Pastor C.

NOES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Question agreed to.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Sen. Mark: We are going into the Schedule?

Madam Chairman: We are not going into the Schedule just yet, Sen. Mark.

New clause 34.

Madam Chairman: Sen. Ramdeen, you have proposed a new clause in your circulated list of amendments. Sen. Ramdeen?

Sen. Ramdeen: No I am looking at— am sorry, Madam Chair. I am just looking at the way in which the Attorney General would have addressed it in the landscape version of the document provided to us.

Mr. Al-Rawi: There was a separate sheet that we responded to Sen. Mark and to you on. Sen. Ramdeen, just to refresh your memory, it was the Minister shall cause to be laid in both Houses of Parliament annually a report on the administration of the Act, and our submission in the landscape separate document—that is the fourth document—was that the standing JSCs of the Parliament deal with these matters already.

Madam Chairman: Sen. Ramdeen, are you withdrawing your proposed amendment?

Sen. Ramdeen: Yes, I accept the proposal of the hon. Attorney General.

Madam Chairman: So you withdraw?

Sen. Ramdeen: So I withdraw.

New Clause 34 withdrawn.

Madam Chairman: Thank you. Sen. Mark, we are now going to the Schedule.

Mr. Al-Rawi: But before we go, because it may perhaps assist. Madam Chair,

there are some consequential amendments which the drafters have advised me are taken up as a result of what we have done in the body of the laws so far. With that said, Forms 3 to 7 would have certain consequential amendments. And what it would do in Forms 3 to 7 is to include the category appearing where we have "accused/defendant" in those forms it will now be "accused/defendant/suspect".

In Form 3 wherever the words "accused/defendant" appeared, it would instead be "accused/defendant/suspect" appearing right through, and that would also include the footers to the forms where the asterisks inclusion would happen in the manner in which it is used. Similarly, in Form 4 again, this is consequential taken up as a drafting style. Again, wherever "accused/defendant" was used it would be "accused/defendant/suspect". Similarly for Form 5, exactly the same, instead of "accused/defendant" it would be "accused/defendant/suspect". Form 7, exactly the same. Form 31, again it would be "accused/defendant/suspect", and that would be it. I am told by the drafting team that these matters are picked up consequentially in any event, but I have just expressed it for the sake of the record.

Madam Chairman: Sen. Mark, you wanted to say something?

Sen. Mark: Yes, Madam Chair, with your leave, I wanted to suggest to the hon. Attorney General—

Madam Chairman: Just one sec. Sorry. It is about the Schedule? Something in the Schedule?

Sen. Mark: It is a matter dealing with an insertion after clause 38 for the Attorney General's consideration before we go to the Schedule.

Madam Chairman: A new clause therefore?

Sen. Mark: Yes. Just want him to consider.

Mr. Al-Rawi: Sure, as it pleases you, Madam Chair.

Sen. Mark: With your indulgence?

4.40 p.m.

Madam Chairman: Well, could you just have the discussion and then before I put new clause and go through the formalities? Perhaps you can just discuss it and then we will see where it goes.

Sen. Mark: "When yuh say, discuss it now?"

Madam Chairman: Yeah.

Sen. Mark: Yeah, yeah, yeah, thanks. Madam Chair, through you to the Attorney General, I would like for you to consider reviewing this legislation and just as how you have proposed an annual report on the administration of this law when it becomes law, I would like to suggest that if you could consider an insertion to the effect that this Act shall be reviewed once every three years, right, through your office, and an appropriate report be tabled in the both Houses of Parliament.

The reason for it, we recognize that the last piece of legislation had a lot of challenges: 1999, 2017. So we do not have to wait for 18 years to go through a review to determine the challenges, the difficulties that we may have. So it would be incumbent upon the lawmakers every three years, given the significance of the legislation and the fact that you have really made a strong case for this being able to help in reducing the backlog. So you will want to do a review of what is happening with this legislation after a three-year period with a view to improving areas of weaknesses and/or deficiencies, and not leave it on the books for the next 10 to 15 years when a new Attorney General would have to come and—

So, I am just suggesting for your consideration, if you can insert a provision for a review of the legislation. I have suggested three years, you might come up with maybe two, you might say four, but the important thing is to allow the

lawmakers to review the legislation through your office. That is my submission, Madam Chairman, to the hon. Attorney General.

Mr. Al-Rawi: Madam Chair, I certainly understand the merit in that sort of observation. The one law that I have actually seen that prescribed in law was the Dangerous Drugs Act, never once used, actually still sitting in the Dangerous Drugs Act. I fear that the inclusion of a clause like this, whilst noble in intention, would not receive the kind of attention that it really does and I feel that we will be better served once we have allowed the new parliamentary system to produce the work products that the Joint Select Committees are coming up with.

We have only recently amended our Standing Orders to provide for these new standing committees which do revision of laws and drive work products. I think that we are not quite as mature as we ought to be on the role that the Legislature can assist with to the Executive's review of legislation and insofar as that is still something which is ripening in the legislative experience in the Joint Select Committee work of consideration of laws and how they work, I would prefer not to deal with that matter immediately. In any event, I do not have any policy direction on it one way or the other. So may I respectfully suggest that we defer that consideration as our parliamentary experience matures?

Sen. Mark: Madam Chair, one final submission. I know it did not work, based on what you have said with the Dangerous Drugs Act, maybe because of weaknesses on the systems and the personnel. But, Madam Chair, may I respectfully suggest that the Attorney General consider taking this matter to the Cabinet for a future decision so that future legislators can review legislation every three years as a matter of policy. And I just want to correct you on a matter.

The JSCs in our Parliament, there is not a specific committee that deals with

legislative review. Maybe we need to establish a committee that deals specifically with legislative review. But I really feel that as we modernize our operations, any real serious society would take into account regular reviews of their legislative framework and regime. So I ask you to take it to the Cabinet, get a policy decision, and maybe the next time, you will report some progress on this matter. Thank you very much, Madam Chair.

Mr. Al-Rawi: Thank you, Madam Chair. I note the recommendation. Well, just to put it on the record, as sitting Attorney General, I have responded to reviews on legislation from a number of Joint Select Committees in the current Parliament. So it is a work product that comes out of a number of committees. Secondly, the Law Reform Commission is also a material aspect of improvement and that is under some renovation by the Cabinet's perspective, so I will take on board the recommendations and see if we cannot find some kind of fit inside of there. I appreciate the recommendation.

Madam Chairman: So, Sen. Mark, having had the discussions, are you still going to insist?

Sen. Mark: No. It was merely a suggestion.

Madam Chairman: Sure. All right.

Schedule.

Madam Chairman: Attorney General, just to ask you. You did say that the amendments to the Forms are consequential and should come naturally because of what we have done in the previous clauses?

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: So that I do not have to put—

Mr. Al-Rawi: No, Madam Chair, no. I was just noting it out of an abundance of

caution and so noted.

Question proposed: That the Schedule now stand part of the Bill.

Sen. Mark: Are you going through these Forms one by one?

Madam Chairman: No.

Sen. Mark: Well, I think our colleagues have some concerns about the Forms. So they thought that when you talk about Schedule, you would say Schedule 1 or Form 1.

Madam Chairman: No, it is one Schedule with several Forms. It is up to Members to indicate if there is a question about a particular form. Sen. Ramdeen?

Sen. Ramdeen: Thank you, Madam Chair. AG, I was just wondering, when we did the judge alone, there were some forms that we had used there. They were very similar to these in relation to the persons who sought to represent themselves. We had improved on them in the select committee and I do not feel very comfortable that the Forms that we have here have taken into consideration on the same basis that—you will recall that when we were in the select committee, we had improved on them because we wanted to include that no threats or promises had been made to those persons whereas what you have done in these Forms is simply use the broad term of being voluntary. I was wondering we cannot improve upon it in the same way that we did in those because the purpose of the ones that we did in the judge alone was for the identical purpose of persons who are representing themselves.

If you look at Form 1A, you would see it being made plain there and I was just wondering if you would be so minded as to adopt the formula that we would have used in those Forms.

Mr. Al-Rawi: Sure. The two Forms that I looked at in reflecting, and I thank you

for making the observation, was Form 4 which is the statement of the accused/defendant which appears on page 27 of the Bill and then 1A. 1A is the suspect who does not wish to be represented by an attorney-at-law and the qualifications here are:

> "And whereas I have voluntarily and of my free will agreed to enter into plea discussions with the Prosecutor and—
>
> (a) I have (elected/not elected" to have a third party of my choice…
>
> (b) I have agreed to the plea discussions being recorded."

Just permit me one second.

Sen. Ramdeen: AG, perhaps I can just indicate to you. There is a formula that you have used in Form 4.

Mr. Al-Rawi: No one has threatened or forced me in any way?

Sen. Ramdeen: Yeah, at line six. Perhaps, if we borrow that, add threats in there because there is no threat. I think these are all in the positive.

Mr. Al-Rawi: Yes. I have no objection to that, Sen. Ramdeen.

Sen. Ramdeen: And you can then borrow that into 1 and we could be consistent throughout the Forms so that we achieve, I think, what you want to achieve in any event.

Mr. Al-Rawi: Okay. So if I look at it, Form 1 and Form 1A both have the two limited circumstances (a) and (b) described.

Sen. Ramdeen: Correct.

Mr. Al-Rawi: If we lift from Form 4—

Sen. Ramdeen: AG, your drafters do not have the version that we used in the judge alone here?

Mr. Al-Rawi: I will have to just double-check. Do you? No, we do not have the

judge-alone folder.

Sen. Ramdeen: If we had it, it may—I am just thinking that there will be—

Mr. Al-Rawi: I recall. We had actually borrowed from this to do the judge alone but what we had materially lifted was words to the following effect coming out of Form 4: no promises, agreements, understandings or inducements have been made to me other than those contained. Well, that one is qualified, not necessarily. But in particular, no one has threatened or forced me in any way to enter into this agreement.

Sen. Ramdeen: Right. Can we borrow that and put them back in 1 and 1A?

Mr. Al-Rawi: Sure. You want to give me a moment, Madam Chair, just to double-check with the drafters? Madam Chair, we propose—I am just reminding. One of the consequential amendments in Form 1 and Form 1A would be that we would be deleting paragraph B of those forms which say I have agreed to the plea discussions being recorded, because we have removed those in the substantive law. We are proposing to insert the words instead of paragraph (b) in both Form 1 and 1A: I have not been threatened or forced in any way to enter into plea discussions. So deleting what appears in paragraph (b) in both Form 1 and in Form 1A, and substituting instead the following words: I have not been threatened or forced in any way to enter into plea discussions, and that would ring in consonance with Form 4.

Sen. Ramdeen: AG, you are not putting the other part about the threats?

Mr. Al-Rawi: About threats? So: I have not been forced or threatened in any way to enter into plea discussions. We are putting that in.

Sen. Ramdeen: No, and the part about the promises.

Mr. Al-Rawi: That is the bit that we are looking at here now. You mean: no

promises, agreements, understandings or inducements have been made to me other than those contained in this agreement?

Sen. Ramdeen: Yeah, to qualify the voluntariness. You are already qualifying it in terms of no threats so it just follows that you should qualify it in terms of no promises. They fall one into the next. You want to add it as (c)?

Mr. Al-Rawi: Yeah, insofar as it is a qualification of free will.

Sen. Ramdeen: Yeah. Well, insofar as it is proof of voluntariness.

Mr. Al-Rawi: Yes. I have had a chance to pull up the language in the judge only and there was a very useful phrase here: no promise, inducement, threat, coercion or force of any kind was employed to secure my election of this mode of trial.

Sen. Ramdeen: Why do we not use that?

Mr. Al-Rawi: Yeah and now the exercise would be to convert it to the first person statement as we have in so (a) or (b).

Sen. Ramdeen: Well, why do you not just use one, AG, like what you did there? I think that covers it all, the both, so you can just have 1A.

Mr. Al-Rawi: Yeah, I am just looking at the language now.

Sen. Ramdeen: Sure.

Mr. Al-Rawi: You know, when I read the two side by side, it is properly captured in the language in the first person as stated because it covers threat, force, coercion of any kind. It is just stated in a first-person statement.

Sen. Ramdeen: So you want to do it as in the Forms now? You take from 4 and you bring back into 1 and 1A?

Mr. Al-Rawi: Correct. So as stated in the recommended language, and thanks for the double-check and caution, I think that we have captured it. We can add in the word "induced". So I have not been induced, threaten or forced in any way to enter

into plea discussions.

Sen. Sturge: Well, I have a concern, Attorney General, Madam Chair, through you, particularly where the—and since we are dealing with 1A which is a person is not represented, if we put into the Form, language which has technical meanings, for instance, inducement, the accused, not being legally trained, he is signing a document saying: I have not been coerced and induced and so on. But we have taken the time in the definition section to lay out in some detail what constitutes an improper inducement. So since this person is unrepresented, should we not—and since he is—before I go on—simply a party to the agreement and the prosecutor is the other party, perhaps, the Form must be drafted in a way to reflect that the prosecutor is also stating: I did not lead the suspect to believe that I was going to lay a charge without and so on or all of the matters adumbrated and enumerated from (a) to (e) in the definition section. So that it is not simply him saying I was not induced.

Mr. Al-Rawi: Understood, yeah. It is an excellent point. I think that we may have helped ourselves out of that dilemma by providing for the court to have the supervision, and reminding that we do have the Justice of the Peace certifying the matters on the page over. Because the Form comes up together with the event before the court and the court goes into matters including whether the rights were given by way of expressed notice, and the issue of competence is to be decided, I think that we could stop with the inclusion of the word, simply, instead of the two (b)s appearing in 1 and 1A, that we insert instead: I have not been induced, threatened or forced in any way to enter into plea discussions.

Sen. Sturge: I understand what—

Mr. Al-Rawi: I know. You want a concomitant obligation upon the prosecutor that

he has not, in the case of an unrepresented suspect, taken the extra distance of doing something which was untoward?

Sen. Sturge: Yes, and I say that and thank you at the same time for drawing my attention to the certification of the Justice of the Peace. Because when I look at what the Justice of the Peace has to certify, the wording of his certificate does not say anything to suggest that he has satisfied himself that the matters which may very well impugn the integrity of this agreement were not, in fact, present leading up to the signing of the agreement by the accused or suspect.

So that generally, when one looks at the—I think it is rule 4 in appendix B of the Judges Rules, when a Justice of the Peace comes to certify a statement and to certify that it was given voluntarily, the learning suggests that he has to itemize, he must not simply say: I hereby certify that the following statement was given voluntarily. He has to certify that he conducted an enquiry and the enquiry would be: I asked the accused if he was fed, he said yes; I asked him if he was deprived of sleep or if he had enough rest, he said whatever it is, and he goes through the entire list of the factors which may serve to impugn the admissibility of the challenged statement and that forms part of his certificate.

But this certificate here, at page 24, the certificate that comes up Form 1A, it is extremely deficient. I do not know if my colleagues would have any suggestion, but certainly, if the JP is performing what is, in essence, an integral task, then one ought not to be placed in a situation where he is simply saying this is what he is certifying in my presence, X, Y, Z. And it is not clear that when he certifies, as is the norm, when he certifies, he explains to the person, the suspect, listen, these matters, if any of these things happened to you, just tell me because it would mean that the statement you are giving is not a voluntary statement and therefore, he

writes at the end of the certificate: this is not a voluntary statement having regard to the questions asked and the answers given. So it is really a process where the JP itemizes all of those things that would impugn the integrity of that statement.

Madam Chairman: Sen. Mahabir wants to raise something, Attorney General, followed by Sen. Mark.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. Form 1 and 1A again, during the deliberations in committee stage, there was agreement and in fact, there was an amendment, that individuals will have access to legal aid, that is now in the text of the Bill itself. But when I read the first paragraph, I see that: and as:

> "…the Prosecutor has informed me as to my right to representation by an Attorney-at-law during plea discussions and I have informed the Prosecutor of my desire to represent myself."

Implicit in that is that this individual who is unrepresented has, in fact, consulted with an attorney, either of his own choice or one appointed for him, by legal aid.

But I would feel more comforted, Mr. AG, if I saw after the word "myself", "after consulting an attorney-at-law", because when we stop at the full stop "myself", what it says is that the prosecutor has informed me of my right to representation during plea discussions and I have informed the prosecutor of my desire to represent myself, but the Form does not impose upon the individual this obligation to have consulted an attorney-at-law, either one that he has retained and fired or one that has been appointed for him. And the issue is, the individual who chooses to represent himself may very well be the individual, as we said during the discussions, most in need of legal representation. So I am putting out for consideration for you that we simply add the words: "after consulting an attorney-at-law".

Mr. Al-Rawi: May I, Madam Chair? Let me repeat what I just heard. An obligation to have the person who is unrepresented consult an attorney-at-law. No one can force someone to consult an attorney-at-law if they do not want one. If one is in the position of having the legal aid applied to the situation, then one has an attorney-at-law if the legal aid attorney is accepted. So it is either you are represented or you are not represented.

The in-between situation at the point of saying: I will engage in a plea discussion, does not arise, because remember clause 6 says you have to have the written consent of the DPP; clause 10 provides the circumstances for safeguards for description of rights, et cetera; clause 24 requires that the court is going to go through certain procedures to ensure that these things were observed at the plea hearing stage. So there is progress and then we have now provided in 10 the obligation of the court to give expressed permission to enter into a plea discussion because you have now certified as to competence and the trawl through the various rights. So I think that we are on safe ground. I understand the observation, it is a good observation.

Sen. Sturge's point out that the JP's role under this Form is not in conformity with the Judges Rules. It is an important observation. However, what is proposed in this Form is simply a form which traverses the witnessing of this event. You see, we have the newly fashioned clause 10 specifically providing that the court must give consent for the suspect who is unrepresented to enter into a plea discussion. So we have not left it as we have had before, for just sign the form, say you do not want to be represented and then you progress.

So with clause 10 having the purview of competence being assessed by the court, of consent being assessed by the court, of the repertoire of rights having

been recited and the judge being satisfied that the person understands that, I think that we are on a safe ground and can distinguish ourselves from the application of the Judges Rules where the role of the Justice of the Peace is a little bit different.

I should correct myself, in Form 1A, we are not deleting the reference to video recording, it is only in Form 1. So in Form 1, we are proposing that (b) be deleted and that we go with the formula of words proposed, and in Form 1A, we keep (a) and (b) and we insert a new (c) which will repeat the same words that I just referred to in Form 1 itself, which will be: I have not been induced, threatened or forced in any way to enter into plea discussions. Those would be the submissions, Madam Chair.

Madam Chairman: Sen. Mark, you wanted to say something?

Sen. Mark: Madam Chair, just to follow up on what say Sen. Mahabir said a short while ago about inserting after "represent myself" in Form 1A or consulting with an attorney-at-law, my attorney or some attorney via legal aid. Attorney General, I think under the Universal Declaration of Human Rights that we are a signatory to and all this accompanying covenants and protocols, I think citizens of each member state are entitled, and the State has a duty to provide an attorney to those persons who are unable to represent themselves.

I cannot fathom a situation where I could be party to an arrangement where, for instance, a person is saying, listen, I do not want an attorney.

5.10p.m.

It just does not appear proper in a society, Madam Chair, where 80 per cent of the people who commit crimes are from the poor, marginalized communities of our country. Some of them "cyah" read, they cannot write.

Madam Chairman: Sen. Mark.

Sen. Mark: So the point I am making—

Madam Chairman: Sen. Mark, yes, that is it. I would like you to get to the point that you are making.

Sen. Mark: Yes, but the point that I am making is that I would want to insist that Form 1A be altered to include that attorney that that person would have a right to—that is mandatory.

Madam Chairman: Okay. Attorney General.

Sen. Mark: Now in addition, Madam. In addition; that is one point.

Madam Chairman: Yes.

Sen. Mark: The other point I would like to make, Madam Chair, is that in Form 1A, we should have provisions to deal with those persons who would need support from a third party, like, for instance, juveniles, persons who are vulnerable, persons who are mentally challenged. You know, Madam Chair, there are a number of people in Trinidad and Tobago who are under mental stress and they are not even aware that they are mentally stressed. So the reality is that you need to put into this form, provision that would safeguard the rights of those people.

And, therefore, I am saying, that just as how Sen. Sturge talked about an enquiry must be conducted by a JP, or maybe even a social worker, or even a psychiatric nurse, there must be provision in Form 1A where we add a (c) and a (d) and an (e), so that when people are signing these forms they know what they are doing and we are giving them the best opportunity so that their rights can be safeguarded and not crushed and not be misled by anyone, Madam Chair.

Madam Chairman: Attorney General.

Sen. Mark: So, I am asking the Attorney General to revisit Form 1A. Go back to the drawing board and come with a proper form to ensure that the rights are not

violated, of the citizenry.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes, Madam Chair. There is a sharp distinction between monistic approach and dualistic approach in law, as it relates to international law, and I am not prepared to rewrite the laws of Trinidad and Tobago immediately to take avail of the provisions recommended by my learned colleague, because we are purely a dualistic state.

The forms, as represented, are in keeping with the laws of the Republic of Trinidad and Tobago and I acknowledge the caution that my learned friend is surely pointing to, but I feel comforted that we are on the right track.

Madam Chairman: Sen. Sturge, are you raising a separate, new, different point?

Sen. Sturge: Four, actually.

Madam Chairman: No, with my leave, you would seek to raise it. What I am asking now, because we have spent quite some time on the Schedule, and I have allowed several questions on different aspects. Are you raising something that is different from what was raised previously?

Sen. Sturge: I am raising four new points that only became apparent from the answer of the Attorney General and from reflecting on the forms which I have not raised.

Madam Chairman: Sure.

Sen. Sturge: And to raise issues which come up in the case law. So, with your leave.

Madam Chairman: Yes.

Sen. Sturge: Madam Chairman, the Attorney General has indicated, because suggestions were made as to who is the best person to safeguard the interest of the

unrepresented person, the Attorney General has stated his position is that the Justice of the Peace is an adequate safeguard, but when I look at the forms, particularly the certificate of the Justice of the Peace, it simply states that:

> "I…hereby certify that the above declaration was signed by the Prosecutor…and the suspect…in my presence on…"—such and such a date.

So he is simply signing as witnessing two other people signing something.

Mr. Al-Rawi: Correct.

Sen. Sturge: That, with great respect—

Mr. Al-Rawi: Falls short of the Judges' Rules.

Sen. Sturge: It falls short of the Judges' Rules and I want to know how is this Justice of the Peace acting as a safeguard, if all he does is sign as witnessing something which took place, as a matter of fact. That is the first thing.

Mr. Al-Rawi: Madam Chair, we have traversed this particular issue already. I have answered that question already.

Sen. Sturge: Second thing. Well, that would also take care of the equality of arms aspect. And two things from the case law. This certification, certification in the Judges' Rules takes place in the absence of the other party, which is the police officer. So in this case, if the prosecutor is a party, should the certification of the Justice of the Peace, and the certification must be based on an enquiry he carries out, should it not be clear from the form that the certification takes place in the absence of the other party, which is the prosecutor, so that we can say clearly there was no coercion?

And lastly, I understand what the Attorney General has said, with respect to representation. But from what the case law suggests and what is the experience in court, our experience, people will say, as in this situation: "I do not want a lawyer",

and then when it comes to court they will say: "I never said that. I want a lawyer. No one told me about a lawyer," and so on. And thereby all of this would be a colossal waste of time unless the safeguards are put in up front.

So I am simply asking if we cannot put the safeguards in to prevent what is the norm in the courts where people sign statements saying: "I do not want a lawyer" and thereafter they say: "Look, I was forced to sign that" or "I did not sign it. I signed a blank piece of paper and I am now saying I want a lawyer" and invalidate all of the work that has gone before. Those are my four points.

Mr. Al-Rawi: Madam Chair, I understand, appreciate and thank Sen. Sturge for raising the positions that he has. We are not proposing to state now into these forms what are the Judges' Rules in the fashion that the Judges' Rules are used. We are using this simply as a justice of the peace, as an extra third party, because the accused has the right to bring a third party in, saying I saw both of these people sign. That is it. What is happening further—so that avoids the "I sign a blank paper. I did not know what I did", because somebody else was there.

Secondly, I remind that in the improved clause 10, we are specifically providing the new subparagraph (c) to the first, that is 10(1)(c). The court has been informed of the matter set out in (a) and (b), the traversing of all of the rights that you wanted to represent yourself, that you signed the form, et cetera. The court is satisfied that the accused person is competent to enter into the plea discussion and conclude a plea agreement and approves of the initiation of the plea discussion. Sothe safeguard inside of here is really the operationality of that exercise of analysis by the court as to competence, capacity, fairness, equality of arms, et cetera, which is why we are not really hanging our hat upon the normal operation of the Judges' Rules.

In those circumstances, we propose that the form be amended, just in the limited circumstances, as improved by the recommendations of Sen. Ramdeen, as it relates to inducement and other threatened capacity.

Question proposed: That the Schedule be amended as follows:

> In Form 1 by deleting (b) and inserting instead the following words: "I have not been induced, threatened or forced in any way to enter into plea discussions";
>
> and that Form 1A be amended by introducing a paragraph (c) with the words: "I have not been induced, threatened or forced in any way to enter into plea discussions".

Question put and agreed to.

Schedule, as amended, ordered to stand part of the Bill.

Question put and agreed to: That the Bill as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be read a third time and passed.

Sen. Mark: Division.

The Senate divided: Ayes 23 Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Henry, Dr. L.

Singh, A.

Coppin, W. M.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

Mahabir, Dr. D.

Roach, HRI

Small, D.

Chote SC, Miss S.

Creese, S.

Raffoul, Miss J.

Richards, P.

Dottin, Pastor C.

NOES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Question agreed to.

Bill accordingly read the third time and passed.

Madam Chairman: Hon. Senators, at this juncture I think we will take the break. So we will suspend until 6.00 p.m. So this sitting is suspended until 6.00p.m.

5.25p.m.: *Sitting suspended.*

6.00p.m.: *Sitting resumed.*

Madam President: Hon. Senators.

Sen. The Hon. F. Khan: Madam President, I am not seeing the AG, but if you could suspend for 10 minutes and let us see where he is. Okay? I will appreciate it.

Madam President: Hon. Senators, I will suspend the sitting for 15 minutes. We will come back at quarter past six.

6.01 p.m.: *Sitting suspended.*

6.14p.m.: *Sitting resumed.*

Madam President: Hon. Attorney General. [*Desk thumping*]

BAIL (ACCESS TO BAIL) (AMDT.) BILL, 2017

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): I smile, Madam Chair, because I walked into the Chamber a second too late, and I apologize for being engaged in business elsewhere on behalf of the Government and just making it back to the Chamber.

Madam President, I beg to move:

That a Bill to amend the Bail Act, Chap. 4:60, be now read a second time.

Madam President, I stand before the honourable Senate this afternoon, now this evening, asking for consideration for another critical part of the laws of Trinidad and Tobago, which the Government holds the view, ought to be reviewed.

This Bill comes on the back of several others, having dealt so far with the experimentation and election of judge-only trials, having dealt with a Bill to propose the decriminalization of motor vehicle offences, the introduction of a demerit points system, the introduction of red-light traffic cameras, and for the amelioration of the laws, as it relates to the enforcement of motor vehicle and road traffic legislation in and of itself.

This Bill comes on the back of the Government's persuasion that it is high time that we consider the abolition of preliminary enquiries, so being the statement for consideration by no less a person than Sir Hugh Wooding in 1962.

This Bill comes on the back as well, of a fulsome discussion that we have just ended a short while ago, in relation to the utilization of plea discussions and plea bargaining as a method to quicken the system of justice.

These particular pieces of law, those which I have mentioned, those which also meet with the operationalization side of the laws that the Government has spent time on, in particular in the introduction and implementation of the Criminal Procedure Rules, come together to treat with the number-one issue in our country, which is the manner in which we as a country grapple with the scourge of crime.

In preparing for reflection on the improvements to the Bail Act, Chap. 4:60, I went back to the 1994 debate offered by the then promoter of the Bill, Keith Sobion, when in 1994, we were seeking to amend the law, as it relates to bail, by putting into statute the common-law perspectives in relation to bail. In fact, that Act, Chap. 40:60, the Act which we now contemplate, came about at a very unique time. Act No. 18 of 1994, came into operation on the 15th of September,1994. But starting in 1994 was this whole conversation about the balancing of rights of individuals.

Section 2 of the Constitution declares our Constitution as the supreme law of our country. Our Constitution, of course, prescribes that we should make law for the peace, order and good governance of our society, but entrenched in sections 4 and 5 of our Constitution are the reflections which our society as a democracy holds and holds in particular in the balancing of rights which come about in a debate which focuses on amendments to the Bail Act.

What is bail? Bail is the consideration which a court gives and grants in certain circumstances to ensure that persons who are charged and who are bound to appear before the courts for a trial can be released but are ensured to return to meet their commitments to attend and stand for trial.

The balancing of rights, I think, can be properly centred by a reflection between section 4 and section 5 of the Constitution. Section 4(a) of the Constitution is, of course:

> "the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof, except by due process of law;"

But section 5(2)(f) of the Constitution certainly does also provide that no law:

> "may deprive a person charged with a criminal offence of the right:
>
> (i) to be presumed innocent until proven guilty according to law, but this shall not invalidate a law by reason only that that law imposes on any such person the burden of proving particular facts;
>
> (ii) to a fair and public hearing by an independent and impartial tribunal; or
>
> (iii) to reasonable bail without just cause;"

I have just reflected upon two positions contained in the fundamental rights provisions of our Constitution.

But what I would like to point out as absent in the section 4 and section 5 rights is a right which is something which I think our society is considering properly on a constant basis and which finds itself in the constitutions of some other countries. And that is whether there is a right to a speedy trial. You see, whilst there is a right to a fair and impartial tribunal and trial, and whilst there is certainly no prescriptive mandatory sense that one can say to a reasonable time frame for a trial expressed in our Constitution, our society is now at the place where, in our discussion, speedy trials is a question.

And this concept of speedy trial, or lack thereof, finds itself centre point into a discussion on bail. And it does so because, in balancing the rights to see whether we achieve a section 4(a) right, whilst observing a section 5 right, including the right not to be denied reasonable bail, somewhere in between the reality of Trinidad and Tobago that the gap between an allegation or a charge and a conviction is a wide chasm which, in some instances, can last upward of 20 or more years.

We have given the celebrated examples or infamous examples of preliminary enquiries going on to their 17th and 18th year. We have already given the example of the State of the Republic of Trinidad and Tobago paying for justice protection or witness protection for one case alone, as I am aware, over $40million to ensure the protection of witnesses to attend a trial. But inside of our existing system of bail, inside of the Bail Act, falls to be a square analysis of where our country stands in relation to the prison system.

Now, it is a matter of public record that the Office of the Attorney General,

Ministry of Legal Affairs, as an order of first enquiry and report upon statistics to the people of Trinidad and Tobago, sought to engage in the litmus testing of what was going on with our criminal justice system by understanding what the pace of movement and consideration and treatment in our prison system look like.

I wish to put on record the words appearing in the Inspector of Prisons 2012 report, and this was submitted by Daniel I. Khan, Inspector of Prisons 2011/2012, what I think was the best-written Inspector of Prisons report that I have come across. And the report started off, the cover of it is a reflection of the dark passage of what the conditions of slavery look like, pictorially represented. But the inspiration written in the report, as having been ascribed, was a dedication to the hon. Madam Justice Carol Gobin for her judgment in Collin Edgehill v the Commissioner of Prisons and the Attorney General and that is in the matter No. 3178 of 2004, which was an unreported judgment. And I want to put on record these words of Madam Justice Gobin in Edgehill at paragraph 31:

> The atrocities of the slave trade, as well as indentureship are well known to us and have been part of our history. Some of the conditions at the Remand Yard are not so different from those experienced by our forefathers.

I have reflected upon conditions at the prisons, because in the Government's exercise to gain statistical reflection of what was going on at the prisons, and let me put it in the context of the Bill, the Bill is really a very simple Bill before us; the Bill as amended in the House of Representatives is a whole five clauses long.

First clause is in relation to the short title. Second clause is the commencement. The third clause is a definition or interpretation, one-line clause. And then in clauses 4 and 5, we deal with amendments to section 12 of the Bail Act, section 17 of the Bail Act, and in clause 6 we insert a fourth Schedule. So

there are three substantive clauses to this. But the purpose of laying the groundwork to explain the rationale behind the amendments to section 12, section 17 and the Schedule of the Bail Act, Chap. 4:60, lies in this understanding of what is going on (a) in our court system, (b) in our prison system.

And in looking at the prison system, Madam President, it is important to reflect upon what is happening in our population-by-population consideration across the institutions. This bit of legislation, which is intended to improve the access to bail, centres and squares upon the number of prisons which we have. It centres and squares upon the fact that we have eight prisons, one industrial institution. The Port of Spain Prison built in 1812; Carrera Convict Prison built in 1877; Tobago Convict Prison built in 1902; Golden Grove Prison built in 1940; Remand Prison built in 1950; Women's Prison, 1970; Maximum Security Prison, 1998; Eastern Correctional Rehabilitation Centre, 2010; and, of course, the industrial institution, the Youth Training Facility in 1949.

But when we looked to the capacity occupation inside of those prisons, as at 2015 to 2017, the period between there the prison population has roughly stayed because of the number of inmates out and the number of inmates in, it has pretty much been a fixed ratio.

At the YTC there is a 40 per cent occupation capacity, 225 persons. Golden Grove, a 67 per cent capacity, 430 persons being the capacity. At Women's Prison, of a capacity of 158, there is a 32 per cent occupancy, 50 people there. At Remand Prison, where the capacity is 655, the population is on average 1,030, or 157 per cent of capacity. Maximum Security Prison, a capacity of 2,453, there is a capacity roughly of 39 per cent or 971. In the Port of Spain, Frederick Street Prison, with a capacity of 250 people, there are 725 people, or it being at 290 per cent capacity.

6.25 p.m.

At Carrera Convict Prison, with a capacity of 185, they are standing at 108 per cent capacity. At Eastern Correctional Rehabilitation Centre, they have a capacity of 500. They are at 32 per cent capacity with 158 people. At the Tobago Convict Prison, they are at 170 per cent capacity having 53 out of 30 people. Statistically, we looked further into the prison system and we can say that our prison population is comprised of convicted persons, yes, persons who are there to serve time until it is duly carried out—the process of protection of the prisons in place as it is supposed to exist in law—but of the remanded population or persons who are awaiting trial, there are a total of 2,227 persons remanded across the several institutions. Of the position last taken at March 09, 2017 that number stood at 2280, but here is what some of the deeper analysis looks like.

The number of persons who were on bailable offenses were 1,170. The rest of them there for non-bailable offences, meaning they are there for murder. Of the 1,170 persons on bailable offences, 839 of those persons were granted bail. That 71 per cent of the people who were remanded into custody have been granted bail under the provisions of the Bail Act, Chap. 4:60.; 71 per cent of them are there but cannot come out of incarceration because they have not satisfied the conditions of bail. Persons on bailable offences but who are not granted bail, that is, bail was considered but the court refused to grant bail—whether it is under section 6 or other provisions of the Bail Act—that is 331 of them or 29 per cent.

In that remanded population, we have seen as well that persons are remanded and standing on bailable offences for matters including sacrilege, matters including possession of marijuana, matters including forged currency, maintenance arrears, obscene language, unlawful possession and throwing of

missiles. They range from quite serious offences, sexual offences, aggravated assault, et cetera, down to matters such as that. Madam President, 71 per cent of the population standing in a position where a court has considered their matters and said you can go free into liberty to await your trial.

In the analysis that we conducted in the prison system, we went a little bit further. We did an estimation of the cost of keeping persons in remand and we came up with a conservative figure of anywhere between $20,000 to $25,000 per person on remand, and we certified it by way of an inspection of the prison records that, in fact, there were persons who were in remanded conditions for over 15 years. The category ranged zero to five years, five to 10 years, 10 to 15 years and over 15 years. And we disaggregated the number, we saw that 12 per cent of the prison population, of the 2,200-odd people, 12.03 per cent of them had been there for more than 10 years. Madam President, 33.88 per cent had been there for more than five years and 54.09 per cent of them had been there for under five years.

When one extrapolates the figures, taking an average of $25,000 per head—and let me explain that figure—that includes the maintenance of the prison service, the transportation for prisoners, the meals and overhead and upkeep of prisoners. It also includes the trip to court, the fact that a prosecutorial system is maintained to deal with the system of persons who are remanded and brought to court from time to time. When we did the averaging out, we came up with this figure of $25,000. But when you extrapolate the percentages of persons who have been there over 10 years or between five to 10 years or under five years, for the 12 per cent who were there more than 10 years, that is 268 people multiplied by $25,000 per person multiplied by 12, multiplied by 10 years, we get a small sum of $804 million. When we multiply the 757 people or 33 per cent who were there for between five

to 10 years, we take 757 multiplied by 25,000, multiplied by 12, multiplied by five, we get $1.175 billion.

[MR. VICE-PRESIDENT *in the Chair*]

When we take the number between zero to five years, average it out, we take the 1,206 people times 25,000, times 12 times three, we get $1,085,000,000. That is what it cost the Republic of Trinidad and Tobago to look after prisoners who are remanded for the range of matters that I have just described, from the very serious to the quite innocuous seemingly on paper.

I would like to ask. If I took $1.1 billion and I divided it by 757—that is per person—who in this country believes that we could be spending $1.1 billion in five years to look after 757 people? That has got to be a lot of money for the State of the Republic of Trinidad and Tobago to be considering. Now, I do not propose to reduce this debate to a simple saying that look, the Government is saying it is expensive to keep people in jail. That is part of the discussion yes. I am trying to paint the picture of what the cost of maintaining the system looks like if we do not think of alternatives, because there is a competition of rights.

An accused is presumed innocent until proven guilty. An accused is awaiting his trial, but the victim who believes that the accused is, in fact, guilty and who wants the protection of the law is equally interested in understanding that there is some form of justice for that person being brought to trial and being deemed to serve a sentence after due process has been carried out. And in this balancing of rights, our current system tells us 71 per cent of our population of remandees are in incarceration having the State spend significant amounts of money to get there. Is it that the Government's position can be simplified to the fact that, well, let us just release everyone? No. That is certainly not the case. We do believe that there is a

concept called conditional release or supervised or monitored release, which is where the operationalization of the electronic monitoring laws comes into effect.

But what we say is that we have an opportunity as a country to treat with improvements to the Bail Act and improvements to the Bail Act which perhaps treat with several issues at once. Number one, that there is a recognized undue preference on the part of the courts of the Republic of Trinidad and Tobago to centralize the focus of bail upon the securing of immovable property or land. In other words, every court wants every person who has to access bail to roll up with a piece of land.

The Deosaran report, one of the many reports that factored the position in relation to the remandee position, clearly said that 97 per cent of the remandee population are persons who come from well below the poverty line and are not landed persons with easy access to real property.

In the Bail Act, one accesses bail by a court considering the provision of a surety or a security. There is no definition of surety, there is no definition of security, but when we look to the interpretation that can be had in reading the law as a whole, we see that surety and security refers to a range of things. On the security side, it may include moveable, valuable assets or real estate. On the aspect of surety—that is someone who stands up for somebody who is going for bail and says: "I enter into recognizance that I will ensure that this person turns up to answer their case at court, and if I am wrong I sign a form and you can treat with me by negative consequence in making sure that my surety is forfeited." Surety and Security.

But the practice in our courts is, notwithstanding the fact that the Bail Act says you should only exercise the provision of security in circumstances where you

believe that there is a genuine flight risk for the person, an absconding accused where there is risk of a flight, you should really ask for some form of security, it has become the habit and fashion that the courts ask for security. But what exists in our country is the other opportunity we have to treat with. This Bill proposes that we put into law that which is known perhaps to the magistrates or judicial officers the fact that you can use immovable property. This Bill proposes the utilization of cash, of certified cheques and, very importantly, of the use of instrumentalities from licensed financial institutions which is in the form of bonds or securities.

We do not propose that those bonds are to be read in the fashion proposed by the two jurisdictions that have the use of bailors or professional bonders which are the United States and the Philippines, where there is a system of forfeiture of bonds, and you can actually deal with it as an absconding debtor. We do not propose that, but we spell out in the amendments to section 12 of the Bail Act that you can actually have these forms of security offered. But the practice in Trinidad and Tobago, apart from ensuring by way of insistence that people must be landed or have real property to secure bail, is that the courts are turning a blind eye to a system of professional bailors.

It is true that section 19 of the Bail Act, section 18 of the Bail Act and section 17 of the Bail Act—sections 17 and 18 provide for the criminalization of persons who agree to offer an indemnity for the provision of bail and that is at clause 18; offence agreeing to indemnify surety in criminal proceedings and section 19 of the Bail Act, Chap. 4:19, there is an offence to stand surety on consideration of property being used as security.

In other words then, you cannot go and offer the same piece of land as the security for offering someone's bail or accepting someone's bail if you do not have

the courts expressed provision and consent to do that. But the system of professional bailors in our country has seen the courts of this land turning a blind eye to the expressed provisions of section 18 and section 19 of the Bail Act, where professional bailors trawl the courts on a daily basis, realize that someone needs to access bail, offers to stand bail for the person, turns up with the conditionalities for bail which are: a certified copy of your deed, your land and building taxes receipt, your forms of identification, et cetera, has the matter checked by a Clerk of the Peace or by the court if that is the position, and then the property is secured for the person's bail and release, but that professional bailor is levying that charge, a quantum of cash from the person who is trying to access the bail.

What this Bill seeks to offer is an alternative and cleaning of the system. And I say so, particularly, when we look to the fact that in the instrumentalities that we provide in clause 4 of the Bill which allows for an amendment of section 12 of the Bail Act, that we are allowing for the provision of cash, certified cheques and bonds offered from licensed institutions.

But, Mr. Deputy Speaker—Mr. Vice-President, forgive me, this matter of the professional bailors is something which does admittedly require a better supervision from a legal administration perspective from the State's end which is where the Ministry of Legal Affairs arm of the Office of the Attorney General and the Ministry of Legal Affairs comes in because what we have had is an unreliable system of data management for the records of land registration in our country.

As we are implementing the improvements to the land registration system, very actively, and which will come to the focused attention to the Parliament in the month of September, the fact is that this system of unlawful bailors in breach of sections 18 and 19 of the Bail Act is, in fact, a continuing ill in our society which

should be dealt with, because we are offering, by the provision of this law, the ability for someone to instead of paying a $10,000 or $20,000 of whatever the quantum sum may be to the professional bailor to instead achieve the cash accumulation or provisional security for a licensed institution to lend a form of security for the provision of bail. That is going to require some degree of agitation in the financial market for this kind of system. It does not go as far as the system of regulated or Federal related bail bonding system as the United States of America or the Philippines where that system has fallen into significant amount of criticism, but it certainly goes some considerable way to achieving the desire of easing the burden for the most impoverished people of our society to access bail without the utilization of professional bailors. It does something further.

It allows by the use of certified cheques and by a system of accountability in the prison system or at the court registry for a source of declaration of income or money use for the provision of bail and, in particular, as it relates to surety or as it relates to security. So clause 4 of the Bill, in amending section 12 of the Act, causes an insertion for recommendation, consideration by the honourable Senate for security to be given in the form of cash or certified cheque where the amount of securities under $10,000 or less; certified cheque where the amount of security is greater than $10,000, a bond issued by a licensed financial institution as defined by the FIA or a charge on immovable property.

What we have done is to next take alive the recommendations arising out of the last Government, because there was a policy position produced by the last Government in the Ministry of Justice which recommended that accessing bail was a problem when the court registry shut down or the cashier shut down, and at once bail has been granted, that there should be some form of ability for another

authorized entity to receive the mechanisms of security and clear the person off. That is where we see the provisions for the Commissioner of Prisons to allow for the acceptance of the forms of security. The exchequer and exchange legislation Act allows for provision of that form of operationalization as that law clearly contemplates—that law having stood on the books of Trinidad and Tobago for, I believe, since 1938 onward, but we are seeking to actually prescribe now a method of balancing the books by the Commissioner of Prisons in the context of the laws of the Republic of Trinidad and Tobago.

We are by way of proposition of a new subsection (4B), (4C), (4D), (4E) and (4F) which allow for the Commissioner of Prisons to keep a proper record, prescribe the dates and times when the prisoner officer designated may accept security, et cetera, and in subsection (4F), we propose that the Minister may by Order amend the Fourth Schedule, the Fourth Schedule being the times during which you can accept the conditions of bail at places other than the court so usually set up to collect the provisions set up in terms of the conditionalities of bail

Clause 5 of the Bill proposes amendment to section 17 of the Act, and what we do here is we are seeking to treat with the conditions dealing with forfeiture of security or recognizance. Section 17 of the Bail Act, of course, we propose an amendment to subsection (2). We are keeping subsection (1). Subsection (1) says:

> "Where a person has given security in pursuance of section 12(4), and the Court is satisfied that he failed to surrender to custody, then, unless it appears that he had reasonable cause for his failure, the Court may order the forfeiture of the security."

As it stands, subsection (2) in the existing law provided:

> "Where a Court orders the forfeiture of security under subsection (1), the

Court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order."

We are proposing now that we break subsection (2) into its individual elements. We allow that:

"Where a Court orders the forfeiture of security under subsection (1), the Court may—

(a) order that the forfeiture…"

To the full value less the amount or:

"(b) where the defendant gave his own security but failed to surrender to custody, allow the defendant on application made within seven days of making the order for forfeiture to show cause why the forfeited security or part thereof should be returned."

And that is an important provision of show cause.

We then go further to deal with the concept of improving forfeiture in circumstances where the security has not been forfeited but we have had a conviction, that security is still available and there is some degree of fine imposition which has to be met or compensation which has been ordered by the court, we are now expressly providing that there is an ability provided that the defendant gives his expressed consent that the application of security can be provided to meet with fines imposed on the defendant or compensation ordered by the court, and that, of course, if there is any remaining balance, that the sums in excess are returned to the defendant.

We, of course, except out the application of this general principle which is where we are recommending after conviction the sums so kept by way of security

being applied for fines or for compensation, we are excepting out from that the case of security given by a surety.

What we do next in clause 6 is rather simple, we simply propose the introduction of a Fourth Schedule. There was not one in the law previously, and in this Fourth Schedule, we are proposing that we allow for hours of operation between 8.00 a.m. to 6.00 p.m. at the prisons: Monday, Tuesday, Wednesday, Thursday, Friday and Saturday and so that can take care of someone having had a matter dealt with at court but missing the court times and having the prison system deal with the receipt and accountability of sums or matters received by the prisons to meet the conditionalities of bail.

The intention of this Bill is very simple. It is squarely designed to treat with improving the access to bail. It is squarely designed towards encouraging the courts to move away from a preponderance of focus upon immovable security or land. It is to take care of the clean-up exercise which can be given by way of utilization of certified cheques, by way of bond systems. It is not to be equated with the use of professional bonds as used in the United States or the Philippine where there is a regulated form of security both at Federal and state level in the United States which allows a bail bonder to actually collect debt by way of bounty hunting, et cetera.

It is specifically designed, this law, to treat with the unregulated elephant in the room—the elephant in the room standing as the improper utilization of professional bailors in our courts in Trinidad and Tobago. I know that Senators who have practised or pass through the Magistrates' Court will see the many touts or the bailors on a constant basis. It is also intended to bring to live the provisions of the Exchequer and Audit Act which allow us to use alternative forms of security

and methods of payment, et cetera. This law is squarely intended to articulate with the exercise of conditional release, which is being activated by the Government in bringing to life the electronic monitoring law which has not so far been implemented after passage in 2011 to today's date.

It is intended to the treat with the backlogging system and case log mapping that we have done with the Judiciary to analyze the cases which are now very far in arrears where the whole concept of a trial within a reasonable time is itself on trial. It is intended to balance the rights between the victim and the accused. It is intended to avoid the circumstance of the whole argument where recidivism comes into question—are with incarcerating persons and then breeding criminals in jail? Do we want to keep certain categories of people out? Do we want to manage the conditionality of release? But this bail fits squarely—this concept to bail adjustment, this concept of amendment to section 12 and section 17 of the Bail Act and the inclusion of a new Schedule fits squarely within the matrix of improving access to bail within the manner in which we contemplate the criminal justice system should be adjusted.

I look forward to observations of hon. Senators onto this Bill. I understand that there may be some heartfelt views one way or the other. The Government is open to considering all perspectives and, in those circumstances, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wayne Sturge: Thank you, Mr. Vice-President, for the opportunity to join this debate and to add my 10 cents on the provisions on the proposed amendments. Mr. Vice-President, as a member of the Senate and a member of the Criminal Bar, I am placed in the invidious position of having to stand up here today given what

obtains in our society with respect to violent crime, it is difficult to understand why we are taking and using precious parliamentary time to debate a Bill like this.

You see, it is very awkward for us to stand up here and debate measures which, in essence, will open the floodgates for about 839 persons. [*Desk thumping*] And if I reflect on the family of the 13 year-old and his caretaker whose life came to a violent and sudden end in Malabar last week, how can we as a Senate justify this sort of legislation keeping in mind what the police are saying about who are the main offenders [*Desk thumping*] because the police theory at this point—

Mr. Vice-President: Senator, let me just caution you on that particular matter in the event that there is a case forthcoming in regard to that. Just be very careful how you move forward.

Sen. W. Sturge: Well, yes, I understand the caution, but since there is no charge, and given the record of the police service there might never be a charge [*Desk thumping*] then sub judice is not an issue. You see, my issue is that as a member of the Senate that I have to stand up here and then face people when I leave here and justify passing a Bill which will allow, in particular, violent repeat offenders to be back on the streets. [*Desk thumping*]

You see, I understand the changes being made by the Attorney General, but I do not see that there is a clear policy in this Bill. I understand what the Attorney General is trying to achieve, but I do not believe the policies have been clearly demarcated and let me say why before I go into other issues. You see, we have at stake 839 prisoners who may, if this Bill works—and I suggest it is highly unlikely that it will not work, but in the event it works, there are 839 persons who may be freed.

Now, I understand what the issues in terms of the criminal justice system are

and I sympathize mainly with first-time offenders. When I sit in the Joint Select Committee on National Security, the Attorney General would agree, I have said time and time again that we as a Parliament we need to protect first-time offenders from the Remand Yard, because if you do not protect them from the Remand Yard, it does not take long for them to be indoctrinated into the violent culture of Remand Yard [*Desk thumping*] and when they eventually return, they return a very different person to when they entered.

Hon. Senator: Worse off.

Sen. W. Sturge: Yes, worse off. So I believe that this Bill should, at least, have some sort of Schedule or some sort of policy dealing with different types of offenders. Let me say this. My view is if you are charged with a summary offence—obscene language and throwing missiles and all these things—I cannot understand why—given the fact that the maximum sentence is 30 days hard labour—you are not entitled to own bail, and that is what I was hoping this Bill would have treated with. [*Desk thumping*] Because if you are standing here and telling me there are persons who are in jail for periods in excess of what the maximum sentence is, then it is within our power to amend the legislation so that these persons when they are charged, they are entitled to own bail as of right. [*Desk thumping*]

7.00 p.m.

Because many of these simple offences—obscene language is one of the most charged offences in the Magistrates' Court, and obscene language and insulting language is usually charged because some police officer feels offended because you cursed him. So because he has an ego, and the law says he should not have that ego, but because he has that ego he charges you, and you end up in this

system with all these violent offenders, and, before you know it, you are indoctrinated. So I am hoping that at some stage we can perhaps arrive at some amendments so that we can say, first of all, if you are charged with a summary offence you are entitled to own bail as of right. That is the first thing.

The second thing, if you are a first-time offender, I believe that you should be entitled to bail as of right, and the type of bail where you have a surety, not a surety requiring the land as security, but you have a surety, a named surety as of right. So that these persons when they are charged, because they are first-time offenders they can say, even though my mother is not a person of means, the court would say your responsibility is to ensure that he comes to court. [*Desk thumping*] So that you keep the first-time offender out of the prison. So those are two amendments I would suggest from the floor.

The third thing is when one understands how bail works in this country, and in most countries, it is not the security that is put up that ensures the attendance of the accused to court. What secures his attendance is if he knows he misses court, bail would be revoked and he is unlikely to get bail. So you see the thing is, this is class warfare in a sense, because if someone from the 1 per cent who made the video is charged with an offence and he has to put up $100,000 surety, that is no money for him. But if someone who attends President's House with his shirt out of his pants and a mismatched tie, he is in a different scenario [*Desk thumping*] and he may not be able to access bail because $100,000 might be a lot for him, regardless of what we think about him.

Hon. Member: That description suits you.

Sen. W. Sturge: And when you—Be quiet. "She alive." And when you think about it, when you think about how crime works in this country, there is very little

distinction between the man who has his shirt out of his pants and the man who sits in a video and brags [*Desk thumping*] about what is known. Sometimes they are up to the same thing, they are just dressed differently, but because $100,000 would not hurt your pocket, you can access bail. And, again, what makes you come to court is not that you "guh" lose the $100,000 you know, it is because if you do not come to court, bail would be revoked and you would have a hard time getting bail again.

So this concept that the courts are burdening us with, no matter how you try to tell them there is nowhere in the Act that says land, and all of these things, they will tell you, no, we want land. It is not simply that you want land, you know, the court wants land that is unencumbered. So if you have a mortgage—and how many of us own land that is not subject to a mortgage? And because most of us, the land we own is subject to a mortgage, we cannot use it, it is encumbered. That is why it is the fault of the court for the development of the professional bailor. [*Desk thumping*] And, again, one cannot use leasehold either.

Hon. Senator: So if you have a villa, 999 years, you "cyah" even use that.

Sen. W. Sturge: Yes, exactly. I own an apartment—upscale they say it is, I do not believe it is [*Desk thumping*]—and if my child should get in trouble I cannot use it because it is leasehold premises. Not only is it leasehold, it is leasehold that is subject to a mortgage, so real trouble. That is why people end up going to a professional bailor. It is the court which facilitates this thriving trade of the professional bailor, because here you have—[*Interruption*]—and that is what should be attacked, but we are not attacking that, what we are doing now is creating a new kind of professional bailor by bringing in financial institutions, bonds, and so on, and forcing those at the lowest rung of the socio-economic

ladder straight into the hands of the 1 per cent, and that cannot be right. [*Desk thumping*]

So let me tell you who bail should not be for, you see persons charged with trafficking drugs, particularly—and when I say trafficking I do not mean you are driving past a school and "de police stop yuh, and yuh have a shake-off in your pocket or a lil piece of a red beard, and they hold yuh, and say, well, look yuh within 50 metres of a school".

Sen. Gopee-Scoon: What is a "red beard"?

Sen. W. Sturge: "Yuh doh know what is red beard?" But you went Jamaica. Jamaican "red beard", and—I do not know what it is either. [*Laughter*] Right. I am talking about quantum trafficking, because if you are granting cash bail to a person who is involved in quantum trafficking, it means that this man has money. So right there and then he has no difficulty in accessing cash bail. In fact, he has no need to go to the professional bailor. Let me tell you this: the difference between cash bail and the professional bailor is this, when you pay money to the professional bailor, if the court sets bail with a surety to be approved in the sum of $100,000, the professional bailor, the man who owns land unencumbered is coming to tell you, well give me 10 per cent or give me 15 per cent, and you have to raise that to pay him. At the end of the case, win, lose or draw, that is dead money, [*Desk thumping*] you are not getting that money back.

With the cash bail, when cash bail is set, at the end of the case, win, lose, or draw, as it stands now you get your money back. So cash bail is really an attractive option, but in the context of this Bill, it is misplaced. Let me tell you why: unless you stipulate, and you really cannot, unless you stipulate and tell the court that whatever bail is set then a cash alternative must be granted not exceeding X per

cent then this would fail. Because as it stands, if you get $100,000 bail, surety to the approved, meaning you need land and all that, and the court gives a cash alternative, the court does not necessarily say cash bail in the alternative in the sum of $10,000; they do not, most times it is more than half. [*Desk thumping*] So if you have to find $10,000 to pay a professional bailor, and because of this Bill they facilitate you and you now have a cash alternative, $50,000, how are you able to access cash bail of $50,000 if you could not access $10,000 in the first place for the professional bailor? [*Desk thumping*] So this, it might be a blessing in disguise but it would not work. [*Desk thumping*] It would not work.

Hon. Senator: Analysis paralysis.

Sen. W. Sturge: Analysis paralysis. Now, there is another issue with respect to the Clerks of the Peace, and the Clerks of the Peace, they have arrogated onto themselves this policy whereby whenever you come with cash they suddenly transform into the Financial Intelligence Unit, and all of a sudden they want a source of funds.

I do not know if you remember, Mr. Vice-President, a chap, who, whilst he was away at work, his son was playing in the river, "de river come down", the son drowned, they fished the body out of the Hyatt, he could not come out, not because he could not make the cash bail you know, but when he made the cash bail the Clerk of the Peace wanted to know where he got $10,000 from—imagine that. And until he or his people could explain where they are getting $10,000, it is no bail for him. So the danger with these things has to fall squarely at the feet of the courts of this country. It has to fall squarely at the feet of the courts of this country because, as I understand it, the Judiciary does not make law. The Clerks of the Peace cannot make law, and it is about time through these measures that we pass legislation

outlining quite clearly what is a suitable surety and what is not.

Now there is another issue, I believe, the AG may have touched, with respect to the problem with the professional bailors, because there is an issue with respect to professional bailors and it is this: since it is a thriving industry, many persons are able to make fraudulent deeds. When they make fraudulent deeds and they access bail with the help of persons who are working in the land registry, so that when the cheques are made, and so on, they say, yes, that property exists, this is the property number, and so on, and it takes some time before the fraud is unearthed. And when the fraud is eventually unearthed what happens, again, the poor man who had to come up with $10,000 is out of pocket because he cannot enforce an illegal transaction, [*Desk thumping*] and he is back inside and he is looking for a new bailor.

Now, I wonder, and I heard the Attorney General make reference to another piece of legislation that, for some reason, has not been operationalized. Because, you see, the thing is it would cost a lot less and it would be very little hardship on the person seeking bail if we operationalize the electronic monitoring Bill. You see, the thing is that allows the police to track the whereabouts of the accused person. So that if we operationalize the electronic monitoring Bill, that Bill that has been passed since 2011, I think it was, then these persons would not need cash bail or a professional bailor, or anything of that nature.

I am sure you recall, Mr. Vice-President, sitting in a meeting when we had to press these persons who were part of a board and saying that it would be ready in May at the outset. I am sure you remember me telling the main person that he was selling us dreams. Well, May has long past and look at where we are at, we are still nowhere closer, because what you really need in this system is not so much

amendments upon amendments, particularly amendments like these that will not work, there are systems in place and what we need to do is to ensure that these systems work. Because we have spent a lot of money on electronic monitoring and if we simply implement it then these 839 persons who are on bail and cannot afford cash bail and cannot afford the professional bailor, they are the persons who would benefit by being tagged [*Desk thumping*] and who can go about their daily business.

But, you know, there is a point I wish to make before I detain you too long. There is a point I wish to make about this Bill, and the thing is this Bill, if you consider it carefully, and what it hopes to achieve, is in essence an admission of failure on the part of the Government. Because, you see, what the Government has done in essence is they have said, listen, we are clueless as to how we are going to speed up the criminal justice system. [*Desk thumping*] Because, you see, the thing is if we are to give justice to all sides then the best way is to incorporate into our Constitution, a right to a speedy trial as exists in Jamaica. [*Desk thumping*]

You see the thing is, Mr. Vice-President, Jamaica is not very different to Trinidad. It might be larger in size, but they have the same sort of problems in terms of runaway crime, and so on, and the difference in Jamaica, if I can use cases, examples, Vybz Kartel is charged with murder. He is tried, convicted and reaches the Court of Appeal within three years.

Sen. Small: Adidja Palmer.

Sen. W. Sturge: Yes, that is his real name. I see you listen to Vybz Kartel. I am still stuck in Steel Pulse mode so I am a David Hinds man. I can use another example, the taxi driver who was charged with the murder of the daughter of Marlene Coudray: within three years he is convicted and his matter is heard before

the Court of Appeal. What is the difference between Jamaica and Trinidad and Tobago? Well, there are several differences but the main difference, the main distinction is that the Jamaican Constitution provides for a right to a trial within a reasonable time—well—sorry—in essence a speedy trial, whereas we do not.

You see, if you elevate that right to the level of a constitutional right, I am quite certain you will see things speed up. You know what Jamaica has that we do not have?—Jamaica has full disclosure, and we are still labouring under the common-law rules where a prosecutor can make a decision whether he withholds evidence or not. And then, "chirrup chirrup", along the way, as cross-examination unearths the fact that the prosecutor was withholding material, then the court has to intervene to force him to disclose it, then he has to mount an argument that he is not disclosing it, and the next thing you know there is an appeal against that ruling—if you are still in the Magistrates' Court—an appeal that goes all the way up to the Privy Council and right back down. And that is what we are talking about when we are talking about Piarco. When we complain about Piarco, that is exactly it. If there was full disclosure, the Piarco people would not have been appealing orders right up to the Privy Council, and right back up three and four times. So there are certain things that we need to fix, but anyway that is in essence moving off of the Bill a bit and I do not need to detain you much further.

Now, I see that the Attorney General has fixed parts of the Bill, because it was a very different Bill downstairs, and now we see that the sums being used as security in order for the court to use it, it has to be sums supplied by the accused himself, so I am happy with that. Because there would have been a constitutional issue where persons who, in essence, help out the accused person depositing money as security, and then when the person is convicted you had a situation

where the Bill was going to empower the court to use that person's money without that person's consent. And I get the impression from looking at the amendment that that was fixed so there is very little issue in terms of the constitutionality, at least from my side, but I am sure Sen. Ramdeen might pick up something that I may have missed.

Now, I think I have dealt with most of the points I wanted to deal with, so if by way of recap before bringing my contribution to a close I will attempt to circulate, again, amendments. I will attempt to circulate amendments because I think a distinction must be made between persons who are charged with summary offences, I think they ought to be granted own bail and we should not subject them to what they are being subjected to, because the Attorney General made reference to it in his opening salvo that there are persons, in essence, charged with things like throwing missiles, and so on, who are still incarcerated and cannot access bail. I think that is an atrocity. It brings me back to something I read from time to time for my children, the story of *Alice in Wonderland*. I do not know if you have small kids like I do, but in the story of *Alice in Wonderland* there is a trial that took place in that story where—I see that I have gotten your attention—there is a trial, and in the trial they bring the accused before the king and the king upon seeing him says, guilty, let us hear the evidence. Because if you remember *Alice in Wonderland*, things went backward.

So if you are having persons in custody they have not pleaded guilty, they are not sentenced, but they are in custody for a time that exceeds the maximum sentence, then that is an *Alice in Wonderland* situation, where the punishment is deprivation of liberty, and they are being deprived of their liberty for a time in excess of what the maximum sentence is, and that should not occur. And that is

one way, henceforth, where we can perhaps insert some sort of amendment to ensure that persons who are charged with, particularly, offences under the Summary Offences Act that they be entitled to own bail as of right.

The other one I had made reference to, first-time offenders, and, of course, for first-time offenders we can make it mandatory that there be reporting conditions so that when they get bail, and it does not have to be cash bail or the normal bail that requires security, that these persons when they are granted bail that parents or someone else can be named surety with no requirement of having to look at assets, and so on, because, really, the purpose is this person is vouching to say, I am going to ensure that he comes to court. So that you can perhaps make some sort of amendment so that this person does not have to prove to the satisfaction of the Justice of the Peace that he has means, and so on, to be seized, because that justification is wholly unnecessary. So that these persons, these first-time offenders can get bail. Perhaps we can legislate that they are subject to mandatory reporting requirements where they attend the police station in their district, perhaps twice or three times a week, so at least the police keeps tabs on them, and at least they understand; it does not escape from their mind, the obligation of this part of their bail that this is a stipulated condition that they must adhere to.

I am not going to close the door on repeat offenders and violent offenders, except to say that perhaps we should look at putting something in the Bill, although my personal view is that if you are a violent offender or—blood crimes—if you are charged with blood crimes then I think the emphasis should be on giving you a trial as speedily as possible, rather than giving you bail, because these are the persons you have to balance, that whilst they have rights, you have to balance the rights of

society to be protected against violent offenders. So I do not believe that these persons should be the beneficiaries of this. Persons who are charged with offences involving actual violence should be excepted from these provisions. [*Desk thumping*]

I made the point of drug trafficking, if you are charged with drug trafficking by quantum, these persons should also be excepted because, in essence, money is no problem for these offenders. So if the Government is willing to take on board these amendments then I may be minded to look at whether I would be willing to support it, because, as I opened by saying, right now as it stands I am in a bit of a quandary as a Senator, and having to show Trinidad and Tobago that I am responsible, that I am debating this type of legislation at this particular time. [*Desk thumping*] So unless I can be of further assistance, Mr. Vice-President, these are my thoughts on this Bill.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Mr. Vice-President. Mr. Vice-President, we are at this very late stage in the parliamentary term debating this Act to amend the Bail Act, Chap. 4:60. There has to be a reason that we are debating [*Desk thumping*] this particular Bill at this time, and if I were to take the cue from the hon. Chief Justice from the Bill which was passed earlier, it has to be in the interest of justice [*Desk thumping*] What the Bill is proposing is that as we veer away from bail that is based on real property, to bail that is based on cash, somehow justice will be served, but the nexus remained, in my mind, vague and unclear.

I want to commend the hon. Chief Justice for recognizing that there may be problems with the system that we currently have with how bail is administered in Trinidad and Tobago. The issue I have is whether the amendments being proposed

will really ensure that the individuals who currently are denied the bail for any number of reasons, and who ought to obtain bail will be granted bail based upon the provisions contained in this Bill. I am in full sympathy with the arguments advanced by the hon. Attorney General with respect to the cost of housing accommodating and looking after individuals who are in remand for bailable offences, and who would not post bail simply because of the lack of means.

But I am not sure that he was very, very clear and cogent in this particular Bill in how the provisions advanced here will ensure that, in fact, the least well-off in our society who are entitled to bail but who cannot somehow afford it will be granted bail by this mechanism. I know he has indicated that cash bail is something that is going to help, but I cannot see how at this time. I am sure in his winding-up he will explain.

But, Mr. Vice-President, as I looked at this particular Bill, I think it is important for us to recognize that bail is part of a wide spectrum of issues in the private sector, and I will refer to his amendment on clause 4, that is his subsection (4), section 12 amended, when I come to that. But, you see, when you look at bail in its entirety, as opposed to superficially, what do we observe with bail? Superficially, it is simply a pledge of some asset which can be forfeited in the event that the accused individual does not appear for his hearing in court.

And I agree entirely with Sen. Sturge with respect to own bail, and with respect to family members providing that pledge, which is a non-cash pledge, because the family members who provide a non-cash pledge have as much to lose as someone who provides a cash pledge, [*Desk thumping*] because if their relative fails to appear and he is going to be in remand it is the relative who will suffer. So the relative is morally obliged, and is obliged via familial strictures to ensure that

the young first offender really finds himself in the court to answer his charge, because the consequence of failing to so do would be greater than if he absconds.

[MADAM PRESIDENT *in the Chair*]

So I understand the risk, and I do hope the hon. Attorney General will take on board the experience of Sen. Sturge, the practitioner as he is in the criminal courts. But, Madam Speaker, when I drilled into the matter, what do I observe about bail?—it involves three parties, it involves the court, it involves the accused, and it involves a guarantor. But when we look at that, what do we see? We see, Madam President, that this particular phenomenon is widespread in the commercial world. For, according to Willis D. Morgan in a classic article which appeared in the Cornell University Law Review—let me get the proper citation—Cornell University Law Review, Volume 12, No. 2, pages 153—73, 1927, it is entitled, "The Law and Economics of Suretyship". It is a classic piece. It indicates that what we are really dealing with in bail is some third party providing a guarantee to someone who is not aware of the risks associated with the person with which he is dealing.

7.30 p.m.

[MADAM PRESIDENT *in the Chair*]

So in the case of the court, the court is dealing with an accused, the court does not know the accused, they do not know his circumstances and they are unsure about the risks associated with a non-appearance. But that, Madam President, is identical to what we have in the commercial world with respect to performance bonds, and I will link it I assure you. It is not a lecture down the road because I love to lecture, it is very much linked—and I do—with what the Attorney General has advanced in his amendments.

We have to drill into what we are dealing with, into the economics of bail, not so much the law, but the economics of bail. In the economics of bail, we are seeing the issue of risk being associated with bail, but risk also associated with performance bonds. What does a performance bond entail? It entails a contractor who is contracting with the Ministry of Works and Transport to build a road, and the Minister of Works and Transport does not know the contractor very well, and so a third party comes in to say, if this particular contractor with whom we have limited information does not complete the project on time, we will provide to you some form of compensation so you do not suffer loss because you contracted with someone you did not know. We have performance bonds in local government. We have performance bonds in the Ministry of Works and Transport.

We also have fidelity bonds. What is a fidelity bond? A fidelity bond is a bond where a company which may be, for example, in the field of providing janitorial services, thinking that some of its employees may be involved in theft of property for which it would have to make good, and then it gets into an agreement with a third party, in this situation an insurance firm which understands risks more than most, and the insurance firm says, "I will guarantee theft for you up to $1 million, so that if your employees were to steal from your customers, up to $1 million I will guarantee you for a fee". And the fee in these fidelity bonds usually amounts to one-half per cent of the bond to 1 per cent. So a fidelity bond of $1 million coverage for theft will carry a premium or a fee of $10,000, and that is standard practice.

What do these performance bonds, fidelity bonds do, and I will link it with bail bonds, is that they provide the mechanism for business to operate in an environment of risk. And so the risk taker who specializes in risk is able to assess

the risk better than most, and he charges a fee for it.

Madam President, I want to link that to what I see in what is the clause 4 of the Bill. It says:

> "Section 12 of the Act is amended by inserting after subsection (4), the following subsections—
>
> (a) cash or certified cheque…"

We understand that, where the amount of security is $10,000 or less, and that has me a little bit surprised, because I do not see why we need cash even for $10,000 when, as Sen. Mark in one of his Motions indicated that there are banks which operate six and a half days for the week up to midday Saturday. So it is always possible to get a certified cheque from a commercial institution, even one close to the Golden Grove that will give you a certified cheque on Saturday midday. So all an individual would have to spend, if he is not able to get the certified cheque, is a day in prison. But that is not the substantial point. It said:

> "The security given under subsection 4 may be in the form of…cash or certified cheque"—certified cheque understood.

But (c), Madam President, and this is where the issue arises:

> "a bond issued by a licensed financial institution"—a licensed financial institution—"as defined in the Financial Institutions Act…"

The Financial Institutions Act, Chap. 79:09. Let us go back to the Financial Institutions Act, Chap. 79:09. Which are these financial institutions? They are the institutions which are regulated by the Central Bank of Trinidad and Tobago. What are their characteristics? When we go back to 79:09, what do we see? They must have minimum capital requirements of $15 million. They must have an annual licence fee and they will include banks, insurance companies. They will include

non-bank financial intermediaries, all of whom are covered under this 79:09, the licensed financial institutions.

Why do licensed financial institutions exist? Do they exist to provide a public service? Or do licensed financial institutions exist so that they will use their expertise in the financial sector to make profit? And the profit is regulated by the Central Bank. So here we have an amendment to a Bail Act which specifically states that:

"The security given under subsection (4)…"—shall be in a bond.

It is a bail bond now; it is not a performance bond, nor is it a fidelity bond. We are creating a market. For the first time we are actually creating a market—a market—a bond issued by a licensed financial institution as defined by the FIA. But while we are creating a market for bail bonds which will be created by any institution—any institution.

I alluded to the fact that bail bonds are no different from performance bonds. Bail bonds are no different from fidelity bonds. They are simply a pledge, a surety. We should really study Willis D. Morgan, 1927, for he looked at these security, these sureties. For 5,000 years in every society they existed. In every society where there was risk, there was someone to bear the risk so that the two parties who were contracting could transact their business, knowing that the buyer and the seller can come together and whatever risk is borne by the buyer will be taken by a third party for a fee.

So when the Attorney General is telling me that he is going to undermine or remove this issue of bail bondsmen in Trinidad and Tobago, I do not think even he was aware of the fact that these licensed financial institutions will be creating these bonds, which are not yet in existence in Trinidad and Tobago, but will be creating

the bonds for a fee. [*Desk thumping*] What do we see emerging out of the legislation?—this is purely the economics of the thing. I know no law, but you see when it comes to the economics of risk, I feel very comfortable.

Risk—we exist in an uncertain environment. It is for this reason—and I sat with the AG in the Insurance Bill in the last term, so we understand the insurance business reasonably well. Without some agency to carry risk, the free enterprise economy will stumble. It will not progress. It is for this reason insurance is such big business. It is for this reason you have every conceivable type of instrument now being insured. And what we are having in this Bill is instead of a family member or some bail bondsman, as was indicated, who may be doing it under the table, pledging his unencumbered property, we are now having competition in the bail business from the financial institutions who will be creating bail bonds.

In creating the bail bonds, the concern I have is this, and I want to propose an amendment. The concern I have is that we are creating opportunities for the financial sector without regulating them. [*Desk thumping*] Madam President, we have heard over and over and over again the issue of bank fees. [*Interruption*] "Just when we going good, man."

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, save and except the committee stage of this Bill.

Question put.

Sen. Mark: We want a division.

The Senate divided. Ayes 15 Noes 13

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

West, Hon. A.

Hosein, Hon. K.

Henry, Dr. L.

Singh, A.

Coppin, W. M.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Romano, Miss A.

NOES

Mark, W.

Solomon, D.

Ameen, Miss K.

Sturge, W.

Samuel, R.

Ramdeen, G.

Mahabir, Dr. D.

Roach, HRI

Small, D.

Chote SC, Miss S.

Creese, S.

Raffoul, Miss J.

Dottin, Pastor C.

Question agreed to.

BAIL (ACCESS TO BAIL) (AMDT.) BILL, 2017

Sen. Dr. D. Mahabir: Thank you very much once again, Madam President. After a very close call, let me continue with my contribution.

I was on the point with respect to the (4A)(c) and the licensed financial institutions being given the right now to engage in this business, whereas they were not there before. But the problem we have, and the problem which exists, is the same problem which exists with financial institutions, where the regulator, the Central Bank, is not able to regulate bank fees and charges, and notwithstanding the appearance before a committee of Parliament, we know that the cost of service may not really be the underlying phenomenon with respect to bank fees. And we find bank fees rising and rising; I understand now it could be close to $1 billion on an annual basis of some aspects of bank revenue.

My position with respect to this amended section 12(c) is that a bond issued by a licensed financial institution, as defined in the Financial Institutions Act, and this is the amendment—I did not get the time to table it, but I will table it in writing—the cost of which should not exceed 10 per cent of the principal sum of the bond. I think it is important for us to impose an upper limit to the fee that the financial institution will charge an individual who is contracting with them, for one of these bonds. It cannot be 50 per cent. Because if we leave this aspect of the Bill

unattended to, we are giving the financial institution a blank cheque with respect to how much they are going to charge for this service. The Central Bank Act will not have effect to regulate this fee, as it has no effect to regulate the fees of bank charges.

What we will have, therefore, is that while we are moving away from pure real property and into cash, if the institutions which are offering these instruments are going to charge a premium, because that is what the charge is, a premium that is undefined, you may very well find that the objective of this particular proposal, the objective of the Bill will not be satisfied. [*Desk thumping*]

[MR. VICE-PRESIDENT *in the Chair*]

And so you are making an opportunity a market for the big financial institutions, to the detriment of the little guys, the poorest people, the people who are in remand, not because they have committed heinous crimes, the people who are in remand because they are too poor to pay the existing bail bondsman what he wants. [*Desk thumping*]

So what we are doing is simply removing whe whe with Play Whe, we are removing the bail bondsman on the ground with the financial institution, [*Desk thumping*] and it is the same going to be profiteering, it is just a different group will get the money. [*Desk thumping*] And given the high level of criminality in this country, I see big business for the financial sector in Trinidad and Tobago, replacing the little guys who are putting their house up in exchange.

Mr. Vice-President, I really would like for the AG to consider regulating this, because given what holds now in the financial sector in Trinidad and Tobago, once again we are going to be party in this legislative Chamber to making sure that the financial institutions profit at the expense of the poor man, and I will not stand

for that; no, it is unacceptable. [*Desk thumping*]

Mr. Vice-President, given (4A)(c), let me look at what exists in the parent Act in section 18. Let me look at the parent Act, section 18, because what exists in (4A)(c) is totally inconsistent with 18. Either (4A)(c) goes or 18 goes, they "cyar" live together. [*Desk thumping*] Let us see 18.

In 18(1) of the parent Act, Chap. 4.60 Bail Act, 18(1):

> "Where a person"—and the reading of this person now can be a corporation, can be an institution—"agrees with another to indemnify the other against any liability which that other may incur as a surety to secure the surrender to custody of a person accused or convicted of or under arrest for an offence, he and that other person are guilty of an offence."

And the offence carries an imprisonment of two years and a fine. So it is not "or"; you will cut two years in jail and a fine of $3,000.

What does 18 say? Since we have given financial institutions an opportunity to enter now into the bail business to create bail bonds, I can see the following situation. A financial institution is taking the bail of $250,000 for somebody. Its fee is 10 per cent of that, $25,000, but the accused does not have the $25,000 to pay the financial institution. So he has a family member who has a Tiida, a car, and he says to the family member, "Could you pledge your Tiida with a bank", another financial institution, and the bank says, "Yes, I will take the Tiida in exchange for $25,000". The bank then calls this financial institution while the man is in jail and says, "Look financial institution, create the bond for $250,000, I will guarantee you this $25,000 in any event". So what we are doing now is involving a fourth financial institution as clause 18 says is illegal.

But you see, Mr. Vice-President, the moment you invite one financial

institution to enter, you cannot then interfere with the legitimate market process, where another financial institution may indicate that we will provide, because, you know, we are talking $25,000, as if everybody has $25,000 in his ATM. But an individual, a middle-class family now, their relative finds himself in trouble, $250,000, or maybe $100,000 in bail may not be such a serious offence, the first institution says, "Well, we will post the bail, but you know you have to cough up $10,000."

The family may not have $10,000 in cash to pay. They have a car, they have some property, they have furniture, they have jewellery, and they pawn it. They go to the pawnshop and the pawn man says—well not the pawn, let us say the jewellery man, [*Laughter*] the person who is operating the pawnshop says, "Well, okay. Here is what, I will give you a cheque for $10,000, but it will take me a while and, therefore, I want to call this bond company and tell the company I, the pawn company, will pledge $10,000. Could you just create the bond so that 'de' man could get out of prison fast?" That is illegal; that is criminal. The fourth person can find himself facing two years in prison and/or a fine of some, I do not know, large sum.

So that what we have in the amendment really is creating a market under (4A)(c), and then under 18 stating we are keeping that it is illegal to engage in a market. This is inconsistent law. It may be consistent in law, but it is inconsistent in economics. But I would really recommend that under clause 4, when we are introducing the licensed financial institution, let us understand what they do. They are profit-making enterprises. They will in general be insurance companies. They are taking the risk, not the risk that someone will not pave the road, not the risk that someone is going to have employees who are dishonest, but they are taking the

risk that someone may not appear for his court hearing.

The insurance company will have what is known as actuarial tables. What are actuarial tables? They are tables of information for the last 100 years. They will go back to the records in Trinidad and Tobago, if they are not doing it now, and they will say if in a year there are 10,000 people called to court, how many of them skipped bail, and they were given that particular probability, they will be able to say, well in a year out of 10,000 people maybe 100 of them will skip their bail, they will violate the terms of their contract, and they will put the bail bondsman in some predicament. In that context, the companies engaged in this business will be able to create an actuarially fair premium, and they will charge from everybody.

That is why I say it should not be 10 per cent, it should be up to a maximum, because some people are no risk whatever but they must still post bail. They may just cost a 1 per cent. Some people may be higher risk, and you can have the variation. But I would like to see an upper limit, because with no upper limit what will happen is this, you are going to get some bail companies saying the bail is $100,000 you have to give me $75,000. It is exploitation. And this is not hypothetical, Mr. Vice-President. This is not hypothetical at all. I have spoken to prisoners who were on $75,000 bail in remand, and they had to pay $20,000 out of $75,000, and the family cannot afford to pay the $20,000.

Unless we address this issue, and unless we look at making it consistent with section 18 in the parent Act, this particular Bill, I fear, will not generate the type of interest that we would want to have with respect to the justice being served. What I see happening is this. I see these bonds are going to be produced by the financial enterprises and we will have to say goodbye to the mom and pop bail bondsman. But I also see, close to the points of incarceration, wherever they are—Port of

Spain or Golden Grove—little shops being set up, where the little shops will be open during the time the Act says bail will be received, cash bail will be received, Monday to Saturday, 8.00 to 4.00, and they would be there ready to provide cash in envelopes to the prison officers, and they will provide the cash for a fee.

The fee is not determined. It is not going to be cash out of the goodness of my heart. There are no Good Samaritans in this world. In that situation, we would want those enterprises to be regulated. But, you see, the law also says they are already licensed. Since they are already licensed, I see branches of institutions, such as banks and insurance companies, close to the jails, just as whenever I pass at any used-car dealership I see a little office of a branch of an established bank in the used-car dealership itself. They are there catering to customers who would like quick credit to purchase a car. I see similarly these institutions close to the Golden Grove or close to the Port of Spain Royal Gaol, where it is a little storefront shop and you go in there and you are able to get your bail in cash under $10,000. They are able to give it to you, and it would be, okay cash bail, $10,000, but that will cost you $15,000, that will cost you $14,000, it will cost to you $13,000. I want to see that it is regulated, because it is going to come.

Wherever there is a demand and a supply of willing individuals, a market is deemed to exist. Whenever a market exists, the only regulatory force for this market is competition, but in this institution there is no perfect competition to keep the fees low. As a legislator, I am recommending to the hon. Attorney General that we legislate how much the poor man, the vulnerable man, the innocent—and I am not soft on criminals at all. I am just thinking about people who have run afoul of the law and they—

Mr. Vice-President: Senator, you have five minutes.

Sen. Dr. D. Mahabir: Thank you very much, Mr. Vice-President. I am just thinking about the individuals in remand. There are individuals who are out of remand because they could afford the fees that are charged. They are people of means. There are individuals for the same crime—you see, that is the issue—there are people for the same crime, the proverbial three joints of marijuana, they are out, they can afford to pay the fee to the bondsman. There are people who are in for longer than they should be, because they cannot afford to pay the fee. And this is where justice is not being served because we are not looking after the vulnerable and the poor without regulating this charge.

8.00 p.m.

Mr. Vice-President, I want to support the Bill. I want to do whatever I can do in the Legislature to ensure that everyone who is entitled to bail is able to secure bail. After all, you are innocent until the courts deem you to be otherwise, and you should have your freedoms intact while the proof of innocence or guilt is being determined, and it should not be that your liberty is coming at a price that is determined by the financial institutions. Your liberty should be determined at a price determined by the legislative arm of the State [*Desk thumping*] and we the Legislature must cap these fees. Unless we do that, this particular Bill will not achieve the objective of ensuring that justice will be served and the poor will be protected. I thank you. [*Desk thumping*]

Sen. Gerald Ramdeen: [*Desk thumping*] Good night, Mr. Vice-President, and thank you for the opportunity to join this debate on "An Act to amend the Bail Act, Chap. 4:60".

This is another piece of legislation, Mr. Vice-President, that has been brought by the hon. Attorney General in his suite of legislation to try to improve

the criminal justice system. And allow me, I would be grateful, Mr. Vice-President, if you will allow me to set the context in which this particular piece of legislation is being brought to this honourable Senate.

Before I get into the details of the context, allow me to congratulate today all of those students who have passed the SEA exam in our country. [*Desk thumping*] Allow me to congratulate Lexi Balchan the first child from ASJA, Point Fortin to top the island in the SEA. [*Desk thumping*] And allow me to congratulate Rayshard Hosein from San Fernando TML who has also been in the first three in the SEA. You see, Mr. Vice-President, when SEA results are released in this country, it is a day that we all celebrate because we see the best that Trinidad and Tobago has to offer in our youth. We see the best of them.

But while we all celebrate tonight, and let me also congratulate the teachers and parents of all of those schools for all of those students who have gotten their first choice, their second choice or their third choice, all of them, all of them.

But while we congratulate all of them today, Mr. Vice-President, in setting the context in which this Bill is brought to this House, I want all of us to spare a thought tonight for Veena Subar and Lennon Subar because today Videsh Subar would have been, if he was alive, he too tonight would have been celebrating with his parents, and we should spare a thought for them because this Bill that is before us today is a Bill that is supposed to improve the criminal justice system, and they tonight do not have their child, 13 years old, that was taken from them. They could have been today like the rest of parents, but they are not.

I was surprised that the Government brought this piece of legislation for us to pass this piece of legislation at this time. This was supposed to be debated last week Thursday. You know where our country was last week Thursday?—let me

tell you, Mr. Vice-President. On the *Guardian* the headline on last week Thursday was:

"SLAUGHTER

Caregiver, boy gagged, throat slit

Chinese grocery owner slain"

And while we are on that, we should spare a thought for Yana Zeng whose funeral is tomorrow after she was also shot, a Chinese businesswoman whose husband has now indicated that he will pack up his family and go back to China.

That is all part of the context in which the Government has brought this piece of legislation. That was the *Guardian*. You know what the *Express* was?

"BLOODY HELL*

Malabar: Mom bawls as son, woman murdered"

Santa Cruz, Chinese businesswoman shot dead

Chaguanas: Cops kill 2 bandits

And that was in the *Express*. And on the *Newsday*:

Boy 13, woman 56, murdered in Malabar

Bound and gagged, throat slit

"House of blood"

That is the context in which this piece of legislation that hon. Attorney General presented to us today, has been brought for us to consider.

The hon. Attorney General, as he always does, provides us with a certain amount of statistics. He said there are 1,170 persons on bailable offences, 839, 71 per cent have been granted bail. I do not doubt for a minute the statistics that have been provided by the Attorney General. But this Bill has the opportunity of taking the legislative key and opening the prison gates for 839 persons in this country.

Mr. Vice-President, I want to make it very clear and very plain to this Senate, to yourself and to the people of Trinidad and Tobago that this Opposition is not going to support any legislation at this time that is going to cause people to walk out of prison and continue the siege on our population, our mothers, our fathers, our children and our youth, we are not going to support that.

I cannot believe that the Government would bring legislation at this time and try to justify that we must take legislative steps that will open the prison gates for persons who are alleged to have committed criminal offences and have the opportunity to walk back out, to walk back out. And let me tell you why it is important in the context, Mr. Vice-President, let me tell you why.

Because Jensen La Vende on Thursday, June 29, 2017, in an article in the *Trinidad Guardian* titled:

"Bandits slit throats of woman, teen"—Malabar Grief

Let me tell you what was reported in the *Guardian*.

> "Police said that Mohammed was robbed eight years ago and the men responsible were held, jailed and reportedly released…"

I do not know how many people know Azim Baksh Trace or road or street, but when you go to Azim Baksh Trace, it is a community like everyone else that we live in, the houses are bounded together. I was shocked when I saw where this murder took place, this double murder took place, because all that separates one house from the next is a chain-link fence and a road that could hardly be passed by two cars. And this has occurred, why? Because people were allowed out on bail, and this is what we have to reap today as the benefits of that, and we are not going to support that. I cannot stand here and support that. [*Desk thumping*]

If the Government wants to solve the criminal justice system, the answer is

not providing people with bail. And this Bill is not going to solve the criminal justice problem; this is not going to provide any solutions. You see, the Attorney General gave us the figure of $1.2 billion, $20,000 to $25,000 per person per month on remand. But you know what I would have liked if the Attorney General was here for him to tell us, Mr. Vice-President? What I wanted to know was this: How much is the cost for Amalgamated Security Services that transports the prisoners? When are those contracts given out? Are they sole select? How much money is the taxpayer paying to amalgamated? We "doh" want to hear that, we want hear about 1.2. But you see, we must never forget that the owner of amalgamated is in the 1 per cent. We must not touch Johnny, let Johnny continue, $80 million and $90 million a year and we want to talk about prisoners and how we must cut down.

In every aspect of Government in this country we will always end up going back to the truth which is the rich will continue to get richer, the poor will continue to get poorer and continue to be taken advantage of by that elite 1 per cent.

So "doh" worry about, the Attorney General should tell us when is the Government going to take steps to regulate the prison transport that is responsible for $80 million to $90 million out of that $1.2 billion that he tells us over five years. The largest slice of that goes to Mr. Johnny Aboud; that is where it goes. Let us not hide it. Let us not make it feel as though the $25,000—the $20,000 and $25,000 is just being spent just like that, and you are telling me that the State cannot set up, cannot set up a business, a special purpose state enterprise to run prison transport. No. Why we should do that. Because one man has to get $80 million and $90 million a year, and then we talk about the cost of prisoners. That is where the cost is going. It is not going in food; it "aint goin in security; it aint

going to fix Port of Spain"; it is going in one person's pocket, that is where it is going.

Mr. Vice-President, the Attorney General told us about how many prisoners there are, and there are eight prisons, Port of Spain, 250, 290 per cent over capacity; Carrera, 108 per cent over capacity; Golden Grove, 150 per cent over capacity. Well what you are doing about that? There is a part of the Golden Grove Prison called Guantanamo since the 2006 riots. You know, the prison has allowed that to remain exactly what it is Guantanamo, and has taken no steps about it, to improve it, to shut it down and people are suffering there on remand. Guantanamo is in remand.

The Attorney General has brought this Bill and he has said that this is going to provide us with the solution because there are so many people who are on remand, 839 people on remand, who have been granted bail and cannot access bail. And the Attorney General was very smart to tell us that there are people in there for throwing missiles, to support this provision to allow us to pass legislation for them to come out. But I am sure that there are people in there for throwing missiles. Like I said, I do not doubt the Attorney General. I am sure there are people in there for obscene language and offensive language and assault, but at the same time, Mr. Vice-President, there are people inside there for rape, kidnapping, robbery, sexual assault. The same people who are assaulting our society today, our innocent mothers, fathers, brothers, sisters, children, those same people are the people who we are going to legislatively take the key, by this piece of legislation, and open the door for them to walk out.

You see, the devil of this Bill is really in the details because look at this. As a matter of common sense, if you are granted a $100,000 bail, we know that you

can get someone to take that bail, all that it may be illegal, a professional bailor normally charges 10 per cent. So if you have bail fixed at $100,000, and you cannot raise $10,000 to pay a professional bailor, you are going to raise $100,000 to go and get a bond or to go and get a certified cheque to go and give it to access your bill. Does that make any sense, Mr. Vice-President?

And we have demonstrated by the last piece of legislation, we sat here for 10 hours last week Thursday, we sat for six hours today, that is 16 hours in committee to assist the Government in trying to pass good law, because as an Opposition we gave an undertaking to support good legislation, and even if the Government does not get it right, we will sit here and toil with them to get it right for the best interest of the people of this country. [*Desk thumping*] It is what our Leader of the Opposition has always said the Opposition will do, and we have proven that.

The trial by judge alone, we have proven that the Bill that we just completed, the plea agreement, we have proven that. And today, I will demonstrate to you, Mr. Vice President, that with respect to this piece of legislation, we will prove it again, but the way in which we will prove it, is to show that we cannot support this piece of legislation. It is not good law in the form that it presently is in. [*Desk thumping*]

Not only is it not good law, it makes no practical sense. How can someone who can get out of prison for one-tenth of the value will go and take bail for more than half of the per cent. You cannot raise 10 per cent, but you will raise 50 per cent. Does that make any sense? It is legislation that has a total disconnect with reality, and it is not going to solve any problems.

You see, like the Leader of the Opposition has said, the problem of crime in this country is not going to be solved by passing legislation piece by piece by

piece, you know, because whereas the Attorney General does his best to give us the statistics, how many years; how many people are in prison; how much money is spent; how many cases there are in system. What we are not told and what we want to hear on this side, is what have been the improvements in the last 21 months that this administration has been in power? [*Desk thumping*]

What has been the drop in crime? Tell us. What has been the success of all the pieces of legislation that have been passed?—zero, zero, zero. The context in which we are being asked to pass this piece of legislation is what?—1,170 persons on bailable offences; 839 granted bail; 331 not granted bail. But you know what the true context is, Mr. Vice President, in which this legislation is presented to us? Eight hundred and forty murders since September 2015; assault and murder of our children; the resumption of kidnapping; robbery, rapes and larceny at an unprecedented level. That is where we are, that is the context that we are in, and that we have been put in, governance PNM style, "red and ready", ready to take us down where we will not recover from. [*Desk thumping*]

Mr. Vice-President, the reason why we have ended up in this situation and it is only going to get worse until we get rid of that administration, is because this administration cannot solve crime, because this administration associates itself with crime; that is why. [*Desk thumping*] The Attorney General could have the best intentions, bring the best legislation, pass all of it, but at the end of the day the Attorney General is not going to support what went on this last week here, you know. I know him, he is not going to support that, because that is against what is going on, that is against what he is trying do. The Attorney General has good intentions to get us out of where we are, but it is those that are around him that are pulling him doing.

Sen. Ameen: Ah "doh" believe you, Ramdeen.

Sen. G. Ramdeen: That is what is going on. The Leader of the Opposition last Friday congratulated the Attorney General for the good work that he is doing. [*Interruption*]

Sen. Gopee-Scoon: Point of order, 46(6).

Mr. Vice-President: Senator, I will agree with the point of order, in the last statement that was made in regard to who is around him and what not. So just be careful in terms of how you are making those statements.

Sen. G. Ramdeen: I am obliged, Mr. Vice-President, thank you.

Sen. Ameen: If it fall in "dey garden". Who is around him?

Sen. G. Ramdeen: The Attorney General is doing the best that he can do, but the best that he can do cannot change the reality in which he survives, and the reality in which we all live in, and that is the problem. That is why that administration cannot solve crime. That is why.

You see, Mr. Vice-President, let us get down to the reality of this Bill. This Bill is going to give an opportunity to persons who are incarcerated at remand yard the opportunity to get bail by cash bail. Now, when I read this Bill for the first time, to understand carefully the provisions of this Bill, one has to read the amendments together with the principal Act. And the first shocking revelation that I read in preparing this is with respect to the amendment that is proposed to subsection (4A). And when one reads the principal Act, section 12 found at page 12 of the Bail Act, Chap. 4:60, subsection (4) of section 12 says:

> "Where it appears that the applicant for bail is unlikely to remain in Trinidad and Tobago until the time appointed for him to surrender to custody, he may be required, before being released on bail, to give security for his surrender

to custody and the security may be given by him or on his behalf."

And then I read the proposed amendment which is subsection (4A) which says that:

"The security given under subsection (4) may be in the form of—

(a) cash…

(b) certified cheque…

(c) …bond,…

(d) a charge on immovable property."

To put it simply for you to understand, Mr. Vice-President, what this amendment is doing is allowing persons who appear to be unlikely to remain in Trinidad to put up cash as a security. So this makes it easier for them to just walk away, fly away and never come back. That is what this is going to do.

When you go to subsection (4B), that is what will apply to everyone else who has been granted bail, who does not have the risk of flying away. So I could not understand how it is that we can be facilitating people who are a flight risk in allowing them to put up cash bail and have the opportunity to simply fly away and never come back. It just does not make any sense.

But, Mr. Vice-President, there are some more fundamental things that are attached to this piece of legislation. You see, when we sit as a Senate here and pass legislation we must understand the realities in which this legislation is going to be put into effect.

There are three main remand yard prisons where you can take bail if this Bill is passed, Golden Grove; Maximum Security; Port of Spain. Mr. Vice-President, I do not know how many of us have had the unlucky experience of ever having to go to Maximum Security Prison. The Maximum Security Prison is off of the Golden

Grove Road. It is about half a mile into, off the Golden Grove Road. It is a half a mile into a lonely stretch with absolutely no security. So that is maximum. Golden Grove Prison is just higher up the road. When you go to Golden Grove Prison there are no facilities for anybody to wait, so what you have is you have two tents pitched across the road next to the prison officers' car park and people sit down on benches there and wait their turn until they get to cross the road and go and see their relatives. No security there either.

And Port of Spain, well let me get to the story of Port of Spain. I want to refer to an article written by Jensen La Vende *Trinidad Guardian*, December 13, 2013. The headline:

"Man released on bail shot outside PoS prison

Minutes after accessing $30,000 bail on a charge of assaulting his neighbour, 27-year-old Ravindra Beharry was shot as he left the Frederick Street, Port-of-Spain prison yesterday. Beharry, of Patna Village, Diego Martin, was shot around 12.45 pm after stepping out onto the pavement. He had been incarcerated on an assault charge, police said. A gunman reportedly approached Beharry as he was about to get into his father Sookram Beharry's car and opened fire on him. He was shot in the neck and legs."

Mr. Vice-President, to build on the point that Sen. Mahabir has made, have we really thought out how this legislation is going to work? People are being shot outside of the Port of Spain prison on Frederick Street and what we are doing now is facilitating people to go there with sums of money, certified cheque to go and access bail right where people are being shot as they walk out of the prison. Have we really thought this out?

Has anybody thought out that when you go to Maximum Security Prison,

you press a buzzer and you wait outside, not even in a shed or a tent, you stand up on the road and you wait until you are attended to with $10,000 in cash, open to the public for anybody to take advantage of you. Have we really thought out what we are doing?

When you go to Golden Grove, you are sitting across the road, unsecured, underneath a tent with a bench with $10,000 in your pocket—right?—waiting to go and access bail for your family. Are we really serious as a Parliament? Are we really serious in bringing this type of legislation? The Government is like an ostrich with its head in the sand, it has no connection to reality. [*Desk thumping*]

How can we put people, our own citizens at risk of going up to the prison, Maximum, Golden Grove, Port of Spain, in circumstances where they put their lives at risk in trying to go and assist their families who are held and incarcerated? How can we do that, Mr. Vice-President? How can you ask us to support that, without coming and telling us that we have put things in place to secure people who go there?

The Schedule to the Bill tell you what times you can access bail, 8.00 a.m. to 6.00 p.m., Monday to Friday, 8.00 a.m. to 4.00 p.m. on Saturdays. These are the killing hours, these are the hours that they will be ready for you and waiting, they know when you are going and where you are going, so all they have to do is wait for you. It is like a death wish; that is what this is.

Do you not think that before we even consider this that we should organize ourselves? The Government should put something in place to secure people who drop off on Golden Grove Road and walking in half a mile into Maximum Security Prison with $10,000 cash on them, bush on both sides, YTC on one side, after that you know what there is?—cassava on one side, pumpkin on the next side and two

big bamboo patch waiting for people to plant behind it. I know it. I know it like my own name, and that is what we are going to do. We are going to tell people, go up there with $10,000 in cash, right, and let people rob you in the bamboo patch, probably rape and assault you in the process, "yuh lucky if yuh eh geh kill". That is what we are accustomed to here. We cannot support that. We cannot put the lives of our citizens in that kind of risk.

Mr. Vice-President, anybody who goes to Port of Spain, 103 Frederick Street, you know what they do? They line up outside Frederick Street, knock on the door and wait, wait. On days when there are visits, there are long lines that go all the way up Frederick Street. Are we going to expose poor people to this? Is that really what we are going to do? Is that really how much thought has been put into this piece of legislation before it has been brought here? Mr. Vice-President, we deserve better.

The Government has to think out what they are doing. It is not simply a matter of taking up what you find, dusting it off and bringing it to the Parliament and expect that because it was then, we will support it now. We have proven that we are here to help you. We are here to help you to get it right. We have the knowledge and the experience here. Soon we will be there and they will be here. [*Desk thumping*]

Sen. Gopee-Scoon: Dream on.

Sen. G. Ramdeen: Well, that might be so, but I think the one thing that is very clear, Mr. Vice-President, whether it be in relation to the crime, the economy or anything else, the incompetence has reached a point where the population cannot take it anymore. [*Desk thumping*]

Sen. Mark: PNM is a walking dead, "yuh doh" know that?

Sen. G. Ramdeen: Mr. Vice-President, we have to be very careful when we bring legislation that deals with the right to bail. The right to bail is a right that is entrenched—the right to reasonable bail for anyone on a criminal charge is a right that is entrenched in our Constitution. It is a right that is fleshed out in the Bail Act and more particularly section 5 that gives you the right to access bail.

But while we have to be careful with bail, Mr. Vice-President, is because while bail allows you to regain your liberty when you are incarcerated, the limitation of bail is a limitation upon your constitutional right to liberty even if you access bail and therefore, that is why we must be very careful.

And if I can be so bold as to ask the Attorney General in his wrapping up to look at the case of *Rhett Allen Fuller v The Attorney General of Belize* and you will see where that proposition, a proposition that was advanced very forcefully in the section 34 case before Madam Justice Dean-Armorer, is that we must be very careful, Attorney General, because even if you access bail, many people feel because you are on bail, your right to liberty is not limited.

8.30 p.m.

But that is a very unique judgment where the Privy Council has said that even if you have accessed bail and your liberty has been restored, just the mere fact that you are on bail you are limiting the right to liberty. So that I would like for the Attorney General to consider that. And while you are considering that, Attorney General, you may wish to look at the decision of the Privy Council in Independent Publishing Company Limited and Ken Ali and Sharmain Baboolal, and where Lord Browne who delivered the majority judgment in that matter explained the way the right to bail is to be fitted in into our judicial and legal framework to protect the right to liberty. And it may be very useful, perhaps if not directly

relevant to this piece of legislation, whenever you are interfering or propose to interfere with the Bail Act and the right to bail.

But, Attorney General, there are one or two matters that I wish to bring to your attention that may allow you to better—if you succeed in passing this piece of legislation, making it a stronger piece of legislation, and more particularly, if your amendments to section 17, this amendment hinges upon the grant of a security and the right of the court to forfeit that security. And, the way in which the amendment has been drafted, Attorney General, when you look at section 17 of the Bail Act, section 17(1) is what I wish to draw your attention to, which reads:

"Where a person has given security in pursuance of…"

—and what I want to draw your attention to, Attorney General, is in section 17(1) you have a provision that hinges upon section 12(4).

Now, section 12(4) is limited to those persons who have the potential of absconding. What you have done, cleverly, is to add in (4B) which captures everyone else. But when you come to the mischief you are trying to achieve—or what I think is the mischief that you are trying to achieve—is that you want to cap the amendments that you have proposed are in relation to any security, whether it be for persons in relation to 12(4), that have absconded, or under your 12(4B)—your new section, for generally any other person. But when one carefully looks at the amendment, the amendment will not bite on the persons who are caught by 12(4B), your new 12(4B), because it is hinged upon 17(1).

So, if it is that the purpose or the policy—which I am sure is the purpose or policy—is to capture anyone who has given a security, you would have—I respectfully suggest—to amend 17(1) to include not only 12(4) but 12(4B), and that would capture all that you wish to capture. And I think that is a serious matter

that has to be dealt with, Attorney General, because you would find yourself with a piece of legislation that does not capture the majority of people who you intend to benefit from this piece of legislation. And I think it is something that you would want to look at very carefully. I think I have worked it out properly, and you may want to just—if you do not, well, I would propose an amendment for you to add (4B) in section 17(1). I think that would effect the policy behind what you propose.

But, Attorney General, can I draw your attention more particularly to the sections of (4C), (4D) and (4E) which, I do not mean to borrow your words to be pejorative, but, are we really ready, Attorney General, through you, Mr. Vice-President, to give this kind of responsibility to prison officers? Respectfully, Attorney General, the reason why—and I have always shared this view with you—we find ourselves in the horrible position that we find ourselves in the prison today, which is perhaps the biggest sore you have to deal with in your trying to fix the criminal justice system. Let us not hide it, it is because of prison officers. The cell phones do not fall from the sky. The marijuana does not fall from the sky. The knives do not fall from the sky.

And the Prison Officers' Association can say what they want, to defend their own, it is they who give the phones to the prisoners. They are the ones who bring the chargers into the prison. They are the ones who bring the marijuana into the prison. They are the ones who bring the contraband into the prison. And unless we take responsibility for what happens behind those prison walls at MSP, Golden Grove and Port of Spain—and when I say take responsibility, I mean actually get in there, search those prisons morning and night, get rid of the cell phones and turn prisons into what they really should be, prisons [*Desk thumping*] and not what they are in now, which is simply a place where a gangster goes inside there and builds

his gang, we are not going to get anywhere.

We need to do that. We need to weed out all of those prison officers. They have changed the Prison Rules. They have amended the Prison Rules. When you go to 103 Frederick Street, there is a big sign that says all of the things that you cannot bring in. You have done well to put scanners in there, but you know what? The scanners prevent us from taking a pen inside the prison. It does not prevent them from bringing cigarettes, marijuana, phones, chargers, and I do not understand how. I really do not understand how. Because the scanners—it is not like somebody taking you and patting you down. It is an electronic scanner that allows you to sit and it just moves across and scans you like an X-ray.

Sen. Solomon: Who operating it?

Sen. G. Ramdeen: Right? So how is it that you getting past that? Every cell in Golden Grove has a cell phone. Every prisoner has a cell phone. Everyone in MSP has a cell phone. The only difference in MSP is that the jammers come on at some point in time. Port of Spain is no different. In one cell in Port of Spain you have four and five cell phones. When they do decide to do a search, it is a garbage bag of cell phones and chargers they coming up with. And we are saying—I mean, really—that we want to pass legislation that allows those same people to have custody of cash—$10,000—and have the responsibility of taking that and carrying it to the court. I do not think that the intention behind the legislation is bad, but we have to be practical about whether the legislation would work. We have to be practical about whether those persons—

Mr. Vice-President: Senator, you have five minutes.

Sen. G. Ramdeen: Thank you, Mr. Vice-President. We have to be practical about whether this is going to cause any real benefit to the people who are to benefit

from it the most. Attorney General, perhaps you would want to look at section 150(2) of the Summary Courts Act, and that particular provision is one that you may be able to achieve what you want to achieve here in a different route that might not cause the kind of problems that are associated with this piece of legislation. That was an amendment to the Summary Courts Act that allowed persons who were on remand when they came before the court to actually get back the time that they would have spent legislatively, because before that piece of legislation was passed, they lost that time. So you might want to look at that, and that may be a shorter route judicially that you can achieve the same outcome that you have here.

And let me not forget to remind you that in our last debate, the Director of Public Prosecutions pointedly before the Joint Select Committee on National Security had pointed out that where there are persons who have spent long periods of time on remand, they have the opportunity to write to the Director of Public Prosecutions and ask him to exercise his discretion under section 90 to either enter a nolle pros or treat with the matter in a particular way. You see, Attorney General, I cannot criticize you for bringing legislation to try and achieve what you want to achieve—

Mr. Vice-President: Just now, I just noticed that you keep referring to the Attorney General.

Sen. G. Ramdeen: I am sorry. I am sorry.

Mr. Vice-President: You are referring to the Chair, and just face the Chair.

Sen. G. Ramdeen: I am obliged, Mr. Vice-President. I apologize.

Mr. Vice-President, through you, to the Attorney General, perhaps what we do not need is a Bill to access bail. What we need is a Bill that can cause people to

access justice. The Attorney General referred to the report of Mr. Daniel Khan. Mr. Daniel Khan was the Inspector of Prisons. He produced a very good report. But, Attorney General, I do not think—unless you correct me now—Mr. Vice-President, through you, that there is even an Inspector of Prisons presently appointed. And if that is so, it is a serious defect, because the position of Inspector of Prisons is an avenue whereby persons can try to access the same reliefs that you are trying to give by virtue of this piece of legislation.

So, what I suggest, Mr. Vice-President, through you, to the Attorney General, let us fix the prison system before we try to make things like this happen. Because it may well be that if we implement legislation like this in a broken system as we have now, it will only make matters worse instead of making them better. We need to fix the prison system. We need to discipline prison officers. Mr. Vice-President, through you, to the Attorney General, we had an experience in this country where people were paid out hundreds of thousands, millions of dollars, for what? Because prison officers could not deliver a notice of appeal in time. There is a host of cases unreported. And that was as a result of prison officers' dereliction of duty.

So if they cannot deliver a notice of appeal in time, you expect them to take cash, bonds and certified cheques and deliver it in time pursuant to this piece of legislation to a court? I mean, like I said, I do not mean to be pejorative, but we really have to be in touch with reality before we bring legislation like this that can end up putting the lives of innocent citizens at risk, and cause more havoc, heartache, and horror than to improve the already broken system that we have.

Like I have said before, Mr. Vice-President, we are here as an Opposition. We are the alternative Government. Soon we will be there. We are here to try and

assist the Attorney General with what he is trying to do in the best interest of the people of Trinidad and Tobago.

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

Sen. David Small: Thank you very much, Mr. Vice-President. Thank you for opportunity to join in the debate on the Bill to amend the Bail Act, Chap. 4:60.

Mr. Vice-President, I rise here with much pain, nine hours plus into this session, because I believe that on more than one occasion I have stood here and sometimes I have said we bring legislation and we bring draft legislation to the table here, and there may be consequences that we do not fully consider inside of the Bill. And I am supportive of the Government's agenda around trying to fix the system. But I am also concerned about making sure that we do not lose a disconnect with what the regular man is feeling out there.

I always, in my contributions, talk about the fact that I am a regular and normal person. I interact with normal and regular people every day, and people are feeling the pain. And depending on where you sit, and how it is reported, and how the Bill looks, I am not sure that the small man is seeing any benefit in this for him, and that is my concern. And the way in which a lot of the things are inside of here, I listened very intently to the Attorney General when he was doing his presentation. I noted that he indicated that the intent of the Bill is to improve the access to bail, and to treat with the unregulated existence of professional bailors, providing for a mechanism to use alternative forms of security for bail.

And, the key point for me is, he made a point about—the hon. Attorney General made a point about balancing the rights between victim and the accused. Now, this is where, you know, we have a problem in Trinidad and Tobago because the victims are feeling the pain and the accused are running free. [*Desk thumping*] A

former Attorney General had said before, and I will repeat it again, criminals own the night. And I said it the last time I spoke here, criminals own the day and the night. Trinidad and Tobago is under siege and anything that gives a little window for persons who are intent on doing wrong, to be out on the streets, you start to have a philosophical challenge with it. And it is not that I am against the intent of the Bill. Philosophically I have a challenge with it, because I ask, Mr. Vice-President—I understand that the existence of the unlicensed bailors is an infringement, but I have to weigh, is that such a terrible mischief that it is so bad it is causing so many problems, as opposed to the problems that we could be placing people under?

And I ask, you know, more than once we have brought legislation to this Chamber and there have been arguments to and fro about the right time. I ask, is this the right time? Then perhaps Senators like myself without portfolio could have access now, we could bring back the Bill about getting access to the Parliament's pension plan? Perhaps, the time is right now, because we are trying to understand, as a Senator without portfolio, I have nothing to look forward to here. When the Bill came for us to access the Parliament's pension plan, it was not the right time, but it is the right time to provide access to bail for criminals, I do not know, or accused persons, forgive me.

I am a simple person, Mr. Vice-President. My logic is to get bail, you have to be charged. To be charged I suppose one has to be arrested. To be arrested, I suppose, investigations have to be concluded at some point. So, what about the Clico fiasco? Where is that? Where are the parties for the HCU fiasco? Where are those persons? What about the FCB IPO? We are talking about bail, and I am trying to figure out, well, there are several issues that are before bail that we have

not addressed. We have not addressed it in any way, and people are—you know, everyone talks about the wonderful documentary and people making statements about who is the best, and who has the best opportunity in this country. And it seems clear that persons who commit white-collar crime, they have nothing to face in this country, and will never have to. Certainly in my lifetime. That is my understanding. Because there is no action on it.

This piece of legislation provides—and I will speak to several issues including the issue raised by Sen. Mahabir, because it just does not make sense to me. We are operating in a space where on a daily basis there is daily thuggery, banditry, and robbery of citizens by the commercial banks in this country, and yet we cannot seem to fix that. Every time that I have spoken about this issue since 2013 to now, and there has not been a single action that I can find to treat with that. There is always about, well, there are regulations, and well, you have to have a conversation. Well, why can we not have a regulation and a conversation about this before this? Why are we rushing to bring this?

On my notes, Mr. Vice-President, this is the ninth sitting in about 31 days. For those of us who have full-time jobs otherwise, this is punishment. This is punishment. [*Desk thumping*] So, I really am struggling to understand why is it we have to be dealing with this today, rushing to the end of the parliamentary session. This could have easily waited until September until it could have been adequately dealt with.

I am always concerned when there is an apparent rush to deal with something. It may not be that anything is wrong with it, but immediately you start to get concerned because there have been things that have happened in this Parliament because things were rushed. [*Desk thumping*] And I want to be clear. I

am not saying anything is wrong with it, but immediately there are concerns raised up, and you start to look deeper to try to understand, but what is the mischief we are trying to fix here? What is really the mischief?

And in the scale of things that are happening in Trinidad and Tobago, I respectfully submit that the mischief in this is something to be treated with, but I do not see that is something that requires this level of urgency at this point in time. I do not get it. I just do not get it. I heard someone remark earlier, this is a simple—there is nothing simple about providing bail or options for bail for persons. And, I mean, Sen. Ramdeen talked about one of the things that I—you think this through at the normal person level. You are giving prison officers cash to deposit in the bank the next day. I mean, that does not—I mean, you stand here, and you have to be careful, you cannot accuse anyone of anything. I have no evidence that anyone has done—any prison officer has done anything wrong, so I should be careful how I say that. But, here is what, the reality is that things appear in the prison and disappear in the prison, and the only persons who have freedom of access are the officers. So, there has to be some connection there.

We are legislating now that someone is going to give them cash, so what happens—not if—when the cash goes missing? What is the penalty? Will the officer be fired? Will he be sanctioned? Because, not if, you know—when? When the money goes missing? When? There is no "if". [*Desk thumping*] When the money goes missing? When the cheque goes missing and it is transferred to somebody else's name and things are—when it happens what are we going to do? We have to start to think these things through in a logical flow based on past experience of what has happened in the system. We seem to be operating in a vacuum and forgetting the history, and we cannot do that. That is one of my

strongest postulations, that there are too many unintended or un-fully—things that were not fully thought through in this legislation that perhaps require some additional work.

I understand the challenges, and the balance of rights between the victim and the accused, people are hurting in this country. People are hurting. Families are crying, their loved ones are dying [*Desk thumping*] and they have no justice in this country. No justice for them. And we are here trying to balance the system. That is a tenuous, tenuous ask. For any family that has been affected by crime directly in this country, balance of rights between victim and accused is something—they are not necessarily listening to us on that score. We are supposed to be completely benign, and look at it in a level—and we try, Mr. Vice-President. We really try. But we have to be sensitive also to the pain that the citizens of this country are feeling. It has to be a factor in our consideration, not only in what we do, but how we do it. What we do right here.

Sen. Mahabir was breathing fire earlier today, because it just does not make sense. We have a banking sector that in the last report, the 2016, there was almost $2 billion of their revenues come in fees. They do not need any more fees. You are effectively taking away from small, medium persons who are trying to hustle because anybody who has had the unfortunate experience of going to the Magistrates' Court or the High Court, like myself, to do jury service, it is an uncomfortable place to be. It is an uncomfortable place to be. Just as a regular citizen you go in there and you are like, okay, this is not a place I want to be. I remember, I think it was Sen. Coppin, was making a contribution on a previous Bill, and he is like, the Magistrates' Court is not a place he is very comfortable in. Nobody likes to go there.

But these people are there every day trawling the halls, trying to get business. It is not a glamorous job. But they are there providing a service, trying to help smaller persons. When you rip that opportunity out away from them and give it to the guys who are making billions of dollars already in fees, that cannot be. Something is wrong. It is just wrong. There is no balance in that system. And as Dr. Mahabir clearly indicated, right now we cannot seem to be put a handle or some controls on the banks regarding fees.

I have spoken here ad infinitum: why do I have to pay 25.99 per cent interest on my credit card? Why is the interest rate spread on the commercial banks 7 per cent between deposits and lending rates is 7 to 8 per cent? Why? Because they could do it. And why? Because nobody wants to tell them that it is really usurious. It is usurious. They are taking advantage of the citizens of Trinidad and Tobago. And all we are doing now is expanding their business portfolio for them to provide another opportunity to further take advantage of citizens of Trinidad and Tobago. And who is going to pay? The man on the street. The small man who is already under pressure. Already under pressure.

Now you are, in my respectful view, giving the opportunities for further banditry and pillaging by the banking sector. Because I would always say that no one gets into business because of philanthropy. That is for Bill Gates and these guys, now they have made their billions they can do philanthropy—pursue those options. So, the banks in offering these nice bonds and services will attach a fee, and I am sure that the fee will be painful, and then the conditions will be even more painful. So that these are things that I think, if we are going to do that you have to put some controls on it. You cannot just leave it open, because the history of the banks is clear. There is no rocket science to it.

So, I agree, hon. Attorney General. You are providing alternative forms of security for bail. Great! Go to the bank and who have financial institutions they get a bond or whatever, great. But there has to be attendant controls. Has to be! Because the history of banks in the way in which they have performed and how they have robbed, systematically robbed and pillaged citizens of this country, it is open. The data is there. I have presented the data on more than one occasion, the same issue.

The method for providing cash is interesting. I find it very interesting. If you had said that someone could go and pay bail for someone, go to a district revenue office and you make the deposit there, fine, and you have the prisoner number or something. We have to find a better system than giving prison officers cash. I cannot see how that is practical. I just cannot see. You are opening the proverbial Pandora's Box to problems. So, some of the things in the legislation, I understand what you are trying to do, increasing the range of options, but the range of options is full of holes. It is full of holes for those very creative citizens of Trinidad and Tobago who use their creative ability to find ways to pillage the system. That is what they do.

I have had enough experience in other rooms in this building, seeing the huge creativeness, and when they come to appear before me, all of a sudden they find all kinds of reasons to not be here, or they get fired, or all sorts of things happen, because they do not want to come and answer, because accountability is a problem in this country. There is zero accountability. People in charge of state resources have zero accountability. [*Desk thumping*] I have a huge issue with that, Mr. Vice-President. But you know I am an easy guy, Mr. Vice-President.

So, Mr. Vice-President, we operate in a system where there is a presumption

that a person is innocent until proven guilty. And that we always try to uphold the defendants—there is a balance about defending the rights of the accused person, but all the same time we have to focus on protecting the public. And this is where I think that I am not sure if that balance is achieved with this Bill. Are we making sure that the rights of the accused person are well taken care of, but are we sure that the balance is achieved in protecting the rights of the public? [*Desk thumping*] I am shaky on that one, Mr. Vice-President. I cannot see it, and it is because of the reality of the place that we are living in now.

Mr. Vice-President, we operate in a place where it is really, really startling the way in which Trinidad and Tobago works. The last time I spoke here I shared an experience I had where people outside of Trinidad and Tobago are looking at Trinidad and Tobago as a place where they have issues with, questions are being asked. And then when we do things like this, I think people ask more questions rather than less, because I am a strong supporter of trying to improve the entire judicial system. The whole system is in a complete shambles. It is on the verge of a complete collapse. It is just not working in any way that allows someone to say that this system is sustainable and it is going to work forever perfectly. It is just going to get worse and worse until we do something.

So, I am not against the general thrust or the measures of the Government to try to improve the system. I question, again, why now? Why is the rush? I am struggling. I am looking; it is short Bill. I listened intently to the Attorney General. I noted all of the issues that he raised, and a billion dollars to keep 750 persons, and the cost of ignoring sections 18 and 19 of the Bail Act. I listened very intently to the AG. But I could not ascertain or discern a group of reasons strong enough that this requires this level of urgency that has seen us here now, almost 10 hours

into this session, trying to ram this Bill through. I do not get it.

This could have easily waited, and certainly in waiting—when I say wait, it means it needs some work done to it. It needs some work done to it. It needs some work to understand that the reality of Trinidad and Tobago is that when you put provisions in the Bill that allow for persons, prison officers, again, good people that they are. I have a couple good people who I know, but you legislate that a prison officer receives the security in the form of cash and the Commissioner of Prisons shall cause the cash or certified cheque to be deposited on the next working day.

So, Mr. Vice-President, we recently ended up with a six-day weekend because of Bret. So, if someone had gone and left, you know, $100,000 with the prison officer on Thursday, Friday was a holiday, and then Monday was Bret, you ended up with a six-day weekend. And on the six-day weekend you deposit $100,000 and on the Tuesday morning, next business day you have $20,000, what happens?

There would have been so many changes of shift. You know, we have to understand the reality of the system that we are working in, and that is just completely not workable, not workable in any form, shape, whatsoever.

9.00 p.m.

Again, we have a systematic failure of our financial system and I am grateful to see, the Government has a new Member, Sen. Allyson West, Minister in the Ministry of Finance. I hope the good Minister will be able to bring some rationality and bring something of the 2020s into our financial system.

Why can we not pay for anything using a credit card? Why do you have to go and line up at places? If you get a ticket, you have to go to the Magistrates'

Court and line up to pay with cash. That just does not make sense, does not make sense. Why can I not log in somewhere with a ticket number and pay? What is the administrative, technical hurdle?

In the same way, if we had an electronic system like that, someone has to pay bail for X person, they have a prisoner number, log in and send a wire transfer automatically and life becomes easy and you get away from having this manual process and someone lodging cash, giving a paper receipt then somebody has to physically take the cash, line up in the bank, deposit, get another paper receipt, it just— So for me we are actually perpetuating a defective system, we are perpetuating a defective system. The system is defective.

I shared with this honourable Chamber, Mr. Vice-President, at the last time when this Chamber went on a recess, in-between the sessions, I was paying a car loan. And at the time when we went between the change of Government, I had to go and manually pay my car loan because the Parliament stopped paying me. So I said listen—while I am here it comes out of your stipend from the Parliament. On the time I had to pay it manually, I had to go to the bank, get a bank draft, walk down from my bank, go to Treasury, go upstairs to Treasury, let them full out a triplicate form, go downstairs, line up, pay it, go back upstairs with one of the duplicates, let them log it in the book, then they gave me one of the triplicates to come with, to bring it and give it to Mr. Ogilvie or one of his people here.

That is just madness. It took me half a day to do all of that, and this is where we are perpetuating a manual system that I do not get and because we have a manual system we do not want to seem to change it. I hope Minister West, I am giving her a big job to try to bring us into the modern living, I have shared that I have had the unfortunate experience of having a traffic infraction in another

jurisdiction and I get an email and they have a little picture of where my vehicle was in the zone. I clicked on the link, I went to the DMV website, I saw it, I put in my credit card number and I paid the fine.

We need to improve our systems and this is where I am going with that, that I think that we have something as simple as this and we are creating a whole long process, certified cheque and—these things are just messy, they are just messy, unnecessarily so.

Mr. Vice-President, I do not want to detain us because I gather that there are probably six or eight more people to talk tonight, so we will be here till, probably midnight at least. [*Crosstalk*] Because I think that the Bill is flawed, it is flawed in many respects and it requires some fixing, not that it cannot be fixed, but I think that this is something that when we—I think myself and Sen. Mahabir have had the experience of—sometimes when Bills come and we have relatively short time to look at it, you start to look at it and then the problems jump out at you. And that has been my experience here looking at this Bill, the challenges or the problems, and it is because we are normal people, we live normal operations, interact with normal people every day. We understand the challenges of normal regular citizens of Trinidad and Tobago because that is my life. And I believe that as a normal regular citizen I might find it difficult to go to the minimart tomorrow morning and they will say, well, Senator, so you supporting giving criminals bail?

The same min-mart man who every couple of weeks fellas passing with a MAC-10 and holding him up? How can I go and look at him and say, "ay, well you know is a good measure it go make fellas geh bail". And I am sure his position will be "but them is the same fellas who robbing me every couple weeks". That is life out in Trinidad and Tobago where we are now. For those of us who live in other

parts of the place that do not have that experience you are blessed. That is my experience. So I interact with regular people every day and they are having challenges.

So I am struggling with trying to say that I support the intent, I strongly support the intent that we should try to improve the system but I do not agree with the how; I do not agree with the how, what has been put in here. We have to improve the bail system, I agree. I support improving the bail system. What we have here does not seem to do that. In fact, what it does, it presents an opportunity for significant mischief, for significant leakages, for significant wrong things or bad things to happen, and that is my fear. Because I am trying to figure out what is the positive gain, what is the positive that we will get from passing it? What is the positive to Trinidad and Tobago?

What will the families of those who have been victims of crime, what will they feel? "Hey", my parliamentary representative or in my case my neighbour supported this, let me ask him why. What are we going to get as Trinidad—what are we going to get from this? What could I say? Well, it allows for a better system of bail. So in case you are locked up—"yeah", my neighbours, you know, they are just regular people like me, good law-abiding people, we keep the law at an arm's length. And this where I have a disconnect. I always like to be in a space because I am always moving around Trinidad, Mr. Vice-President, and people stop me and talk with me and say, Senator, so explain this to me and I try to explain things to people in the simplest language I can.

So what is really the intent here? What are we trying to do? And I struggled with this because I am trying to see, what is the mischief that you are trying to fix? Is it the big mischief that we have unregulated professional bailors? Well, "wow",

in the world or in the universe of problems that we have in Trinidad and Tobago, I respectfully suggest that it is a small problem. It is a tiny problem. [*Desk thumping*] That is a problem that we could leave until we fix some other bigger problems. That is my pass at it. And for me it does not require to be on the legislative agenda until probably 2029 or something like that. [*Laughter and desk thumping*] We could deal with that some other time. Because there are enough problems in Trinidad and Tobago that need fixing now; we need to fix Trinidad and Tobago now. We need to fix the police service, we need to get a Commissioner of Police. Why can we not get a Commissioner of Police? What is the problem? Bring legislation to fix it.

Why, Mr. Vice-President, we have a system where we have the death penalty, it is on the books. We are seeing challenge to be able to enforce it, because of a whole set of other things. Bring another piece of legislation and say, listen, let us change the final Court of Appeal, let us see what happens. Bring it and let us see. At least let people put their views on the record. I will be able to put my view on the record on it very clearly. And certainly not as succinctly as today because I would be absolutely, pellucidly clear about my view on that because—let me not digress, Mr. Vice-President. Let me stay on course. So, Mr. Vice-President, one of the things I would have thought if the hon. Attorney General and his team were looking at trying to improve the bail Bill, is that making sure that—and I will be guided if it exists now, but once the problem we have, we seem to have a revolving door of persons going out on bail and committing offences. That is a gap we should close.

You know, in some other parts of the world they have a three strike rule. That is a gap we should be trying to plug. So that if you are already on bail for

another offence you automatically should not get bail for another offence. That is it. You should just languish until, because you are a multiple offender. Or as it applies in other places, you are on bail and depending on the offence you are on bail for, you are subject to random drug testing. And if you are tested positive—they call you in and you are given a random test, if you are tested positive, your bail is revoked. If we are trying to improve the bail system. let us look at things like that that are progressive. So that if someone is out on bail and they are found to have illegal drugs in their system, they are using illegal drugs, they have access to illegal drugs, they are obviously hanging with the wrong people.

So those are the types of things I would have liked to have seen inside of the legislation if we are talking about making amendments to the bail Bill, to the bail system in Trinidad and Tobago. But just merely, because, Mr. Vice-President, I am very clear, I reject the suggestion that because it costs what, a billion, one point something billion dollars to house prisoners. I cannot accept that as any part of the logic to support this Bill, I reject that. I reject that completely. I cannot rationalize my brain around that, because what it costs to house prisoners is what it costs to house prisoners. That is what it is. They would not have been there if they had not done something illegal or are awaiting trial to find out whether or not they have actually done something illegal. So I cannot rationalize that logic. I understand where it came from, but for me, I think that where we are as a country, we understand the drivers for crime.

I have said on more than one occasion that, Mr. Vice-President, there is an element in our country. I am not talking about persons who wear shirts out of pants. I am staying far out of that. I am staying far, far away from that. But there is an element of people in this country, Mr. Vice-President, who get up every day and

they dress themselves, whether shirt in pants or shirt out of pants and their whole intention is to commit crime. They have nothing on their agenda, that is it.

Sen. Mahabir and I will get up, we would read *The Economist* in the morning, read the *Financial Times*, make sure we are up to speed with all the various economic developments around the world, that is my routine, that is his routine. Then we will get dressed and present ourselves and come here or go other places and do business. But there are people who get up every morning, put on their shirt inside their pants or outside their pants and their whole life existence is about crime. That is it. Get their arms, their armaments, whatever, and I say this is part of the problem. That is the thing we should be targeting; trying to understand the root causes of crime. Trying to understand how we can reach out to the disaffected youth who seem to think that the system is against them. And then we have to look at the persons who can talk about the fact that they are the best in Trinidad and Tobago because that is why the FCB IPO persons are walking free. That is why Harry Harrinarine and his people at HCU, every person in this room, every taxpayer paid to help make sure that HCU depositors got back their money. But a man was paying himself $1 million a month, head of a credit union, running a Ponzi scheme. You know, Sen. Mahabir, a good guy we like to talk about, a guy called Raj Rajaratnam. And Allen Stanford is doing 125 years at the pleasure of United States Government—

Hon. Senator: He made off 150.

Sen. D. Small: —"yeah"—for running a Ponzi scheme. People ran Ponzi schemes in Trinidad and Tobago, they are living in Florida, they are living fat and then telling the Government they want back their assets. So what it is we are running here? What are we running here? And I had the unfortunate experience, persons

from outside looking at us and they are almost looking at you with grass skirts view. Because you are sitting and you are hearing them talking and I am saying, but, I feel pressured when I hear people describe my country like that. But then I look at things like this and I am not saying that they are correct. In fact, they are wrong, but things like these make us look bad.

We have a Securities and Exchange Commission, Mr. Vice-President, it is the cleanest; it should be in the *Guinness Book of World Records*. We have never had an insider trading in Trinidad and Tobago. It has never happened. So we should make an entry to the *Guinness Book of World Records* for our Securities and Exchange Commission because on their books there has never been insider trading in Trinidad and Tobago. Never happened, not a prosecution. Yet, under the FCB IPO I tried to get 1,000 shares, they tell me, "Smallie" you could only get 500. But men end up with half a million shares and they are laughing at me. They say, "ay, Smallie, he talking in Parliament, doh worry about he, he cannot touch we". And that is the problem in Trinidad and Tobago. Me, regular citizen, I applied and I cannot get what I want but "ah man get ah half ah million".

And these are the problems that we should be trying to fix. Lock them up, lock them up! Make sure that the investigations are concluded, bring the charges, have them arrested and then we could talk about bail. Give them bail, but we are not even getting to the stage of completing the investigations. Are these people so untouchable? Is Trinidad and Tobago a place where the haves and the have nots—I think, I recall, I shared, Mr. Vice-President, in my last talk here that I was in another place looking at the wonderful Anthony Bourdain special and you know, I sit at it and I was a fly on the wall. And you know people described their life. And I am saying good, I am happy for those who could live that life. That is not my

experience, I am a regular guy. I was born in East Dry River, in Rose Hill. Very few people know where Rose Hill is, okay. I came from humble beginnings. I am just a regular person, normal person, trying to live life, trying to make my way in Trinidad and Tobago, trying to make a contribution here.

So I understand the challenges the regular person being born with nothing, nothing and working hard. Nobody has ever given me anything, Mr. Vice-President, I know about hard slug. Hard slug is the order of the day. Hard slug is why I am here making a contribution coming to 10 hours into this session, hard slug. I know by dint of hard work one shall be successful. And I am preaching that to my generation right behind me, but there is a generation who are not being inculcated with those values. They want it today, they want it last week and they do not want to work for it and we have to fix that, not this. Those are the things we should be trying to fix. Pastor Dottin will speak to trying to reach out to those— [*Interruption*]

Mr. Vice-President: Senator, first you have five more minutes, but I also just want to ask you to try and bring it back to the Bill. I understand everything that you are saying, but it is actually getting outside of the Bill at hand. So, you spoke to the urgency of this Bill right now and you spoke to prison officers. So if you have any points to bring forward on the Bill itself I would ask you to bring them up now.

Sen. D. Small: Thank you, Mr. Vice-President, and I appreciate your guidance and I will be guided. So, Mr. Vice-President, on the merits of the Bill, we have the opportunity, or this Bill presents the opportunity for people who are violent, repeat offenders could be getting bail and I am scared about that. I am not saying that is the intent of the Bill, but I think that is one of the consequences that could come

from the Bill. We should be trying to make sure that persons who have committed crimes before or are likely to be committing crimes again, we should try to be restricting the opportunity. And this is where one of my deepest concerns lies. That is something that actually, the average person will say that is repugnant to them.

Mr. Vice-President, as I begin to wind up, I know I only have three or four minutes, the hon. Attorney General in his presentation gave many statistics. I would have like to hear statistics about the number of offences committed by persons on bail. That would have been a useful statistic, about persons who are already on bail and those, how many offences they have committed. I would have liked to hear that, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President, as I close I want to say this. I support the move by Government to fix the system of administration of justice in this country. I support it completely. I believe that it is not intended to be a quick fix, it is something that is going to roll out probably in the medium term and we have to put things in place now to try to treat with it. However, Mr. Vice-President, I respectfully posit that providing the opportunity for prison officers to abscond with people's money, providing the opportunity for banks to further rob citizens of Trinidad and Tobago, we have opened some couple of panaceas in here that I am sure were not within the consideration of those who were drafting the Bill. And those holes need to be plugged. They need to be plugged. Because those are the things that we leave too much open, too much to risk.

The issue of persons who are flouting the current sections of the Bill, sections 18 and 19 of the Bail Act by providing services, by trawling the halls, I do not see that that is something that is of huge importance or huge disruption to the system or huge mischief that is causing this whole problem—I am not seeing the

whole—perhaps I need further edification from the hon. Attorney General and perhaps he will be pellucidly clear in helping me to understand.

But for me where I sit, I am not sure that this is something that should have been brought here in what seems to be some level of haste to get it done. I think that this is something that we need to address. There are things that, in my respectful view, were left out of it and then some of the things in it need to come out of it.

So that is my position, Mr. Vice-President. I believe that we are here to fix Trinidad and Tobago and I will continue to say that as long I am here, I have breath in my veins. Every day, Mr. Vice-President, I wake up, I give my thanks to the father above, I thank him for everything and I say 10 fingers 10 toes, thank him for my family and children and I come every day here, once I am here, to give of my best and I have Trinidad and Tobago's best interest at heart. So when I make my contributions I try not to be disrespectful, but here is what, I tend to be relatively straightforward in my presentations. Thank you very much, Mr. Vice-President. [*Desk thumping*]

Sen. Khadijah Ameen: Thank you very much, Mr. Vice-President. Mr. Vice-President, at this time I join—I am pleased to join in this debate having sat in this Parliament for more than 10 hours already and looking forward to perhaps several days for this week of sitting.

Mr. Vice-President, the Bill is entitled:

"An Act to amend the Bail Act, Chap. 4:60 to facilitate…"

—and it is described as being a Bill:

"…to facilitate a move away from the use of property as a means of providing security for accessing bail and the introduction of the requirement

for security by way of up front deposits of cash or certified cheques."

Mr. Vice-President, I begin by submitting that when a person is arrested and their trial begins, the only thing that makes a difference or determines whether a person stays in jail or not, is money. And this Bill does not change that. The advantage remains to the person who has money. Mr. Vice-President, when we consider the recent conversations, national conversations around the haves and the have-nots, the advantages and disadvantages, those who have power know they have power and continue to abuse that power to carry on with making money, whether it is through illegal or legal trade and committing crimes and facilitating the crimes that contribute to the social ills in our society but continue to get away scot-free because they have money. [*Desk thumping*]

Mr. Vice-President, this evening I want to talk about the vulnerable or at-risk youth who commits a crime. If a person commits a crime and he has property, business or relatives with access to money he can easily take his own bail. But when that young at-risk youth gets himself in trouble from following bad company, when the Government has removed all the opportunities for tertiary education and jobs, and leave young people idle and they get involved in gangs and they end up before the courts, very often they come from single-parent homes or they themselves are single parents.

Sometimes it is a grandparent who might be a pensioner, because at the time when you get arrested your friends are not around. The bad company you followed to reach where you are, they gone. In some cases they are hiding from the police. So who comes to take your bail? Your poor mother, your poor grandmother or grandparent, an aunt or uncle. [*Desk thumping*] I think it is important for us to consider this vulnerable group, because statistics show that people who are under a

certain income bracket tend to make up a greater percentage of the number of people in prisons. And when we speak about bail we speak about the people who are in remand prison. So we must consider what is the earning capacity of the average person on remand. And that vulnerable group is who I would like us to give consideration to.

For many of them bail is something that they simply cannot afford. It is not that they prefer to sit down in remand. The Attorney General in his opening, indicated the population of all of the prison facilities in Trinidad and Tobago and I thank him for sharing that with the Parliament and it emphasizes the fact that the remand prisons are way, way, overpopulated. So it is not a preference. But the present proposals, the present Bill does not deal with the root of the problem. When you talk about that, at-risk youth, who does he go to, to get money? Mr. Vice-President, he goes to a moneylender.

These loan sharks that are—in fact, many of them are around the court because they know people need money and they have very exorbitant interest rates. The interest builds up on you and if you cannot pay or you stop paying, he takes you to court. And then you now have a court order to be enforced against you for this little pittance that you had no choice but to borrow. And who ends up with that debt? The aunt, the grandmother or the mother who has to take your bail. You know who else they go to? They go to the very drug lord who probably had them pushing drugs to get money and become further indebted to him or her and therefore they continue, their obligation to continue in the drug trade is further increased.

They continue that vicious cycle of committing further crimes and they become beholden to that criminal mastermind to repay their debt. How are we

reducing the vicious cycle of poverty and crime by implementing these measures? You are talking about people who—I am talking about people who might have to borrow $100 to buy milk to drop for their child. "We doh have ah baby grant again, you know." [*Desk thumping*] We have people who, they come and they are looking to hustle to make up $200 to buy groceries for the week. Sometimes they come and they need to borrow money because their electricity bill might be disconnected because they do not have $500 to pay the overdue bill. They are begging for groceries. If they get a hamper, they are very happy.

But, Mr. Vice-President, these are not people who have $10,000 sit down in their pocket or sit down in a cash register somewhere that they could send their relatives to take out and bring and "come up by the prison and meet meh". That is not the case. In some cases, these people cannot even get a loan from a regular bank to improve their own life if they want to even open a small business. They simply do not have the wherewithal; they do not have the security. And we have to examine that group of at-risk youth in our society if we want to reduce the number of young people who are in the prisons. We have to, and this Bill fails to address that. [*Desk thumping*]

Mr. Vice-President, there is the need to be tough on crime. We must—the approach in terms of an eye for an eye and so on, but we must examine the effects. The present President of our country, as previously as a judge, he was involved in a programme called the Bail Boys Project. And I must mention that programme. And they generated a lot of discussion in the public domain about what produces the man-child.

[MADAM PRESIDENT *in the Chair*]

That young person who has been incarcerated in our nation's prisons for

long periods before their trial even begins.

And you know what that does, it turns them into hardened criminals because they come out of school, they have no educational opportunities, but they go into the school of crime, the school of hard knocks, the remand prison and they come out as hardened criminals.

> While punishment in the form of incarceration is necessary and it serves as a punitive deterrent in our whole sentencing regime. But before the sentence is passed there is opportunity—Madam President—for restoration instead of punishment, being the traditional penal approach to prevent offending and reoffending.

And that is the direction I would like us to see.

9.30 p.m.

And how can we do that? I have some recommendations that I will share with the Senate a little later in terms of conditions of bail, but at present several speakers mentioned the present practice with bailers. I agree with the Independent Senator Dhanayshar Mahabir, who opened our eyes to the need for legislation to regulate what will be a new suite of financial services that will be generated because of this Bill and the change in the bail regime. The present practice where the accused or relatives of the accused pay 10 per cent to a bailor is considered illegal. That is a hustle. That is a means by which people provide a service to a group that needs a service for a fee. It is a hustle. How different is that to the bank fees that keep increasing time after time and citizens have no choice? How different is that?

The difference, Madam President, is that the issue that is created here, is that you institutionalize that trade that is presently conducted by these so-called

professional bailors. You institutionalize it and you take it away from the small man. So, again, that increases the social divide from the small man. The income going from the small man and going to the big institutions and back to that 1 per cent. So you want to dismantle the well-established practice of professional bailors, of these men who are making a hustle, but I have to say that we must deal with the financial institutions and regulate the advantage that they have been taking on us, the citizens, when it comes to providing financial services.

This brings me to another point, Madam President. The Attorney General mentioned, in his opening, the average cost of treating with a prisoner of being around $25,000 per month. This is not the first time that he has spoken about what a prisoner costs the State. My question is to this Government: What is the purpose of this Bill? Are you seeking to save money? Are you seeking to generate revenue by having the money that is to be paid to the bail that previously would have gone to the professional bailor, now coming to the state via the prisons? Is this another opportunity to pressure the citizens to increase revenue? We already have had several taxes levied on the population. We have had the issue of property tax recently; we have had increases in traffic fines and the Government seems to continue with their approach of trying to lift themselves up by the handle of the very bucket they are standing in and they are destined to fail. [*Desk thumping*]

Madam President, the Government is going down a dangerous path that could undermine the principles of good governance and the integrity of our institutions if their objective is simply to raise revenue. You cannot put policy measures in place with the objective being to raise money and sacrifice the structures of our institution and our public administration, and that is something that I question if part of your objective here is to raise revenue.

Madam President, I go to another point. In clause 4 of the Bill there is an attempt to amend what was section 12 of the previous—it is (4B) and it:

> "…provides for a person acting on behalf of a Defendant who has been taken into custody to give…by way of cash or certified cheque to a prison officer…"

Several speakers before me spoke about these issues with regard to the integrity of the prison service and the safety of deposits at the prison. However, I want to go into some other areas surrounding the prison service. I want to begin by saying that I know there are law-abiding prison officers in the Trinidad and Tobago Prison Service, but there are also the rotten eggs and I want to touch on the human resource and safety issues, and the industrial relations issues.

Madam President, at present because the prisons are overpopulated, the prisons are also short-staffed by extension because you have a certain ratio of prison officers to prisoners. You have overcrowding which has been emphasized by the Attorney General at our prisons and several safety concerns. In fact, I recall reading an article, and when I checked it was an article by Rosemarie Sant on April 25th. It was in the *Express*, April 25, 2016, and the headline and byline was:

"Prison officers live in jail dorms for safety"

So the issue is about the safety of the prison officers. The article was a very good article and it gave a breakdown of the day-to-day experience of prison officers and how they feel threatened in the prison to conduct their regular duties and they spend their time in the dorms. So my question is to the Attorney General: Have you been advised by way of a human resource assessment to determine the additional burden that would be put on the prison service, and if they are required to conduct these new duties? But at present, have you dealt with the existing

burden in terms of improving their human resource shortfall?

Madam President, this takes me to the industrial relations surrounding these new duties. My questions to the Attorney General, if he could indicate in his winding-up: Have you held any consultations with the representative union for the prison officers? Have you had talks with the Commissioner of Prisons? Are these recommendations in line with what they feel they can deliver based on their resources? Have they asked for additional resources and will that be supplied perhaps in the next budget? I think the Attorney General must tell us if he has had any consultation, and if this is the product of those talks.

You see, there is a job description for positions in the public service and the protected services. Salary and salary range is determined based on your duties, but also on the risk that you are exposed to. Authorizing an officer to collect cash is another issue in industrial relations and certain officers are given that authority based on the establishment, but you may be changing the job description. You are certainly changing the risk by having these officers now handle cash and the level of responsibility they will have, and those are issues that the representative union ought to be given the opportunity to treat with.

Madam President, then comes the issue of the safety of our deposits. Sen. Ramdeen mentioned the types of items that are often found in prisons—the knives, the cell phones, the contraband, the cigarettes and so on. The fact is that the few corrupt prison officers are the ones who put all their colleagues at risk, and until that is stopped, the question again, and I reiterate even though it has been said before, how are we guaranteed the safety of the moneys that are to be deposited at the prison? Is the AG attempting here to give authority and power to collect money in this corrupt prison system that exists? And what mechanisms have you put in

place to ensure, not only the safety of the money, but the safety of the officers with the additional risk?

Madam President, I hope the Attorney General will see it fit to respond in his winding-up concerning that human side of the implementation. What I also did not hear from the Attorney General is, you know, in terms of the data, what supporting data led you to feel that this measure would reduce crime? The fact is the Government is yet to show to the nation that they have a handle on crime, that they can put policies in place to adequately deal with it, and I know that the Attorney General has an aggressive agenda to show the nation that he is bringing legislature to deal with crime. However, even though you can talk in Parliament and talk on the platform about the good intentions, the practical part of implementing it and the targets and what you hope to achieve have to be carefully examined. I want to ask the Attorney General if he could share with us, what data did you base this Bill on? What do you hope to improve in terms of targets?

In the United Kingdom, the Department of Justice can tell you that 74 per cent of former inmates reoffend within three to five years of leaving prison. They can tell you the number of people on bail for different offences, by offence, who reoffend, and I am asking if we have that, if those statistics are available.

To me, in my view, Madam President, that is what should inform our policy on bail because if the people who are on bail and reoffending are committing certain types of crimes, there may be social reasons behind it. There may be issues behind it that we have to treat with and we have to be very targeted, and these are matters that you see results in years not in days. So we have to be very careful about what we debate today because it could make a difference in the lives of people decades from now. So I want to ask the Attorney General, please make

policy recommendations based on facts, based on data.

Madam President, I am coming now in terms of the recommendations and the areas that I feel we should be going into. Research in other countries—of course, it does not appear that there is any such research for Trinidad and Tobago, but the research shows that keeping an indigent person in jail prior to their hearing, not only causes personal hardship for that person and their family, but also seriously disadvantages their ability to fight the charges. So the purpose of bail is really to ensure that a person shows up for their proceedings in court. The remand is not a punishment.

In other jurisdictions, judges are moving away, and the Judiciary is moving away from cash bail and there is a reason for that, and we must ask ourselves if that is applicable here in Trinidad and Tobago and it very well might be. Given the environment at present, the personal hardships people are facing, there is no doubt that people are really just trying to eke out a living in some cases.

There was some interesting information, a study by The Bronx Defenders—which is a big group in New York—which found that there are other options that are more favourable. They examined personal property bonds, the use of other forms of insurance and so on, for people who could afford, but then you also have a number of people who are on offences—they may be minor offences, or they may be violent offences—and the study found that even though the bail was as low as sometimes a thousand US dollars, the individual could not post the bail and they ended up in prison and, of course, the whole cycle continued.

In fact, there is a move to individualize the bail terms to take into consideration the defendants, the accused's economic reality, what is his socio-economic position, and legislation has been passed in other jurisdictions to allow

for charitable organizations—NGOs, particularly those who are interested in the human rights of citizens—to post bail for these persons who may not be able to afford, and in the US you have the bar set at US $1,500.

So any person who commits a crime and is granted bail, US $1,500 or less, one of these NGOs can stand bail for them. So that these, what you call indigent clients, can, especially when they have misdemeanour charges, and really that seeks to level the playing field. And if you are talking about improving access to bail in order to improve the administration of justice, you have to speak about levelling the playing field because creating an access to bail with the price being the same, really does not change the access at all to those who cannot afford.

So, if the Government's intention is to reduce the number of persons who are on remand because the remand prisons are crowded, and your intention is to improve access to bail, or as I raised earlier, whether your objective is to reduce the cost to the State, you must level the playing field and the measures in this Bill fail to do that.

Madam President, there are many options that are opened when it comes to making bail more assessable. You can look at the conditions set for bail orders. We have well-established bail regimes in terms of monitoring; in terms of who the defendant reports to, where they report to; the qualification; the probation officer system and so on. So particularly for first-time offenders, we should be facilitating bail with a monitoring period during their trial so that you can prevent those first offenders from going into the prison system and becoming hardened criminals.

We must include in that the whole approach of restorative justice; therapeutic jurisprudence not merely setting the usual conditions but having conditions that would improve the lives of the individual and allow them to step

out the hole that they may be in; conditions could include enrolling in educational programmes; it could be in schools. In some instances, offenders are at the age where they should be in secondary schools; it could be a tech- voc programme—

Madam President: Sen. Ameen, you have a few minutes left of your speaking time and you have said quite a bit on several issues. I will ask you to use your remaining minutes to focus more and to come back to the Bill—okay?—because the Bill is not about bail in general. It is about a specific aspect of bail.

Sen. K. Ameen: Thank you. How much time do I have?

Madam President: You have 11 minutes.

Sen. K. Ameen: Thank you, Madam President. Madam President, these are the recommendations I am making that I think should be included, that I feel would have a positive impact on the lives of those who access bail if we are talking about improving the crime rate and reducing repeat offenders. So if you would allow me to just finish the—I have just three more points in terms of recommendations—and move on. I think one of the things that we could include is—

Madam President: Sen. Ameen, as I say to you that you have 11 more minutes of speaking time, that is the amount of speaking time you have, but I would ask you to use the 11 minutes to be relevant to the matter at hand. Okay? You have spent quite a bit of time talking about a lot of other issues, and now I am asking you, if you are using up your minutes, to just use it in respect of the Bill, please.

Sen. K. Ameen: All right. So, Madam President, I thank you for your guidance. There is no doubt that crime is escalating and there is no doubt that the nation expects the Government and the Opposition to come up with measures to fight crime, and I have seen a number of Bills come to this Parliament in a very short space of time. While the Attorney General has been working on a number of Bills

at present, what I have experienced in the last few weeks in this Parliament, we went through a period where the Parliament would have to be convened at a date to be announced and we would have missed several Tuesdays, our regular sitting and so on, based on the Government's agenda.

What I am seeing now, where we are coming close to the close of Parliament, it seems to be an attempt to rush all this legislation [*Desk thumping*] that should have been done before, and, Madam President, I think it compromises the quality of the legislation, the quality of the consultation particular at the committee stage, and that is something I would not like to see happen to this debate. While we have what seems to be a rush to complete this and other pieces of legislation, the fact is that this Senate will fail the nation if we let bad legislation come out of this place that could fall apart and be stricken down in the courts. [*Desk thumping*]

So I want to urge the Government, let us work on quality over quantity, let us not abuse, and perhaps I should not use the word "abuse", but I feel it is an abuse of the Senators who are part time and the Parliament, and the Parliament staff to be stretched, to be putting in all these hours to make up for what should have been done earlier and that is a failure on their part. [*Desk thumping*] The cooperation of the Opposition during these debates, Madam President, because we continue—I mean, all of these Bill are linked in terms of crime fighting and improving the inefficiency of justice. We have seen more contributions from the Opposition and the Independents, than from the Government Ministers. I do not know if the Government has given up, or if they are just simply relying on the Attorney General, but Madam President, I do not think they are doing the right thing with the present approach.

I thank you. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Madam President. Rest assured, Madam President, that I will not be using all of my speaking time tonight, but I think that there are some important points that need to be addressed. In the first place, I think that what the hon. Attorney General is trying to do is to legitimize or give life or to put in the legislation something which governs cash bail. That is to say, where a court makes an order for bail and instead of land being pledged, what the court says is you can pledge cash in a certain amount. Regrettably, I think this is not what the legislation ends up doing.

In the first place, if we look at section 12 of the Act, and in particular section 12(4), with which this amended version starts, I think what we would see is a subsection in the main Act which really ought to be forgotten about, put aside, because it is in clear conflict with the general principles which guide us when it comes to the granting of bail, or the refusal of bail, as set out in section 6(2)(a) of the Bail Act. Because 6(2)(a) says that:

> "where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—
>
> (i) fail to surrender to custody;"

That in itself is a reason for you not to get bail in the first place. So I find it a bit strange that section 6 is telling you the court is not likely to give bail to a person who is likely to fly, but we now have an amended section here which not only permits it, but it gives you any of four options that you can take to effect it, to effect flight from custody. So I think our starting point is all wrong.

Clearly, 12(4) in the Act is in conflict with the rest of the legislation, and in the absence of repealing it, I think what needs to be done, as often happens with pieces of legislation which are bad, is that we should just ignore it. We should just

go straight, Madam President, to consideration of how best legislation can achieve the goal which I respectfully think the hon. Attorney General is hoping to achieve, which is to say allow for cash bail to be provided for in a bail order. To do that, what the hon. Attorney General needs to do, if I may suggest through you, Madam President, is to start with what is contained at (4B) of the proposed legislation, and instead of this convoluted language of where bail is granted and so on, simply say what you would like to effect. That is to say, where a court, or a court shall be entitled to make an order for cash bail, or something along those lines, and then you go on to say how the order may be satisfied, and then you may use the definitions of security which you have at clause (4A). It is as simple as that and it will lend clarity to the understanding of what this piece of legislation is hoping to achieve.

It is laudable thing that the hon. Attorney General is trying to achieve because what happens in the courts is that some magistrates allow cash bail, some do not. It is quite arbitrary in terms of who will and who would not. Some magistrates allow cash bail but for only certain kinds of offences; other magistrates allow cash bail only after you have shown that you are attending court on bail with a surety.

So if this section can be worded in such a way so as to level the playing field, make it clear that when justice is dispensed in terms of granting bail and the conditions of bail, that everybody has an equal shot at it, I think that would be what you would want to see in a piece of legislation like this. This whole thing about bond being issued by a licensed financial institution, I must respectfully say I think that ought to find no place in the legislation.

10.00 p.m.

I do not think that we are here to create a new line of business for banking institutions, and this is the kind of thing which would allow a rich person who intends to flee to go and get a bond in a bank and then make his way abroad hastily, because the poor man certainly, or the middle-class person, is not going to the bank to get a bond. He might have money borrowed and be able to get cash or a certified cheque. But when it comes to financial instruments such as these, you are really talking about the rich, and in principle, I have a problem with that because the law must apply to the rich and to the poor.

And we cannot take, you know, as Sen. Mahabir was quoting an economist, I looked up some quotes from economists to see if I could find one that I can use as well. But there is something from John Keynes where he talks about trying to make what is foul fair and he thought it was acceptable because what is foul is useful and what is fair is not.

But I think what we have to do here is, we simply have to get to the point in the legislation and I think there is lot of rigmarole around the drafting of this piece of legislation which has caused us, in the Senate, to speak when we ought not to have been speaking because this is simply such a simple thing to draft and to bring before the Senate. We ought not to be here at 10.00 in the night because of poor drafting. [*Desk thumping*] And I make no apologies for it, I regret to say.

Now, this whole thing about prison officer receiving cash and so on, prison officers already receive cash. If you are in custody, if you are told that you are fined and you do not have the money to pay the fine, essentially what happens is you go inside until your relative or friend, or whoever it is, is able to get the money together and come and pay it at the prison. So moneys are already collected at the prison.

I do not know what systems are in place for regulation and auditing and so on, but certainly I think, perhaps, the part of the clause which says that the Commissioner of Prisons shall ensure that a proper record of all moneys received and deposited is maintained. Perhaps that could be strengthened a bit, but I am not a financial person so I will leave that to those who know more about it than I do, but I certainly think that simply saying that a record must be kept is insufficient because there is no penalty or no liability if no record is kept. So I respectfully, Madam President, suggest that that ought to be considered.

Now, if I may move on to clause 5 which seeks to amend section 17 of the principal Act, in particular I am looking at (2)(b) where you are talking about forfeiture but you are talking about allowing the defendant, within seven days, to show cause why the security should not be forfeited. I think this is a bit too onerous, with all due respect, because sometimes people do not go to court because they might be in hospital, they may have given birth, they may have got into a car accident, they may have been re-arrested and in a police station somewhere, or they may be in a prison. So seven days for somebody, in those circumstances, would be an impossible time frame to meet. So, Madam President, I am respectfully suggesting that some consideration should be given to reviewing the time period or putting in a mechanism by which the time period may be extended.

Now, if I may now move on to (5) which says:

"Where the security has not been forfeited and the defendant is convicted, the Court may with the defendant's consent, order that the security be applied towards the payment of—

(a) fines imposed on the defendant; and

(b) compensation ordered by the Court for victims of the offence…"

The thing is, I am not clear about this, but usually the defendant is not the person who is putting up the bail. So essentially, what you are saying is the wrongdoer, if he is convicted, can have the innocent relative or the grandmother or grandfather or so who has put up whatever as surety, that person is now going to have his property forfeited to deal with the offence committed by another person, so there is no relationship between forfeiture and the offender, and surely that cannot be correct. Because when you offer to take bail for a person, you take bail within the framework of the law. That is to say, you give an undertaking to the court that you will ensure that the person attends court on each and every date that the matter is called, or if the person is unable to attend court, you as the surety, you have to go to court and explain to the magistrate or the judge why that person is not here and that is the extent of your legal obligations. I did not know that sureties would now be liable to have their property and so on taken away and used as fines and compensation. They are innocent people.

Hon. Al-Rawi: No, that is excepted in (7); (7) excepts them out.

Sen. S. Chote SC: I see. So essentially what it means, as I understand it, and I am very grateful that that is so—

Hon. Al-Rawi: It does not apply to surety.

Sen. S. Chote SC: [*Laughs***]** So, it is only where somebody is on own bail then, as I understand it, that his security and fines may be paid and compensation ordered. I cannot imagine how many people are on their own bail out of the thousands of people in prison because magistrates and judges, generally speaking, do not place persons on their own bail because of the crime situation in the country. It has to be a really exceptional situation for you to find that a defendant has been placed on his own bail. Persons who are placed on their own bail may be placed if they are

charged with minor offences or if there are exceptional circumstances for more serious offences. So I do not know what is the use of this section.

In addition to which, normally when you pay money to a government agency or to the court or to the prison, you have some sort of record of payment being given back to you or you get some kind of receipt. If your own bail is going to be forfeited for payment of a fine and so on, where is the mechanism which shows that these moneys are being used for those purposes? I think that is absent from the legislation.

So, Madam President, I applaud the effort to try to sort out the difficulties encountered with the use of cash bail. Unfortunately, I do not think it can be sold as a crime-fighting tool. In fact, it has very little to do with the fight against crime. It is significant because it is small step towards where I think we ought to be going, and that is to say having legislation, creating a bail bondsman so that persons will not have to face the touts by the Magistrates' Court who sometimes take 10 per cent, sometimes take 25 per cent and that kind of thing and people who want to act as sureties will operate within a regulated environment. Right now, they are operating like PH drivers: unregulated and hazardous.

So, I support the idea and the intent contained in this legislation but certainly, the words used to convey the intent do not do so efficiently or clearly, and I would respectfully ask the hon. Attorney General, through you, Madam President, to have a look at the wording of the sections proposed and see whether amendments may be made to better effect than is contained in this document.

Thank you, Madam President. [*Desk thumping*]

Sen. Wade Mark: Thank you very much. Madam President, I am very happy to make my contribution on this measure before this honourable Senate entitled an

Act to amend the Bail Act, and as we have been advised in the explanatory note, that the purpose of the Bail (Access to Bail) (Amdt.) Bill is to amend the Bail Act in order to facilitate a move away from the use of property as a means of providing security for accessing bail and the introduction of the requirement for security by way of upfront deposits of cash or certified cheque.

Madam President, in my contribution, and I want to say from the outset that I support the contributions made by my colleagues earlier, as it relates to the flawed nature of this piece of legislation. [*Desk thumping*] I will show where this legislation, as my colleague developed earlier, and just consolidate on what he has said, where it will enrich the criminals and the gang leaders. We are being asked in this Parliament to support legislation that will ultimately lead to the enrichment of gang leaders in this country and I will demonstrate. [*Desk thumping*] We already have in our midst, 1 per cent of the population controlling 70 per cent of the wealth, and we also have, from what we have been advised by hon. Sen. Mahabir, when this goes to the licensed financial institutions, they, too, will have their share like the gangsters. So we have the gangs and then we have the legalized gangs in the banks.

Madam President: Sen. Mark, please, have a seat. Please have a seat. Please, I do not think that that is a statement that can be supported, that should be articulated the way you just did it. All right? So please, I would ask you to move on but also desist from that kind of language.

Sen. W. Mark: Well, I take ownership of it.

Madam President: No, Sen. Mark, please, I am not asking whether you are taking whatever you are taking ownership of. I am asking you to not use that kind of language at this stage. [*Interruption*] And Sen. Ameen, do not ask me about what

Standing Order. Okay? Continue, Sen. Mark.

Sen. W. Mark: Yes, we have to ask because we are guided by Standing Orders.

Madam President: Sen. Mark, please, have a seat. It is late and I have asked you, there is a particular—you said certain things and I am asking you to desist from that line and I am asking you to continue with your contribution.

Sen. W. Mark: I want to say, Madam President, that Sen. Mark has freedom of speech under the Constitution of the Republic of T&T. [*Desk thumping*]

Madam President: Sen. Mark, please. Sen. Mark, I am going to warn you for the last time to move on and to desist from those kinds of comments.

Sen. W. Mark: So, Madam President, this Bill is obnoxious. [*Desk thumping*] It is offensive. [*Desk thumping*] It is downright anti-people. [*Desk thumping*] It is deeply flawed. [*Desk thumping*] And it is designed to make gangs in this country more powerful. [*Desk thumping*] And I will demonstrate in my contribution why I have said this. It will not fix the problems.

And I want to tell the Attorney General, through you, Madam President, you want to solve the backlogs? You want to deal with the amount of overcrowding in the prison system? You want to release those who are there on bail through cash? Before you do so, Madam President, I want to tell the Attorney General, this evening, and his Government, that their first responsibility is to fix the social problems in the country. [*Desk thumping*] Deal with the social problems that give rise to these young African youths and these marginalized citizens who have to resort to a life of crime because of the poor and mal-distribution of wealth and income in this country that the PNM is not addressing. [*Desk thumping*] That is what we have to deal with if you want to solve that problem of overcrowding and not to come here this evening with this vexatious piece of legislation and ask us to

support you to release people from prison.

Madam President, I want to let you know that in this country, people are angry, people are outraged. People have reached a point in this land where if they call an election tomorrow, the PNM will disappear from this landscape [*Desk thumping*] because as far as they are concerned, they are doing nothing to deal with the real problems confronting the people. Economic security, social security, and therefore, we are submitting on this side of the House that what is before us today will not solve the problem. It will not and we make it very clear that the Attorney General should do the proper thing and the decent thing, he should withdraw this piece of legislation. [*Desk thumping*] He should withdraw the legislation from this Parliament and take it back to the drawing board.

And this punishment that we are going through here for the last couple days and we have been here from 11.30 because this Government is haphazard, they are disorganized, they are dysfunctional, they are incompetent and they have come here [*Desk thumping*] and last minute, Madam President, seeking to force us into passing bad legislation because somebody wants to look good at the end of the day.

But, Madam President, I want to tell you, 90 per cent of the citizens who are currently incarcerated, pre-trial detainees as they are called, they do not have the financial wherewithal to stand their own bail. They cannot get surety through property, surety in terms of a person and that person having property to guarantee that if they are released from prison, they will appear in court. And what the Attorney General is doing is playing with fire. To bring legislation here, in 2017, where you have a culture of violence and criminality in this country and tell us we must support an arrangement where you will now have cash for bail. Is the Attorney General serious?

What is going on in this country today where people are openly robbed? Their private spaces are being invaded. They are being slaughtered and mutilated without this measure. Madam President, just think, think what this measure will lead to at the end of the day. You know what is freedom? Freedom, when you tell a man who is incarcerated that you can now buy your freedom for $10,000 or you can now buy your freedom with a cheque, or as my colleague said, a bail bond. Think about it. These people who are incarcerated, many of them cannot read, they cannot write. Many of them and so on are unemployed but we are now going to be giving them a provision where we are going to legislate into law, that ability to raise cash.

Madam President, how are they going to raise cash? How are they going to raise the cash to get out of the prison? Madam President, they will get it from you and they will get it from me and they will get it from the ordinary citizens. The middle class will be targeted. The middle class will be targeted because how this thing works, if the Attorney General is not aware, we are being told by hon. Sen. Ramdeen that you have, in most of these centres of incarceration, hundreds of cell phones where people are calling at liberty. They have no controls over these people.

And if you introduce a measure where you are now going to say to gain your freedom, you can now get $10,000, Madam President, I do not have that $10,000, so I ask my family on the phone to raise it and they cannot raise it, what will happen? They will go to the gang leaders and the gang leaders will now be able to guarantee them that $10,000. When they come out of prison, what will happen? They will now become recruitment centres for these people and they will now see us as legitimate targets in order to recuperate whatever they would have issued on

their behalf.

Madam President, this is a dangerous piece of legislation. [*Desk thumping*] This is going to promote criminality and violence in our country.

Madam President: Sen. Mark, could I just ask you to not shout as you are? Maybe you are overcome with passion for what you are speaking about but could I ask you to lower your voice, please.

Sen. W. Mark: Well, I do not know if I am shouting, I speak with passion. So maybe I speak a little loudly but I do not shout. [*Crosstalk*] I do not shout. No, I exercise. [*Crosstalk*] Anyway, Madam President, that is how I have always been and until the Lord is ready for me, I "cyah" change. I am telling you the truth, I "cyah" change. I have been always like that.

Madam President: Sen. Mark, I do not want you to change with your passion, you know, you can have your passion. I am just asking, please, if you could just lower your voice a little bit. That is all.

Sen. W. Mark: Trust me, I will try. [*Interruption*] No, nobody can curb my passion. [*Interruption*] Nobody can beat me down. Anyway, let me speak to the hon. President. But I am making the point that—you know, sometimes, Madam President, when I notice my colleagues want to fall asleep, I have to keep them alive [*Desk thumping and laughter*] and I see a lot of them want to dip and I have to keep them alive here, and I do them a duty and it is my responsibility to keep these colleagues of mine at attention and sometimes, I have to really give them some extra energy. [*Desk thumping and crosstalk*] Anyway, Madam President, may I continue please? So the point I am making is simply this, no matter what time I speak, you will love me. [*Desk thumping and laughter*] I can speak at one, two o'clock, the energy is here. "Da'is me." But anyway, Madam President, I hear

you and I will whisper if I can. [*Laughter*]

Madam President, the point I am simply making is that it is necessary for us to appreciate the dangers of what we are engaging. We have very very—and, Madam President, it will have internal consequences and it will also have external consequences. This approach, as I said, to this cash for bail, I do not know if there has been any consultation with the Prison Officers Association. Now yes, they have their challenges but they are a legitimate body and I would have thought that there would be some kind of consultation. The Attorney General is not here so he cannot tell us if there was any consultation with the Prison Officers Association on this very important matter. So it is very critical that we do not take the wrong message out there.

10.30 p.m.

Madam President, we know that to date we have had close to 255 murders in our country and it continues to spiral out of control. My colleague indicated earlier on, that in the last 22 months, over 800 murders have taken been committed in our country.

Sen. Ramdeen: Eight hundred and forty.

Sen. W. Mark: Eight hundred and forty murders, Madam President, and these are very serious matters affecting our society and community.

Madam President, I want to let you know at any point in time the statistics are showing that there are some 11million persons in the world who are incarcerated, and there are close to 3million people who are in what is called pre-trial detention. And it is a very serious matter, because we know that bail is a very important element in seeking to have somebody access freedom and, therefore, the release is critical in this regard. And, Madam President, I am arguing that when we

are dealing with this issue, we have to take into account the kind of challenges that we are faced with in this society.

I go to the issue, Madam President, of this particular provision in the legislation that deals with the role of the prison officer and the prison commissioner or what is called the Commissioner of Prisons. And you can see in both subsection (4B) as well as subsection (4C) the role of the prison officer and the role of the Commissioner of Prisons.

Now, we are advising in the legislation that the Commissioner of Prisons will now become what is called a revenue collecting agency, will now become a receiver of revenue, Madam President. I have a document called the *Comptroller of Accounts, Ministry of Finance Accounting Manual*, and on page vi of this document it talks about the role of the receiver of revenue and it states that:

> In accordance with section 2, Part 1 of the Exchequer and Audit Act, receiver of revenue means an officer appointed by the Treasury for the collection of and the accounting for such items of revenue as the Treasury may specify.

It goes on, Madam President, to look at the financial regulations of the Exchequer and Audit Act, Chap. 69:01 and its state as follows.

> "A receiver of revenue shall supervise and ensure—
>
> (a) the punctual collection of revenue in accordance with the laws or regulations relating thereto; and
>
> (b) that revenue collections are properly brought to account."

So here in the legislation, Madam President, we are being told that the Commissioner of Prisons will be given the responsibility of collecting cash. He will also have the duty to receive cheques and he can also receive bail bonds. The

question that has to be asked, Madam President: Is there a system in place at the prison administration to facilitate this new responsibility that they are placing on the shoulders of the Commissioner of Prisons?

We have not been given any instant or any information, I would say, Madam President, on the ability of the prison administration to deal with this matter. What I can tell you, Madam President, is that when I look at the Auditor General's report for 2016, and for 2015, and I look under the Ministry of Justice, Madam President, I can tell you that the ability of the prison administration to deal with this matter is very questionable.

Let me read for the record in the Auditor General's report of 2015 what it states on page 66.

> Access to accounting records at the Maximum Security Prison was arranged on two occasions but not effected by the prison authorities.

So even though Auditor General, on two occasions, sought to access the accounting records, on two occasions, they could not have gotten access and it was never effected, Madam President.

Madam President, whether it is expenditure control, whether it is inventory control, whether it is overpayments, whether it deals with documents not produced by the prison service, the litany of woes, as it relates to that institution is here for everyone to see. But, Madam President, what had me very, very concerned was page 86, and the subject matter here is "Statement of Receipt and Disbursements". It says:

> Documents not produced by the Commissioner of Prisons

Now this is the gentleman who is being asked to be a collector and a receiver of revenues in cash, Madam President. The Auditor General is telling us in this 2015

report that the following documents necessary for verification of figures presented by the prisons were not produced: Treasury card, not produced; revenue register, not produced; authorized signatory file, not produced; Comptroller of Accounts receipts, not produced; receipt books, not produced; remittance register, not produced; and cashbook, not produced. Cashbook, not produced.

So, Madam President, where did the Attorney General get this confidence that by giving this responsibility to the Prison Commissioner that you will have systems established to ensure that there is proper accountability for the taxpayers' dollars that will be given to the Prison Commissioner or whoever he would have assigned responsibility for collecting those moneys, Madam President?

Madam President, I see also where there is a heading called "Revenue Control" and it says that critical records such as the cashbook, the revenue register, summary statements and revenue abstract were not provided for audit scrutiny and revenue reported could therefore not be verified. So, Madam President, we are very sceptical about giving this kind of power to a Commissioner of Prisons whose record of controls and systems of accountability, according to Auditor General, leave a lot to be desired. And that is why we believe, Madam President, there is need for the Attorney General to really pay attention to that particular matter.

Now, the Attorney General, Madam President, in a contribution in the other place, indicated, and I want to share with you what he said, he said that there are some 3,200 persons incarcerated in Trinidad and Tobago. He said there are some 1,000 persons in prisons charged for murder and, therefore, these people cannot access bail. But as of March the 9th, 2017, we have 2,280 persons in Remand, what is called pre-trial detention. And of that 2,280 persons, we have 1,170 of them there for bailable offences, bailable offences.

He goes on further, Madam President, to outline, of the 1,170 persons, 839 are incarcerated, are still incarcerated, even though they have been granted bail. So it is these people, Madam President, these 839 persons, who have been granted bail, that the Attorney General is seeking, through this legislation, to release?

Sen. Ramdeen: Unleash.

Sen. W. Mark: And unleash at the same time.

Madam President: Sen. Ramdeen.

Sen. W. Mark: Yes, yes. Release and unleash. And that is why, Madam President—Madam President, we know, let us be serious. There are petty crimes, Madam President, that citizens who have been incarcerated, one can examine and look at. Somebody who is charged for obscene language, Madam President, and that person is incarcerated for one year, two years, he cannot actually raise his own bail, he does not have property, Madam President. In other jurisdictions, alternative measures have been introduced, whether it is for obscene language, Madam President.

Madam President, do you know that there are people in prisons today because they failed to pay their traffic violation, the amount of money rather, or the sum of money, charged for traffic violation offences? People are in jail today for maintenance, in terms of their children.

So, Madam President, there are certain categories of, let us say, crime or offences that we can look at and there are alternative measures that one can utilize, Madam President. You know, Madam President, when people are released from prison, given the kind of measures, the kind of crime I am talking about, they can be told by a court that they must report every week, twice a week to the police station at a certain time. So that for instance, the whole question about ensuring

that those individuals are able to return to the courts.

But, Madam President, just as how we have some petty crimes, there are also people in jail or incarcerated—[*Interruption*]

Madam President: Sen. Mark, you have five more minutes.

Sen. W. Mark:—and they have very serious offences facing them. Those are the people, Madam President, that we are saying that you cannot release them: people who are in jail because they are guilty or not guilty, they have been charged, Madam President, with grievous bodily offences, they have shot someone, they have seriously wounded someone, Madam President, and those are the people who have also been granted bail and they are part of the 839 that the Attorney General is seeking to have us, you know, support through legislation. Blood crimes as they are called. We cannot support these things, Madam President, not at this time. The culture of violence is too serious in our country, so we have difficulty, Madam President, in going along that road.

Madam President, I also would like to suggest, in the few moments I have remaining, I want to suggest to the Attorney General that there is something called biometric technology and I think it is something that is very useful for persons who have already been given bail in Trinidad and Tobago. It is an attempt, Madam President, this new biometric technology allows suspects to comply, Madam President, with their bail conditions, using just their fingerprints, Madam President, and that would go a long way, Madam President, in replacing what we have seen in Trinidad and Tobago as a very archaic paper-based registration system.

It is being introduced in The Bahamas. It is in existence in the United Kingdom and it is a system where, if it is properly introduced, it can cut down on the breaches of bail conditions by digitally tracking information. It will prevent

people from signing registers at police stations. Madam President, this is a system I would like to suggest that the Attorney General pay attention to. As I said, it is a new system of technology. It will be able to track everything, in relation to bail, from the application to regular signing, to report, to monitoring, whether a surety is signed for someone previously. And, therefore, a new system of bail management, Madam President, will go a long way in dealing with this matter of managing those persons who are on bail and it is a more innovative approach to adopt in this period.

So, Madam President, I would like to say in closing that there is need for us to pay attention to a more revolutionary approach to this whole question and seek to make a distinction, Madam President, if we are serious in helping those persons who are incarcerated, by seeking to make a distinction between soft crime, petty crime and the hard crime, Madam President. So that people who are in that category of petty crime can be considered for alternative methods of engagement outside of the spaces that they currently occupy in the prisons. I thank you very much, Madam President. [*Desk thumping*]

Sen. Clive Dottin: Madam President, it is late, but I consider this a privilege on a very important issue in the history of our country, and it must not be trivialized and it should be taken with the absolute seriousness that is required. If I should just go a bit into what the Attorney General said, and I must tell you I appreciate what happened in the previous Bill. To my mind, there was a synergy between the Independent Bench, the Opposition and the Government and I was saying it augured well for the future of the development of not only law but the twin island state of the Republic of Trinidad and Tobago.

I want to venture in the area of law by giving my opinion on what makes

good law and I have six facets here or factors.

1. To my mind as a non-legal person, good law will cater for the most vulnerable and the disadvantaged. [*Desk thumping*]
2. It will make resources available to the above-mentioned group, which would include a highly functional, not dysfunctional, legal aid department.
3. It will maintain the separation of powers between the Judiciary and the Executive.
4. It will recognize that transparency, especially in terms of law, in the crisis we are going through right now, is not optional but compulsory.
5. It will show a responsiveness to the victims of injustice, which I dare say there are many in our country;

And finally, and this to my point is the major problem in this Bill, eh, the specifics of the Bill, the specific intention and objective of the Bill, all right, will not be lost in ambiguity where boundaries disappear. So I think my contribution will be based on these six dimensions, as I look to evaluate the law.

Madam President, I hear an expression called "own bail". But when I examine what is happening on the street, hardly anybody, especially the young ones of the age of accountability, do not have any own bail. There is a recruiting strategy going on now in the nation, in the nation's schools, and I will tell you, they are very dependent on their false Godfathers, who happen to be the drug lords, the guys who are involved in the porn industry, the guys who are pushing the gambling industry now in secondary schools like a virus. So that is something we have to consider in a big way.

One of my concerns is the intergenerational drug blocks in this country, as I

have said before, and that is why we have to be careful who we give responsibility, including prison officers, for collecting this kind of funding. I have said before behind every corrupt cop you could find a lawyer, a businessman, a politician. And the same could go. You could swing it around, behind every corrupt prison officer. And when I look at this Bill, I tell myself that perhaps whoever helped in the drafting of this is not in touch with reality. [*Desk thumping*] I mean, I have seen things in this Bill that shocked me, that virtually stunned me because it is far removed from current reality.

And I want to start here with section 12 of the Act is amended by inserting after subsection (4) the following subsections, and this has been really bludgeoned today. Because I do not know, I have relatives in business. They do not even walk around with $100. They do not walk around with $100 and I do not know where this—who will carry this amount of money anywhere. So to my mind, that needs to be struck out, down the road, subsection (8).

And then we have this issue of the bond. Well, I want to add to this because I understand the mafia in this country. You know, Madam President, what amazes me in this country is that we want to fight crime but casinos multiplying all over the place, legal or illegal. And I do not know if we are depending on some of them and the youth who are involved so heavily now, in and out of school.

I want to share an example with you. I went to a particular school recently. In fact, for the last four months I have been to over 25 schools and one teacher confessed to me that there was a guy who missed school for the whole week, and the last day he came to collect thousands of dollars from his fellow students and he told the social worker he did not come to school to learn that day, he just came to collect.

So it appears to me that this issue of crime and the intergenerational dimension of crime, the role of parents in crime, the role of fathers in crime, the role of the Godfathers in crime. You have fathers who carry their sons around teaching them how to kill and I am not guessing on this. I am telling you what is taking place. This is very serious.

And the challenge we face, as lawmakers, in the other place and here, is that we have to take into serious consideration good law that will look at the dimension to the society and the institutions that are falling apart and not give them extra responsibility, and I would tell you the prison service right now cannot cope with any extra responsibility, whether they are collecting money already for whatever. They cannot cope with any extra responsibility. That is very clear to me. So that, we have a serious challenge and now—

You know, sometimes you have to protect administrators from committing administrative suicide. Because to my mind if we go along with this Bill tonight in this House, it would not be helping the development of the country, will not even be helping the Government.

I mean, we have prison officer (4C) receives security in the form of cash or by way of a certified cheque under subsection (4B). He shall issue a receipt to the person giving the security and the Commissioner of Prisons shall cause the cash or certified cheque—and I remember what the Attorney General was saying about, you know, the issue of data recording. You see that issue of data recording, of course, you know, we have a situation here where the guardians of justice, did not even know, apparently that a particular, you know, judicial officer had 53 more cases to deal with.

11.00 p.m.

Now, the issue of data recording affects the prison service, the police service and the Judiciary, and we are locked in a stalemate here because, to my mind, a dagger is being planted in the heart of justice in this society that a company is collapsed. I mean, we are on the edge of that and, therefore, I would have thought that a certain amount of consultation with critical groups would have taken place before this comes here. [*Desk thumping*] I am saying there is absolutely no reason—a lot of my colleagues on this Bench have said it before—that we should be rushing a thing like this.

I mean, there is something called sleep deprivation and stress, and it is said it causes the prefrontal cortex to shut down and the amygdala to run wilder than the 100 meters world record breakers. It is not good for us. I think of a guy like Sen. Roach. I heard him complain and I want to, perhaps, indicate to the Government that when a vote goes 15 to 13, it would display sensitivity if you treat it as a tie. It would display that kind of sensitivity to individuals who have to have all their mental cortical faculties to make good law and respond intelligently and in an alert fashion. [*Desk thumping*] I just want to give that advice because, do you know what? What hurts us in this society is when you are in Opposition, you could accuse the Government of doing the same thing that you are now doing, because I could remember situations where this was done when the roles were in reverse order. So, therefore, it is very, very important that we think in terms of this, people's health. I know there are people in this Parliament may have a heart situation, some may be even diabetic, some like Sen. Roach will have his differently-abled challenges and, therefore—

Madam Chairman: Sen. Dottin—[*Interruption*]

Sen. Dottin: Yes.

Madam Chairman: You have said what you had to say about the time and what we are doing, but I would ask you now, having said all of that, to come to the Bill, please. Okay.

Sen. C. Dottin: Sure. Thank you for your intervention, Madam President. This is a very, very serious Bill and I looked at it clause by clause and I am saying that there are certain clauses—and I would not take all my time—that should be struck out.

I also want to suggest, through you, to the Attorney General, that the amount of surgeries that has to be done here, do you know what will happen? We cannot use cosmetic practices or surgery to deal with a malignant metastatic cancer. That requires a very serious thing if the life is to be saved. When you hear me go into this Bill now, you will have to do so much surgery in this Bill that it would not even be recognized—the final draft might not be recognized. For example, I am told to go to the Bill, so I am going to the Bill.

Madam President, (4A) will have to go; (4A) will just have to go. 4(C)—well let me come to (4C) there. Let me come to (4C) because I understand how the underworld operates in this society, and what we are doing here, and I want to tell the Attorney General, through you, what I see happening here. When I looked at that part of that Bill, I shuddered because I know how strong the underworld is right now, and I shuddered. Do you know what is going to happen here? We are just replacing professional bailors with institutional arrogant individuals. Because when I listen to some bankers in this society get up—and I mean some, I did not say all—and when they asked about these surreptitious increases in rates, the arrogance that is displayed, we cannot move a society forward in terms of arrogance and we cannot give people who are already arrogant more power and more authority over the disadvantaged. [*Desk thumping*] We cannot do that

whatsoever. [*Desk thumping*]

Getting to the Bill, I am getting to this Bill right now. That is (4C). All right?

Madam Chairman: Just have a seat, please. I am hoping that I am not detecting—I think that this could be inadvertent on your part—but it may come across as being—throwing sort of—I have made an intervention on your behalf and I am just asking not to make reference to it all the time, just deal with what you have to deal with. Okay?

Sen. C. Dottin: I hope I did not convey the wrong impression, my dear. If that happened, I apologize. I can go ahead?

Madam President: Yes.

Sen. C. Dottin: Okay. Now, where I see us going—and I appreciate the role of the Attorney General, and I believe he means well for the society. That is my—I mean, I did not know him before this Parliament, and I appreciate what he is trying to do and I appreciate that he has a heavy responsibility. I have to quote Esther chapter 4, Madam Chairperson, to the Attorney General:

> "And who knows whether you have not come to the kingdom for such a time as this."

I honestly, Madam President, do not feel that we must get into this PNM/UNC thing, because I feel that the problems are so deep. The corruption is so heavy in the society, I mean, it is endemic. And this is not last year, you know, or the year before. This is about four decades and here you have an Attorney General, at this point in time—and if he were a theologian, Madam President, I will tell him that there is in theology something called time carotid time whereby you just arrive at a particular moment. Winston Churchill says that all of us were born for a

moment, and when we recognise that moment, we achieve great success. We have to recognise the moment and we have to place—you know in law and in legal circles—the correct strategies and policies to make a difference. So I am very sympathetic to this Attorney General.

However, really speaking, we cannot govern by sympathy here. We have to look at the thing dispassionately and advise in terms of where we should go. Now, so you have a situation where you are in trouble in terms of the judicial area. You have a situation where there is a loss of confidence. You have a situation—and I am referring to (4C) now where I heard a response to the present judicial crisis where folks are saying, prison officers are saying that there is going to be a riot, there could be riots within the prison system. I do not think it is the best thing right now to engage the officers in terms of (4C) because I think they are stretched to the limit. They are not the only ones stretched to the limit.

You know, when I consider Father Harvey moving out and Hal Greaves now deceased, I want to encourage all of us as parliamentarians to know that we have to really put our heads together—forget party affiliation, forget scoring points, forget the next election—let me quote former President Max Richards—and think about the next generation. Whether it is law we are passing, whether it is community work, whether it is how our churches operate, whether it is how our constituency offices are organized in terms of response to you—I am saying all of these are critical.

What I find with this Bill is that it puts the cart before the horse and I would explain that. For example, I do not know the level of consultation in terms of the bridge between the Attorney General's department and the banking sector or the financial sector. I do not know. One day I saw something that amazed me. The

trade unions were asking for a certain increase—and this comes to the issue of sensitivity. I do not know how sensitive the banking community is to what is taking place in the society. You know, soon after they could not give a particular increase, they announced hundreds of millions in profits.

Now, the Attorney General made a remark that struck me and I want to relate to it. If I could quote him—I mean, paraphrase what he said—he said he would have to speak to this community in terms of their becoming responsive to this responsibilities here. I heard him say that and that to my mind was the most significant part of the Attorney General's explanation and articulating the ingredients of the law. That, to my mind, was a very critical factor which tells me that people do not change overnight. They tell me it takes, in the field of psychotherapy, one of my special areas, postgraduate wise, sometimes it takes a generation for change to come, and this apart from data recording, but even to get a cultural change within your society, it takes a long time.

Do you know what I find? Three things in the society that we have to watch—and that is why you cannot premeditate some of these things. You cannot over-anticipate. You could be disappointed, because if the financial sector does not want this responsibility and they figure it is too much for them, or if they do not change their approach to rates, what could happen here is that you could expand the underworld activity within the legal sphere—I hope I am not saying anything too wrong. I stand to be corrected—you could expand that within the society and create more oppression than you have right now with those—and I agree with the Attorney General, Madam President. I mean, these professional bailors are something else, but could we think for a moment—that if bad will not give way to worse because imagine you are negotiating with one of these guys, the professional

bailors who live off of this and sometimes exploit people—sometimes the issue of people's property. It is a real issue. In fact, I hope the lawyers here are not offended, but I know some attorneys not easy at all when coming to taking people's property. So that it appears to me the whole society needs spiritual engineering. I am saying in terms of this, while I agree with the optimism of the Attorney General, Madam President, this issue could spawn more problems. In other words, the solution of itself can become a problem, and I want to advise on that. I just need about seven minutes more, my dear friends.

The issue of recording, well that is a serious problem in the public service. I do not know if the public service has been engaged by the hon. Attorney General, because, to my mind, the work ethic in the country leaves a lot to be desired and this is an indisciplined society. However, I want to say this: In this society, if we have to move it forward, the corrupt should not be protected against the just. The just should be protected from the corrupt. I want to mention that. Whatever laws we have here must ensure that poor people and those who are victims of injustice receive all the assistance they could get and no Bill or no law does not place them at a disadvantage.

So, ladies and gentlemen, Members of this great noble assembly here, I just want to close off with this: that justice is a flower that can easily be crushed and sometimes even the road to hell is paved with good intentions and, therefore, intentions are not enough. I think we have a Parliament here—and I want to say this, Madam President—and a Senate here that has to be dispassionate, must look at the long-term consequences, the medium-term consequences and the short-term consequences. It is my humble opinion that since we have a real challenge in terms of governance in the society that what we need to do is to rethink this Bill. We

need more time. I would suggest that perhaps when the new parliamentary session opens in September, it will give some time to look—do all the consultation because there are parts of this Bill that I do not think you will have proper consultation with the stakeholders you want to help you. For the stakeholders to come on board there must be consultation, there must be critical agreement, otherwise we could pass a Bill and when we go out to the stakeholders now, we get disappointed. So that I wish all the best. I am looking forward to hear from the hon. Attorney General, but I think that we have to have change in the bail system but it must be carefully thought out.

You know, I was on the Police Service Commission one day—and I close off here, Madam President—and we had to change four clauses in the Police Act and it took some months. When the legal draftsman came from the department, the AG's department, he told us: "You know something, one of the problems in legal drafting is that we do not have people in that profession growing on trees. We do not have many in the state sector." So I do not know if that is part of the problem that would need some investigation.

Hon. Al-Rawi: Senator?

Sen. C. Dottin: Yes.

Hon. Al-Rawi: May I ask a question?

Sen. C. Dottin: Yes.

Hon. Al-Rawi: Thank you, hon. Senator. Thank you for giving way. Could I just ask—I would really like to get a grasp of some of your objections. I got the (4A), I got the (4C), but I was wondering, you had indicated that there were a number of matters that you felt needed some significant surgery. Is there anything else in the Bill?

Sen. C. Dottin: (4A), subclause (c) and the two sections there, below here—this whole page.

Hon. Al-Rawi: I was just wondering—sorry Senator, if I could just finish. We cannot both stand at the same time. Sorry.

Sen. C. Dottin: My apologies.

Hon. Al-Rawi: I was just wondering if you would not mind just giving me a few of the submissions as to what you would prefer to see otherwise, just so that we can respond appropriately when we have the opportunity to wrap up.

Sen. C. Dottin: Can I go ahead, Madam President?

Madam President: Yes.

Sen. C. Dottin: Yes. I am suggesting that that cash value, I have a little problem with the cash thing, I must tell you, and I think that should be seriously reduced. If it does not make sense to have this, it should be struck out. That is my feeling. (4C), I disagree with that completely, with the licensed financial institution. I think it will create more problems and it will exacerbate what we already have in this country in terms of people being disadvantaged. I have a problem with that. I do not trust the sensitivity of a lot of banking institutions.

I have explained what I believe in terms of (4B). I think I mentioned that already. I do not know if you were inside the room at the time. I am saying that (4C), I do not agree with the prison officers' involvement here at all. Okay? If you could put another profession involved—you see, one of my concerns working with the police service and even with the Police Youth Clubs and what have you there, sometimes getting professional administrative assistance to perform a certain role within a department plagued with issues like the prison service is a real problem. It is a problem with the police service too. So if you get some other professionals who

perform that role, I would be very happy and it will be more secured, Attorney General, through you, Madam President, than what we have there now.

I am concerned about section 17, subsection (2B):

"where the defendant gave his own security but failed to surrender to custody…"

—and the issue of the seven days, I too like Sen. Chote, I have a problem with the issue of the quantum of the seven days. I think there should be some other conditions that people who are genuine and missed the seven days should be looked at seriously.

Now, Madam Chairperson, if I could get the Attorney General's attention, I think we have to look at the whole concept of what constitutes your own bail, because what I know is that, for example, a lot of young people who are pawns in the hands of certain crooks in the society, we have to look at that, because I am not sure how much own bail you would have. I would tell you, there are some—I am dealing with lots of young people involved in crime right now. I could tell you, some parents would prefer to give up everything they have—sell their cars, sell everything—just to get bail. I have told some parents is better you let the boy go to jail, it is better let the boy pay a price.

Look at the case in 2014 of that grandmother who got a heart attack. Her daughter was shot and killed in Morvant there. The son, a boy at age 14, was also shot and killed. He was rejected by his parents and everything else and that lady would have done everything to protect that boy from even going YTC. Well, I would protect him from going St. Michael's myself, because all those institutions need a serious overhaul. That is why I am saying to you Attorney General, through you, Madam President that we have to look at an institutional overhaul for this to

make any sense at all—that includes YTC, St. Michael's and St. Jude's and all those institutions. To my mind, before this comes here, there are other things that should take place to make this make sense. Thank you very much, Madam President. [*Desk thumping*]

ADJOURNMENT

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Madam President. I beg to move that this Senate do now adjourn to Thursday, 6th July, 2017 at 2.30 p.m. when we will conclude debate on this "An Act to amend the Bail Act" and then, time permitting, begin the Preliminary Enquiry Bill. [*Crosstalk*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.19 p.m.