

SENATE

Thursday, July 06, 2017

The Senate met at 2.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]



LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Melissa Ramkissoon, who is out of the country; Sen. H. R. Ian Roach and Sen. Sophia Chote SC, who are both ill.

SENATORS' 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: MR. NIKOLI EDWARDS

WHEREAS Senator Melissa Ramkissoon is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NIKOLI EDWARDS, to be temporarily a member of the Senate with effect from 6th July, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Melissa Ramkissoon.

Given under my Hand and the Seal of the
President of the Republic of Trinidad
and Tobago at the Office of the
President, St. Ann's, this 6th day of
July, 2017."

“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: MR. JOHN HEATH

WHEREAS Senator HUGH RUSSELL IAN ROACH 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, JOHN HEATH, to be temporarily a member of the Senate with effect from 6th July, 2017 and continuing during the absence of Senator Hugh Russell Ian Roach by reason of illness.

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 6th day of
July, 2017.”

“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: MR. ALBERT WILLIAM SYDNEY

WHEREAS Senator Sophia Chote is incapable of performing her 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, ALBERT

WILLIAM SYDNEY to be temporarily a member of the Senate with effect from 6th July, 2017 and continuing during the absence of Senator Sophia Chote by reason of illness.

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 day 6th of
July, 2017."

OATH OF ALLEGIANCE

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

Nikoli Edwards, John Heath and Albert William Sydney.

PAPERS LAID

1. Annual Audited Financial Statements of the Trinidad and Tobago Mortgage Finance Company Limited for the year ended December 31, 2016. [*The Minister in the Ministry of Finance (Sen The Hon. Allyson West)*]
2. Annual Audited Financial Statements of the National Commission for Self Help Limited for the financial year ended September 30, 2015. [*Sen. The Hon. A. West*]
3. Ministerial Response of the Ministry of Planning and Development to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]
4. Ministerial Response of the Ministry of Community Development, Culture and the Arts to the Third Report of the Public Administration and

5. Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
6. Ministerial Response of the Ministry of Public Utilities to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
7. Ministerial Response of the Office of the Prime Minister to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
8. Ministerial Response of the Central Administrative Services, Tobago to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
9. Ministerial Response of the Service Commissions Department to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
10. Ministerial Response of the Ministry of Sport and Youth Affairs to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
11. Ministerial Response of the Ministry of Attorney General and Legal Affairs to the Third Report of the Public Administration and Appropriations

Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service.

[*Sen. The Hon. F. Khan*]

12. Ministerial Response of the Equal Opportunity Tribunal to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*Sen. The Hon. F. Khan*]
13. Response of the Elections and Boundaries Commission to the Third Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Inventory Control within the Public Service. [*The Vice-President (Sen. Nigel De Freitas)*]

JOINT SELECT COMMITTEE REPORT

(Presentation)

Local Authorities, Service Commissions and Statutory Authorities

Sen. Nigel De Freitas: Madam President, I have the Honour to present the following report as listed on the Order Paper in my name:

Fourth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Second Session (2016/2017), Eleventh Parliament, on an inquiry into the regulation and licensing of Medical Doctors by the Medical Board of Trinidad and Tobago.

URGENT QUESTIONS

SEA Examination 2017

(Evaluation of Low Scoring Students)

UNREVISED

Sen. Paul Richards: Thank you, Madam President. Good afternoon, everyone. To the Minister of Education: Given that 2,170 students scored below 30 per cent in the 2017 SEA Examination, will there be an evaluation of each student to identify and address his or her needs prior to entry into secondary school?

Madam President: Minister of Education, you have two minutes. [*Desk thumping*]

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. These 2,170 students fall within two groups. The first group, students who are 13 years of age or older, those students will move on to secondary school. Students who are less than 13 years, they will be offered the facility to repeat the year and to resit the examination, and, therefore, we have no immediate plans to conduct an evaluation prior to the entry into secondary school. Certainly, when school reopens in September, we would put things in place.

Sen. Richards: Thank you, Madam President. Would these students have been identified as having challenges for sitting SEA possibly through national tests or other mechanisms?

Hon. A. Garcia: Yes, a number of these students have been identified, and our Student Support Services Division is liaising with our curriculum department in an effort to ensure that the necessary support is put in place for those students.

Sen. Richards: Given that the identification of possible challenges and possible remediation did not work, will there be an assessment of this remedial protocol to avoid this significant cadre of students from falling below the benchmark in the future?

Hon. A. Garcia: There is always an ongoing reassessment of all the protocols that we have in place at the level of the Ministry of Education, and we will continue to do so.

Madam President: Next question, Sen. Richards.

**SEA Examination 2017
(Provision of Remedial Work)**

Sen. Paul Richards: Thank you, Madam President. To the Minister of Education: Given that 2,170 students scored below 30 per cent in the 2017 SEA Examination, what immediate steps will be taken to provide remedial work for these students to prepare them, the ones who are moving forward, for secondary school?

Madam President: Minister of Education, you have two minutes.

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. While there are no plans to put in place any method of evaluation we want to assure parents, and indeed the national community, that as soon as school reopens in September, we will be able to identify students with specific needs, and we will design individual programmes to meet these needs. We will also be conducting diagnostic testing to determine the students' functional levels in the areas of numeracy and literacy. We will provide guidance as to the alternative career paths that those children can follow. We will conduct parent workshops.

In terms of curriculum, we have put in place basic programmes of work in the foundation areas of Mathematics and Language Arts, and we will adapt and adjust the existing curriculum programmes to meet the needs of the students. At the level of school supervision, we will ensure that school supervisors visit schools, on a timely basis, so that where those students are placed they will be afforded adequate time and adequate support. We will be meeting with the administrative teams of the schools to discuss the leadership and management arrangements to be put in place, and there will be regular monitoring of the schools

and the aforementioned initiatives. Thank you.

Sen. Richards: Minister, given the fact that now these students who have fallen below the 30 per cent who will, because of their ages, be moving forward to secondary schools now will have to undergo the protocols that you kindly outlined a while ago, are there plans by the Ministry to provide extra support for the teaching staff given that these students will now be faced with having to do Form 1 work in addition to remedial work because they fell below the 30 per cent benchmark?

Hon. A. Garcia: Madam President, I just stated that we will be conducting diagnostic testing to determine the students' functional needs in the areas of numeracy and literacy. Where this is concerned we are going to lay an emphasis in these two areas so that they will have the necessary skills before they move on. I want to use the opportunity to state that we need to look at the results of the SEA in two categories. We have been able to secure an improvement in the performance of the students because we moved from a 4 per cent to a 13 per cent success rate, and, therefore, we are not only focusing on the students who fell under the 30 per cent, but we are also focusing on those students who have done extremely well also.

Hon. Al-Rawi: That is over 90 per cent.

Hon. A. Garcia: Over 90 per cent, yes.

Sen. Richards: Madam President, I will be guided by your wisdom in this. I hope it falls within the remit of radiation to the question. Does the Ministry plan to reassess the 30 per cent benchmark since it is not globally competitive?

Madam President: No, Sen. Richards. Next question, Sen. Mark.

Office of the President

(Security Breach)

UNREVISED

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of National Security: Can the Minister inform this Senate whether a security breach occurred when a man whose name was not on the guest list was allowed access to the Office of the President to attend an event on Friday, June 30, 2017?

Madam President: Minister of National Security, you have two minutes.

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Madam President, I am unable to state whether any breach occurred at the Office of the President with respect to the question asked. At this time, the ADC to His Excellency and the Commissioner of Police are looking into the matter, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, could the hon. Minister indicate how soon a report would be concluded by the *Aide-de-Camp* on this very important matter that has occurred?

Hon. Maj. Gen. E. Dillon: Madam President, I am unable to give any timeline with respect to those answers. I cannot speak for the President.

Madam President: Sen. Mark, a further supplemental?

Sen. Mark: I wanted to also ask the Minister, as Minister of National Security, having regard to what has occurred, whether he intends to take any further measures to address this breach that has occurred in the apparatus of national security at the President's House.

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

Global Peace Index Report 2017
(Trinidad and Tobago's Negative Image)

Sen. Wade Mark: To the hon. Minister of Foreign and Caricom Affairs: In light of the Global Peace Index Report of 2017, in which Trinidad and Tobago has been named as the most dangerous country in the English-speaking Caribbean, what urgent measures are being taken to correct this negative image of our country?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Madam President, in answering this question let me just quote from page 17 of the report. It speaks to, under the heading, “Central America and the Caribbean”:

“Of the twelve countries in the region, five saw their scores deteriorate, while the other seven improved.”

With respect to Trinidad and Tobago:

“...this was on account of a rise in *military expenditure as a percentage of*—gross domestic product—“and *weapons imports.*”

So I am showing the reason why we have been, by our scores, is deteriorating. Madam President, a quick look over the last 10 years saw the score being fluctuating, roughly between 87 to 94. In 2007, for instance, we were ranked 94 in the global ranking; 2008, 98; 2009, 87; 2010, 94; 2011, 79; 2012, 94; 2013, 90; 2014, 89; 2015, 97; 2016, 84; and 2017, 97.

Madam President, the matter of the image of this country is the responsibility of no single Ministry, and, in fact, no single entity—the Ministries, Departments, agencies or person. Consistent with our development thrust and overall objectives to improve the quality of life of all our citizens, the Government of Trinidad and Tobago remains committed to pursuing a whole-of-government approach to achieving our Vision 2030 objectives. Trinidad and Tobago continues—

Madam President: Hon. Senators, the time for urgent questions has expired.

[*Interruption*] Minister, continue.

Hon. Maj. Gen. E. Dillon: Thank you very much, Madam President. Trinidad and Tobago continues to collaborate with key international partners and agencies through which we benefit from technical assistance, training, equipment, and the exchange of best practices aimed at enhancing our criminal justice system. Madam President—

Madam President: Minister, your time is up. Sen. Mark.

Sen. Mark: Madam President, could the hon. Minister indicate in the area of security and safety, given what we have been advised in this report, whether he is aware that Haiti, Jamaica, and even the Republic of the Congo is ranked higher than Trinidad and Tobago in terms of global peace, are you aware?

Hon. Maj. Gen. E. Dillon: Madam President, I want to repeat; The reason why we are ranked as we are, and it is exactly from the report, with respect to Trinidad and Tobago, it was on account of the rise of military expenditure as a percentage of gross domestic product. And, therefore, it is based on our expenditure, military expenditure in particular, and, therefore, looking at those we may have to monitor our military expenditure as a percentage of gross domestic product to treat with those issues. We have to bear in mind also that our military expenditure has, in fact, bear fruit in the sense of the large drug bust that we have, the largest in the last 25 years. So the military expenditure is justified to a large extent with respect to our vessels, support of our aircrafts, and so on. So we have, in fact, again, it is a result of our military expenditure, and this is quoted from the report, Madam President.

Sen. Mark: Could the hon. Minister of National Security share with this Senate, what is the percentage rise in military expenditure in relation to the country's gross domestic product? You seem to emphasize a lot on that, so could you share with

us what is the percentage rise, where it was and where it is now?

Hon. Maj. Gen. E. Dillon: Madam President, I do not have the percentage rise, and I am in fact quoting from the report as the reason for our ranking. However, in respect of providing that answer I can do so at a later time, exact percentage rise in proportion to gross domestic product.

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government will answer question No. 99. I seek your indulgence and that of the Senate, to defer question 95 to the next sitting, even though it was deferred already, the reason being that the hon. Minister of Finance is currently acting as Prime Minister and he could not attend the session this afternoon, and he personally wants to answer this question. So I crave your indulgence.

Sen. Mark: Madam President, is the hon. Minister indicating that the person who is to answer this question will be visiting the Senate this afternoon to answer this question? I did not get him clearly, and could I get some clarification?

Sen. The Hon. F. Khan: No, I said in the next sitting of the Senate.

Sen. Mark: Well, Madam President, I would like—I do not have the Standing Orders before me, but I am not prepared to wait until the next sitting of the Senate on the 6th of September, or thereabout, to get an answer, I would like to therefore invoke the relevant Standing Order by asking you to do the necessary.

Madam President: Sen. Mark, the relevant Standing Order can be invoked at the end of the question period. So let us just deal with the question, and then, yes, we will deal with it.

The following question stood on the Order Paper in the name of Sen. Wade Mark:

Massy Communications Acquisition

(Details of)

95. Sen. Wade Mark asked the hon. Minister of Finance:

On the recent acquisition of Massy Communications by TSTT, can the Minister inform the Senate of the following:

- a) whether any due diligence and valuation reports were commissioned by TSTT prior to its acquisition of Massy Communications; and
- b) if so, whether the Minister had prior knowledge of these reports and their contents?

Question, by leave, deferred.

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?

Madam President: Minister of National Security, you have five minutes.

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Madam President, the Trinidad and Tobago Police Service received a report of pornographic photographs being posted on a local website in June 2016. This matter is at present under investigation by the Fraud Squad supported by the Cyber Crime Unit. To date, no one has been arrested, Madam President.

Sen. Richards: Thank you, Madam President. Minister, could you indicate if the Cyber Crime Unit has put any preventative measures to mitigate a possible recurrence of this, if there are protocols for that?

Madam President: Sen. Richards, that question does not arise but you can ask another supplementary if you wish.

3.00 p.m.

Sen. P. Richards: Minister, can you indicate, when the investigation is completed, if the contents of the investigation can and will be made public in terms of public awareness, even if we sanitize it to protect the identities of the younger people involved, the minors involved?

Hon. Maj. Gen. E. Dillon: That will be subjected to the advice of the Commissioner of Police at that point in time.

Sen. Mark: Madam President, with your leave I would like you to invoke Standing Order 29—*[Interruption]* Sorry, I am using the House of Representatives Standing Orders.

Sen. Baptiste-Primus: Wrong House!

Hon. Member: You are no longer there.

Sen. Mark: Madam President, with your leave I would like to invoke Standing Order 27(15), having regard to the fact that this matter is outstanding for some period of time.

Madam President: Hon. Senators, Standing Order 27(15) will be followed through.

DEFINITE URGENT MATTER

(LEAVE)

Ministry of Energy and Energy Industries

(Mismanagement of Petrotrin)

UNREVISED

Sen. Wade Mark: Madam President, I hereby seek leave to move the adjournment of the Senate today under Standing Order 16, for the purpose of discussing a definite matter of urgent public importance, namely the failure of the Ministry of Energy and Energy Industries in overseeing the management of the Petroleum Company of Trinidad and Tobago Limited, Petrotrin.

The matter is definite because it pertains specifically to the mismanagement of Petrotrin and the decreasing revenue generation by the company. The report of the Auditor General on the public accounts of the Republic of Trinidad and Tobago for the financial year 2016, also sets out that the Ministry of Energy and Energy Industries could not provide evidence that oil and gas production data received from Petrotrin and used in the calculation of revenue collectible was verified by the Ministry.

The matter is urgent, because given our economic hardships the country cannot shoulder the added burden of another mismanaged and poorly supervised state enterprise. Additionally, the energy sector accounts for approximately 34.9 per cent of the country's gross domestic product, and our economy and energy sector is in dire need of innovation.

The matter is of public importance because Petrotrin employs approximately 5,000 persons. If the Ministry of Energy and Energy Industries continues to neglect this state enterprise, not only Petrotrin employees will be affected, but the livelihood of every taxpayer who has entrusted the Government to effectively and efficiently manage the country's resources.

I thank you, Madam President, and I beg to move.

Madam President: Hon. Senators, I have considered the Motion of Sen. Mark and I am not satisfied that this matter qualifies under this Standing Order.

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

[Second Day]

Order read for resuming adjourned debate on question [July 04, 2017]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Hon. Senators, those who have spoken on this matter are the Hon. Faris Al-Rawi, MP, Attorney General, who moved the Motion, Sen. Wayne Sturge, Sen. Dr. Dhanayshar Mahabir, Sen. Gerald Ramdeen, Sen. David Small, Sen. Khadijah Ameen, Sen. Sophia Chote SC, Sen. Wade Mark and Sen. Pastor Clive Dottin.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much for allowing me to join this debate at this stage. Madam President, from 1994, when then Attorney General, Keith Sobion, who, like me, came from the Mayaro constituency, it was landmark legislation relating to bail. I think previous speakers have established that that piece of legislation dealt with the common law practices as it relates to bail and other practices found in miscellaneous pieces of statute, but in a sense it was landmark legislation. From 1994 until this Bill, every piece of legislation brought to the Parliament relating to bail has been in relation to putting things in place to make it more and more difficult for criminal accused to be granted bail.

Reflecting on 1994 and reflecting on the data relating to crime from 1994, it is almost surprising that the Attorney General at that time would have been minded to treat with something like bail, and set in train an area of difficulty in being able to access bail, and an area of difficulty that over a period of time became progressively worse.

Before us is the only piece of legislation brought to this Parliament to deal

with the issue of access to bail. It is the only piece of legislation. Every piece of legislation before this, has dealt with the restrictions on the grant of bail. And that is a vital piece of information to start off with, because I listened on the last occasion to every speaker. I would say first that Sen. Sturge, who I always say I look forward to listening to because he practises in the criminal courts, I listened, and towards the end there were some suggestions from him. Sen. Ramdeen I would say gave us a contribution in two parts; the first, very emotional; the second part towards the end some suggestions on how we can improve what is before us, and then Sen. Sophia Chote, a series of suggestions on how we can improve.

Let me first talk about Sen. Ramdeen's contribution, and there are two things that I want to address in that contribution. The first is, Sen. Ramdeen introduced the word "floodgate", and since Sen. Ramdeen introduced that word in relation to this Bill, I have had a very unsettled feeling because it took me right back to the closing period of the last session of the Parliament.

In the last session of the Parliament, the Parliament was asked to consider, as had been done on several occasions before, the extension of legislation which put in place restrictive conditions for the grant of bail. In particular, there were two changes brought by the last administration, which I, and I am sure all the right-thinking people in this country, fully supported. Those were the amendments relating to the 120-day restriction, where bail could not have been granted to an accused in relation to certain offences and in relation to certain conditions.

In fact, the second of those Bills, one brought in and moved by then Attorney General, Garvin Nicholas, in 2015, set out to introduce amongst the offences for which bail could not be granted in 120 days, firearm offences. When Sen. Nicholas brought that Bill, I do not think there was a single citizen of this country who could have argued with that piece of legislation, because I do not need

to go into the data except to say, it is well established that there is a link between the proliferation of illegal firearms in the country and the trend of murders rising over a period of time, and as I have said before, from 1999, which was the last year this country recorded murders under the figure of 100 a year. Also, I do not need to supply the data, but it is undisputed that the issue that had to be dealt with was the issue of persons out on bail committing similar offences, in this case, firearm offences.

Those two amendments from 2014 and 2015, aimed to do more than what previous amendments had done. Previous amendments had dealt with issues like kidnapping and violent crimes. I was surprised and disappointed that in this Parliament, the UNC, which enjoyed the support of successive Oppositions in bringing amendment legislation as it relates to bail, would not support the continuation of those restrictions in relation to bail. If ever—if ever a floodgate was opened, it is that refusal to support the extension on the restrictions on the grant of bail in relation to a series of offences, in particular, firearm offences. And that is the floodgate.

Because, Madam President, this piece of legislation does not deal with the grant of bail. Those two pieces of legislation, both of which contained a sunset clause and both of which were scheduled to expire in August 2016, by the non-extension of those restrictions on the power to grant bail within the first 120 days, that in my mind really opened a floodgate on this country, allowing repeat offenders, who might have been restricted in their ability to get bail, to be able to access bail and come out onto the streets of Trinidad and Tobago and re-offend, as all the data shows they are likely to do.

The second point is this reference to the Malabar murders. I think that there was absolutely no need in a debate on bail and a debate on access to bail, to make a

reference to a newspaper article from the *Guardian* written by journalist Jensen *La Vende*, because there is until now, absolutely nothing to suggest—there is absolutely nothing to suggest—that anything that happened on that day in Malabar, as vicious as the events were, absolutely nothing which suggests that it is linked to bail, it is linked to access to bail, it is linked to cash bail or bail by certified cheque. It was purely emotions and purely an attempt to stir emotions. And you do not need to stir emotions in relation to those murders or any murders in this country.

All of us are on record as indicating how we feel about crime, how we feel about murders and how we feel. [*Crosstalk*] In fact, all of us—[*Crosstalk*]

Madam President: Sen. Ramdeen, please, and Members generally, stop the crosstalk please. If it cannot be done in the way it is supposed to be done, which is not for me to be hearing everything, then cut it out. Continue, Minister.

Sen. The Hon. C. Rambharat: Thank you, Madam President. It was no more than a cheap attempt to belittle the Government, using what all of us accept to be a most disturbing murder, or two most disturbing murders, as all murders are disturbing to us. So it is very important that we bring clarity to the debate because it is easy to get carried away—very important to bring clarity.

I would say three things in relation to the misconceptions, the misinformation relating to this Bill. The first is that this Bill does not interfere with the power to grant bail. So in this Bill the Government is not adding to the power and the Government is not taking away from the power. This Bill leaves the situation as it relates to the grant of bail exactly where Keith Sobion left it in 1994. That is where we are. The only thing between 1994 and today that would have placed further restrictions on the court's power to grant bail, was if the UNC last year had extended those two vital amendments which expired in August 2016. [*Desk thumping*]

The second point I want to say in relation to misconceptions and misinformation. This is not the PNM Government at work on this Bill. It is very important that we understand that. Let me just go back. There are several instances where the former Minister of Legal Affairs, Prakash Ramadhar, has taken full ownership of this particular bail Bill, notwithstanding the fact that given the opportunity in the other place to speak on this legislation, he distanced himself completely from it. But it was May 2015. I do not recall the circumstances in which he was prompted to talk about it, but it was May 2015, in this Anna Ramdass report in the *Express* under the headline:

“Ramadhar: Now bail by cheque or cash”

And it is Justice Minister, Prakash Ramadhar, who is saying to the media:

“...yesterday the Legislative Review Commission (LRC) held discussion...towards bail being granted to people not just by property deeds but also by cash and cheques.”

He goes on to regale the media about discussions held with Stephen Williams, the Acting Commissioner of Police, with the Commissioner of Prisons and with other stakeholders, with a view to advancing this piece of legislation that is before us now. So this is not PNM legislation. This is not PNM legislation. This is legislation that this administration is advancing because that party is no longer in Government. [*Desk thumping*]

It does not stop there, Madam President. As far I recall, it was in November last year—and I refer to it in relation to a previous debate—that we laid in this Senate the First Report of the Finance and Legal Affairs Committee, and that was a report on the enquiry into the criminal case flow management in the judicial system. I sat on that committee with Sen. Sturge, and with Mr. Ramadhar. And as I always do when I am amongst those who know far more than I do, I listened very

carefully to what they had to say. We had a most engaging and important discussion as a committee when we interviewed Inspector of Prisons, Daniel Khan.

I recalled on that occasion, and it forms part of the report, an intervention by Mr. Ramadhar on this issue of bail and cash bail. The Inspector, Mr. Khan, had just completed the answer to a question which was specific to access to bail. He had just completed and it was Mr. Ramadhar who could not conceal his excitement, saying to Mr. Khan:

“...I want to congratulate your expression in relation to bail.” And he goes on to say:

“I will tell you now that work had been far advanced in relation to the cash deposit system and I find it troubling that it has not yet been instituted when I demitted office, equally in relation to the electronic monitoring. Equipment had already been procured and you were to have instituted that in the month of September, we are now in February. I am hearing that there is no step to take that far.”

This is Mr. Prakash Ramadhar talking, not just on bail, but also on electronic monitoring, and expressing disappointment in this committee, expressing disappointment that this matter of cash bail and bail by certified cheque had not been advanced, even though he had intended to have it instituted in September 2015. So this is not PNM legislation, Madam President. This is our legislation, historic legislation brought here, not to grant bail and not to restrict bail, brought here for the purpose of fulfilling the desire of a judicial officer to have bail granted. [*Desk thumping*]

Sen. Sturge—there is no question. There are two things that shocked me. One is on the flip-flop, because if you go back to when then Attorney General, Garvin Nicolas, moved the legislation again to restrict bail and to introduce more

onerous conditions relating to firearm offences, well the *Hansard* shows Sen. Sturge, in his opportunity to speak on that Bill, had a great time in the House, regaling the House about the importance of this piece of legislation; regaling the House of the importance of giving prosecutors those 120 days to get their case together; even making the point at one stage that those 120 days were important to keeping witnesses live, and thereafter flip-flopping on that issue. But it goes further.

When I spoke about Daniel Khan, the Inspector of Prisons, having a lengthy discussion with that Finance and Legal Affairs Committee on the issue of bail, it was in response to a question posed by Sen. Sturge, and the records are there in that report. It was on February 19, 2016, the committee interviewing Mr. Khan. It was Sen. Sturge who introduced this issue of bail, saying to Mr. Khan:

“Now, I am interested, quite apart from those who cannot access bail, particularly for murder, there are those who are on bail but cannot access bail; you would agree, if measures are put in place, we can reduce, somewhat, the prison population if we assist those persons who are on bail but cannot access bail?”

This is Sen. Sturge in a committee dealing with the important issue of case flow management in the criminal justice system, having an opportunity to interface with Daniel Khan who by that time had written a voluminous report in relation to prisons, saying over and over, through that report the importance of dealing with the Remand Yard, the importance of reducing the population in Remand Yard. And saying in response to Sen. Sturge's question, how important it was to deal with the issues of those on Remand Yard who had already been granted bail, but could not access the bail. Mr. Khan in his response took the committee through a comprehensive discussion on the importance of ensuring that where bail has

already been fixed, that those who are entitled to bail be given the opportunity to access that bail.

I would have thought with the due regard that I give to my two colleagues on that side, Sen. Sturge and Sen. Ramdeen, with a history, not only outside this House but in this House, of dealing with the question of balancing the interest and standing in defence of constitutional rights, that they would come and speak and ultimately maybe vote in support of the denial of persons who are granted bail, with a real opportunity to access that bail. Because if the sides were switched, they would have said to us that it is not just access to bail, but real access to bail, and that is what this Bill is about. Expanding the opportunities, not limiting it to unmovable property. Expanding the possibilities and prospects for those persons who a judicial officer, acting in accordance with the law as established in 1994 by Keith Sobion's work of giving an opportunity for those who are on Remand Yard and cannot access bail, giving them an improved opportunity to access that bail.

Madam President, it was very interesting that while Sen. Sturge was distancing himself from this piece of legislation, he embraced the electronic monitoring Bill. I wondered if he understood that the electronic monitoring Bill works in two instances, and two instances only. It works upon conviction as part of a sentence in relation to particular offences. But the electronic monitoring Bill also works as a condition of bail.

3.30 p.m.

So you cannot have the electronic monitoring Bill and all the stipulations and all the opportunities in that Bill if you do not have the opportunity for bail, and one can envisage it. One can see that where a judicial officer grants bail and the bail can be accessed, the use of electronic monitoring can be applied so that you mitigate some of the risks that arise when an accused person is on bail.

But what, in embracing the legislation as normally happens on that side, Sen. Sturge paid no mind to the fact that four years after the passage of that very vital piece of legislation, absolutely nothing was done to give effect to it. And the two work together, I agree with him, the two must work together and it is not one or the other.

The third thing, Madam President, is that somewhere along the line, and I forgive anybody who fell for the misinformation, the misinterpretation, the misunderstanding, not the Miss World contestants, I forgive them. But, Madam President, it is Sen. Chote who made the important point towards the end of her submission. And the most important point is that this piece of legislation does not introduce the concept or the use of cash bail in this country. And I do not want any of the Senators sitting here to believe that this is something, this is the PNM and the Attorney General bringing legislation to introduce the use of cash bail in Trinidad and Tobago.

Madam President, cash bail has been used, but Sen. Chote made the important point. Just as in 1994, it would have been a consideration of then Attorney General Keith Sobion that by putting into one piece of legislation all the matters relating to bail, he would have been removing different applications and different use and different conditions applied to bail from court to court. He would have been streamlining. And what this legislation seeks to do is to streamline and to put into statute an equal opportunity for those who a judicial officer determines meet the criteria for bail to be able to access bail using some of the additional opportunities introduced by the amendment to section 4.

Madam President, we do not have to go far to find out that cash bail has been used in this country. I will go back to several recent stories, but let me just take you back to this article which appeared in the *Express* on March 01, 2015,

under the headline, “Businessman in court on extortion charges”. And this case, Madam President, deals with a businessman who appeared in court charged with extortion and demanding a total of \$204,000 by menace. And the charges were read, this was from 2006, the offence was said to have been committed in 2006. And in this case, an extortion charge relating to the figure of \$204,000, the magistrate, according to the article, refused the request for own bail, and instead granted the accused \$150,000 bail with Clerk of the Peace approval or a cash alternative of \$75,000.

This is the application of cash bail. And, Madam President, this ought to be no secret. Also referred to in this article of March 04, 2015. The article says, the accused was represented by attorneys Gerald Ramdeen and Wayne Sturge. So my friends over there are extremely familiar; as practitioners in the court they know that this is not the PNM, this is not the PNM opening the floodgates to criminals and handing somebody the key to open the jails, this is the PNM dealing with something that already exists, where clients of my friends, I am sure, have had the opportunity to access cash bail, and what we are doing here is that we are not making it applicable to certain courts and certain magistrates on certain days under certain arrangements. We are introducing a level playing field where judicial officers, having determined that bail should be granted, would now deal with the access to bail on the basis of new conditions that are introduced in statute by amendment to section 4. And that is what we are doing. Cash bail is not new in this country, Madam President.

March 14, 2017, *Trinidad Guardian* under the headline, “Shooting victim fined \$15,000 for loaded gun”. The accused a 20-year-old who pleaded guilty and two other accused who pleaded not guilty and were each given \$100,000 bail. The article in the *Trinidad Guardian* goes on to say:

“They were also granted a cash...alterative of \$65,000 by San Fernando Second Court Magistrate, Margaret Alert.”

So it is not new.

But, Madam President, we also have stories which is why we are here putting this into statute. We also understand and the AG is very clear that he intends to make it possible to be able to access bail, and right this week, Madam President, while we have been in here debating this we see, for example, *Trinidad Express* July 05, 2017 under the headline, “Accused of child abuse, woman remains in custody”. And the article tells us of the lady who appeared in the San Fernando Magistrates’ Court on Tuesday, on Tuesday, while we sat in this House dealing with bail on Tuesday granted bail of \$100,000 unable to access the bail and remaining in custody up until the night.

Because that is what happens, and that is what the Attorney General is saying to us. This happens to be a lady in relation to an offence that has been in the news, a lady who has eight children, and the court has determined for whatever reason and however you feel or I feel about, however we feel emotionally about this thing, however we feel about crime, the separation of powers it falls to another body, another body to administer the system of justice. And if in accordance with the 1994 legislation brought in by Keith Sobion, the judicial officer grants bail, this Bill before us deals with access to bail in a way that this lady referenced in this newspaper article of July 05, 2017 would be able to access bail.

Madam President: Minister, you have five move minutes.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President.

Madam President: And as you proceed, just move away now from the matter. Yeah.

Sen. The Hon. C. Rambharat: Thank you. Madam President, if you go back

over the last 15 years, if you go back to the pronouncement of the Judiciary, particular various Chief Justices as they delivered their annual statements and other statements, if you go through, if you go through the debates in this Parliament you would see that this thing called access to bail has been an issue that has always been raised. What this Bill seeks to do, it is a very short Bill, it seeks to first, and I would say that the Bill does six things. The very first thing is that it introduces the amendments to subsection (4), and those amendments, Madam President, it introduces subsection (4A), which sets out the four forms in which security can be given in relation to bail.

Firstly, for those sums under \$10,000 security in the form of cash or certified cheque. For those sums which are greater than \$10,000, certified cheque.

Thirdly, a bond issued by a licensed financial institution; or four, as a charge on immovable property. And I know Sen. Mahabir has spoken about the (c) part of it, the new (4A)(c) opening another line of business. But it is as the Attorney General has said, Madam President, it is to clamp down on what exists now in the system, a system that works against people who are desperate to get the financial support in order to secure bail for persons or relatives who are accused and who are in Remand Yard and likely to stay there very long if they are unable to access bail.

Madam President, the second thing, it introduces the opportunity to deal with the access to bail on certain hours and in certain places, the prisons in particular, and I just deal with the issue of the lack of trust, a very important issue. But as it exists now, police officers are also charged with responsibilities in relation to bail. And you know, if you cannot trust or if you cannot put things in place for a prison officer to handle \$10,000 in cash, then that prison officer should not be handling hundreds and hundreds of prisoners at the country's prisons.

The third thing, Madam President, it deals with the issue of forfeiture and

the power of the court to forfeit the bail in certain circumstances. And then, Madam President, it deals with the issue of where a person has posted bail, given the court with the permission of that person, and Sen. Chote raised issues in relation to that provision where the court can use the security put forward by the bail to not only pay fines out of it, but also pay compensation that may be ordered, all with the permission of the defendant, and I believe that is where Sen. Chote had an issue.

So, Madam President, in conclusion, this is not new, the issue of cash bail has existed and this is to level the playing field. This does not interfere with the grant of bail. This gives no additional power to grant bail or to deny bail.

And thirdly, this as I have said so many times, follows on the work of the persons who now sit opposite us and they have not distanced themselves on many occasions from what they set in train, except that for political purposes and when you go through the contribution by Mr. Ramadhar in the Lower House you would see it was naked politics at work as was emotion at work in this House. I thank you very much. [*Desk thumping*]

Sen. Daniel Solomon: Much obliged, Madam President. I am pleased and humbled to make a small contribution in regard to this Bill.

Firstly, I want to compliment all my colleagues in the Senate particular on last occasion where four Opposition Senators, three Independents and one PNM speaker made contributions, perhaps that is why the quality was so high on that occasion. Anyhow, I am pleased to see that Sen. Rambharat has decided to join in the fray. He has always been most illuminating and a pleasure to listen to.

So, Madam President, what is the purpose of this Bill? The purpose of this Bill is to amend the Bail Act and:

“...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”—cash—“deposits...certified cheque.”—bonds or charges on property.

These are all things that were allowed by the Magistrates' Court in any event, and I suspect that what this Bill aims to do is to encourage to some extent a movement towards encouraging the magistrates to accepting more along the cash, certified cheque and bond aspect of the bail.

Madam President, one of the proposed amendments in particular, and I look briefly at these as an introduction, the main proposed amendments are as follows:

“Clause 4 of the Bill seeks to amend section 12 of the Act by—”
—defining what is meant by “security”, and security may be given and received in various forms. Subsections (4A) to (4F) describe these forms.

Clause 5 of the Bill seeks to amend section 17 of the Act that allows compensation ordered by the court to be paid as fines into the court. So, we see a major shift there. And:

“Clause 6...seeks to amend the Act by inserting after the Third Schedule, a Fourth Schedule...to provide the days and times during which a prison officer designated by the Commission of Prisons can accept security for the purpose of...”—this Bill.

Now, Madam President, I have to say that I do understand the difficult balancing act that the hon. Attorney General faces. He is facing a situation on the one hand where he has a large number of persons on remand who may or may not be entitled to bail, many of whom have been granted bail, but cannot meet the said conditions for that bail. And I would reiterate that the highest law in the land is the Constitution of Trinidad and Tobago and that provides not only once, but twice in the Constitution, a fundamental right to bail and this cannot be ignored.

Section 4 of the Constitution outlines, says:

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

And I want to come back to that later on of several instances in this Bill where that may be offended. Section 5(2)(f):

“...Parliament may not...deprive a person charged with a criminal offence of the right...to reasonable bail without just cause;”

So, Madam President, that is the fundamental basis upon which we have to look at all aspects of bail, and all aspects in a very serious manner because you are dealing with the incarceration of people, many of which are presumed innocent until proven guilty and the conditions under which they are kept also may be inhumane and unfair and quite frankly an affront to any civilized society. That being said, this may not be the panacea or the answer to solving these issues, and I hope that my contribution may be listened to by the Government and perhaps, humbly, some of them may be taken on board, as have the contributions of my fellow Senators.

So in the opening, the Attorney General said that the number-one issue facing this country is crime and he hopes that this Bill seeks to fix, in some small way together with a suite of others, in fixing aspects of the criminal justice system and the prison system. I have no problem with that whatsoever, Madam President. I believe that he is right. I think that crime is the number one issue amongst a host of other issues including the economic situation, employment, the education system which we saw today with 2,000 failing the SEA; there are many, many challenges that we face including natural disasters, including flooding, we are in a terrible situation, Madam President, and this is the time when we need clear, focused leadership.

And I will say on behalf of the Opposition that we are not here to just fight and oppose for opposing sake, we are here to work together with Government. If the Government is successful, we are successful, and if we are successful we can go home and we can enjoy a safe, private, prosperous life. So unfortunately, Madam President, we are here to work together to try and achieve a better country for ourselves.

Now, Madam President, crime is the biggest problem in the country and unfortunately, Trinidad and Tobago has had the unfortunate placing as being number seven in the world's countries with the highest crime rate. That was said by the *Gazette* review June 17, 2016, placing us ahead of countries like El Salvador, Brazil and Kenya.

In this particular study, Venezuela was number one and that in itself is disconcerting given our close proximity to Venezuela, and I know with a triple murder including some nationals from Venezuela recently in media, there is a large amount of trafficking in drugs and cocaine smuggling and human trafficking and, in fact, there were some Trinidadians who were recently arrested in Venezuela for human trafficking. So, the proximity to Venezuela which is now the number-one highest crime rate country in the world is also going to impact on Trinidad. To turn a blind eye to that and bury your head in the sand is asking for trouble.

Madam President, there is another study which was in the papers today actually and it was in the *Newsday* page 11, and it reads:

“Global report lists TT as the most dangerous in the English-speaking Caribbean”

A title that we could really do without at this stage.

“TRINIDAD and Tobago has been named as the most dangerous English-speaking country in the Caribbean followed by Jamaica.

This is according to the Global Peace Index Report 2017 which ranked 163 countries.

The most dangerous listed in the Caribbean are the Dominican Republic ranked at 65, followed by TT at 67, Jamaica, 72...”

So, we now have officially surpassed, according to this global report, even Jamaica, that is even more detrimental, more disappointing and a mark of our failure, given our wealth and given our oil wealth that we now have squandered and find ourselves in a position where we, in fact, are more dangerous than Jamaica. And you can see the ramifications on an international scale, you can see that it is going to affect tourism, it is going to affect the economy.

So, Madam President, I certainly agree with the Attorney General’s assertion that we are in a situation where we have got to treat with crime and we must treat with crime as the number-one issue. And looking at the court systems and the prisons systems is something that we certainly need to focus our attention on, but we must do it properly.

Madam President, if you will permit me to read where we stand, Cuba, 76, Haiti is 81, so we are ahead of Haiti; Guyana on the South American mainland was ranked at 83.

So we fall higher, more dangerous than these poorer nations. Syria has been listed as the most dangerous country, for understandable reasons. The top ten obviously are countries like “Afghanistan, Iraq, South Sudan, Yemen, Somalia, Libya, Central African Republic, Sudan and Ukraine.”

And this report is not compiled lightly. It is:

“...compiled by the Institute for Economics and Peace”—it—“covered 163 countries which accounted for over 99.7 percent of the world’s population.

They were assessed using 23 indicators on the level of safety and security in

society, the extent of domestic and international conflict, and the degree of militarisation.”

So, Madam President, that is the situation in which we find ourselves and the challenge now with the Government and the Opposition and the Independent Bench is to find good law, good solutions to assist the Government in tackling the scourge of crime.

I would say, Madam President, that the Government’s responsibility as is delineated in the Constitution is to keep the citizens of this country safe and secure, and right now there is a feeling that nobody in this country is safe and secure, and I do not see how this Bill in particular is going to do anything in the furtherance of keeping our citizens of Trinidad and Tobago safe and secure. [*Desk thumping*]

A snapshot of the last week in the media and what has been going on in our country: kidnapping for ransom, Chinese business woman murdered; double murder of caregiver and young boy; 13-year-old boy found dead with five-month-old baby; that incidentally is statutory rape of the highest order; 17-year-old boy found hanging at children’s home in Valsayn; Fr. Harvey hog-tied and robbed; 11 boys escape St. Michael’s Home, a home recently which we are reading more and more in the papers is rampant with sexual abuse, assault, rape, torture of these young children. These are the institutions which we entrust to look after these children and keep them safe, it is no wonder that they try to escape because that sounds like living hell and a breeding ground for criminality—

Madam President: Sen. Solomon, you are putting your contribution in a certain context, but you are staying too long on the context and you are not dealing with the Bill itself. So, I need you to deal, to get a little more focus now on aspects of the Bill or on the Bill itself.

Sen. D. Solomon: Much obliged, Madam President. These young men who have

escaped, perhaps bail would have been a better option for them. The point is, this Government has no plan whatsoever. This is not even a good idea, this Bill is not a good idea.

And if I can move to section 12 of the Act, inserting subsection (4A) and the proposition is that cash or certified cheques in the amount of \$10,000 or less should be given as security for bail.

So, Madam President, as I understand, this proposition is the thinking behind it is that cash will be more easily accessible and therefore, persons will be able to obtain bail easier. However, if you cannot afford the bail granted by the professional bailors, as it were, which is 10 per cent of the amount of the actual bail granted, there is no way that you will be able to attain the full amount of bail in cash. [*Desk thumping*] It defies logic.

So, let us say bail is granted in the amount of \$100,000 and the man says, "Okay, you can do it \$100,000 cash" which is encouraged by this legislation or you can pay \$10,000 to a professional bailor and get the \$100,000 bail, which option is he going to choose? He has no choice. Ten thousand dollars to most of these men is a far stretch beyond their reach, far less \$100,000, that is even more beyond reach.

So you will end up with a situation where this Bill, now that magistrates are going to be tending towards to move the cash situation, you are going to defeat the actual purpose behind this Bill because you are going to have less people being able to obtain the money and obtain bail, and then you are going to fill the remand yards which are already overfilled beyond capacity.

So in my humble submission, this Bill is badly construed and will have the absolute negative effect of what that is intending. Now, I have heard arguments that cash bail tends to be less granted than that of property. That may be the case.

Some have said, well they estimate that 50 per cent less, but even if you take 10 per cent of the \$100,000 and you have 10 per cent, \$10,000, and you have \$100,000, 50 per cent cash of the \$100,000, you still \$50,000 cash you have to get your hands as opposed to \$10,000. It does not make sense, reverse effect, incarcerated. It does not make sense. If you are telling me the purpose is to empty the prisons of these prisoners and let them loose on the public because they cannot afford the bail, well this is putting more people in remand and more prisoners behind bars. I do not see the purpose.

4.00 p.m.

Madam President, where are they “gonna” get the cash in the first place? We have read recently about a *Newsday* article dated June 30, 2017 where kidnappers collected a tidy sum of \$270,000 in Beetham for the kidnap of a businessman who was going about his bakery business in the wee hours of the morning. Within 24 hours, \$270,000 was obtained. That is how they are going to get the cash. So, you want to make it—why this is dangerous, dangerous legislation is because you are encouraging the criminal element to go after quick cash to get their boys out. [*Desk thumping*]

Madam President, there is another aspect to it. When these people are allowed out on bail, and I am not saying for one minute that they all deserve to be there, but when they do come out, and they may be paid in—people may be paying cash on their behalf. The people who are paying the cash on their behalf may very well be criminals themselves, with their ill-gotten gains, drug lords in particular are full of cash, and they can easily, easily afford to release 10, 20 men to go out and do their biddings, and they will be indebted to that drug lord, and they will have to go and earn their right to pay back the debt which they owe those drug lords. [*Desk thumping*] What I see, and what we see from this side, is a crime wave

coming out of this. [*Desk thumping*]

Madam President, you have to consider the protection of the public, protection of the court system. The Attorney General said, and he said it quite clearly, this Bill is designed to improve the court system. How are you going to improve the court system if you cannot get persons to give evidence against criminals in criminal trials? And that is what we are faced with, because you are going to have a number of people out there who are going to get bail, and the first thing they are going to do is they either going to go after the very witnesses who are giving evidence against them in the first place, so that they can get their bail money back, or, alternatively, they will be bailed out by a drug lord or some other high-level criminal person who has access to that amount of cash, and he would send him to take care of other witnesses, and that is a major problem. Because what we are hearing is that nobody is safe. People no longer want to give evidence. They will witness horrific murders, horrific rapes, horrific child molestation and they say nothing, because they do not want their families to get killed. They do not themselves want to get killed. So, when you are saying to them, “cash”—cash equals further crime. [*Desk thumping*]

Madam President, do not take it from me, it is widely reported. If I can refer to an article, “Witness opts not to testify in Moruga case”. Saturday, April 16, 2016:

“The State’s case against six police officers charged with the murder of three civilians from Moruga in July 2011 appears to be in jeopardy as its main witness has decided that she will no longer testify because of what she says are broken promises in the witness protection programme.”

So, Madam President, six police officers charged with murder, no witness; we understand where we are going.

Madam President: Yes, but just understand that if that is a matter that is pending before the courts, I would want you to treat with it with sensitivity, so you have made your point and I will ask you to just move past that point now.

Sen. D. Solomon: I did not intend to go into it in any great detail, Madam President.

Madam President: Good.

Sen. D. Solomon: I just want to illustrate the point of the danger that we are going into by this Bill, by allowing the cash bail, there is a natural flow of events that will occur in the criminal underworld, that will then directly rebound to the criminal justice system that will then damage the criminal justice system, and then you will not get convictions, and the criminals who may have committed the crime go away scot-free. And that is the ramifications by this Bill. And if you cannot look at the chain reaction then you are stuck. You release 800 people on cash bail, you have 800 more persons on the ground indebted to the hierarchies in the criminal underworld. That cannot be good for the country.

Madam President, I heard my hon. Senator, Mr. Clarence Rambharat—

Sen. Mark: Senator.

Sen. D. Solomon: Sen. Clarence Rambharat, my apologies—and he mentioned that horrific murder involved with the young boy Videsh and his caregiver. The point, and nobody wanted to glamorize or politicize, but I think that he missed the point. The point was that this murder in particular was hateful and brutal, and was designed to send a message purely because the victim had given evidence in a previous matter. And that was reported in the *Guardian*, and if you checked the *Hansard*, as you should have done, you will see it. So “doh” come and try and say that we are glamorizing crime, and try and hide and put your head in the sand to pretend that that did not happen and we should not talk about it. You must talk

about it because you have to deal with it. [*Desk thumping*]

Madam President, I believe that before granting persons bail, one needs to look deeper into the defendant, into who the defendant is. And my comrade, Sen. Sturge, he had said in no uncertain terms, that they should split the offences between summary offences and the more serious offences when considering bail. That certainly is a start. But I would go further and I would say that in foreign jurisdictions, for instance the United Kingdom, social workers and probation officers work very deeply alongside the justice system, together with the psychiatric evaluation teams, psychiatric nurses and doctors, because they recognize after centuries of jurisprudence that everybody who is before the courts is not a normal, sober, run-of-the-mill person. A lot of them are vulnerable and need deeper support in order to move forward. It does not appear as that part of our judicial system has been neglected, which is why we find ourselves in situations where the weak, the vulnerable, the children and the women in society are the ones who tend to suffer the most. And we have seen a viral video the other day of a lady assaulting a young two-year-old boy, what hope do we have if those aspects are not addressed, and those aspects are not identified and dealt with?

So, my submission is that, before we release people on bail, we need to know what people we are releasing on bail. What is the risk impact to the society? Are they likely to recommit offences whilst on bail? Are they likely to recommit violent offences? What are their known affiliations? Are they linked to criminal gangs? Are they known to have a violent past? These are things that I think need to be looked at in deeper detail to understand who we are dealing with. You can have a hardened criminal who has been released on bail on very serious offences, or he may have been freed and then commit a lesser serious offence, and under the summary offences, may be released on bail, but he is no ordinary person who may

have made an obscene language, or maybe is there for non-maintenance of paying for his children. This is a different category.

Now, yes, the man who may be there for obscene language, or the person who will be there for non-payment to maintenance, they should be automatically granted some form of bail, once it is decided that they are not a risk to the society. And that is the key to the whole thing. That is the key to understanding bail, it is understanding the people who are before you. You cannot take a high-handed approach, or broad-brush approach without ignoring the social services aspect, the probation officers' aspect, the support services in terms of psychiatric.

I mean, we have a situation where persons who are mentally ill are being killed. There is the new one today. I spoke about it in my last contribution, where five mentally ill people in the past two months have been murdered. And today, again, another young man was murdered who turned out to have mental illnesses. We are totally unequipped, and people are dying as a result of it. To me, that is unacceptable. So that shows that when you consider bail you must consider the services, consider the institutions that go along with them and utilize them. You cannot just lock people up en masse and expect it to work, because you are going to have people who are there, as I have said before, and the Attorney General made the point, and it is a valid point—it is a pity he is not in the Chamber right now—but it is a valid point. He said, you know, it is a fact that if you put in young offenders or vulnerable persons into a situation where they are there with hardened criminals, some have been convicted for very serious offences, and you lump them all together in a cell, 10 by 10, inevitably those persons are going to come out hardened criminals too, and that cannot be acceptable. But if you choose to ignore that social services side, and intervene, and separate, then you are going to be in great difficulties, and we have the facilities. We have the facilities, and these

people need our protection. They do not have any other protection. When I saw the video of the two-year-old naked boy running down the street—

Madam President: Sen. Solomon, please! I have just asked you about certain matters that are currently engaging the court's attention, and I am asking you to just treat with it sensitively here. All right? Now, you have made mention of it, please, you do not have to be bringing it up all the time in your contribution. And by the way, I am going to ask you now, if you could just try once again to focus more on the Bill, please, and the issues arising from the Bill.

Sen. D. Solomon: Madam President, subsection (4A)—and I accept your ruling, and I beg your forgiveness, because sometimes one does get carried away. These are passionate things which I feel passionately about, and I feel as though we are failing, and I would not go further. [*Desk thumping*]

So, Madam President, I want to make the point, subsection (4A) which says:

- “(a) cash or certified cheque, where the amount of security is ten thousand dollars or less;
- (b) certified cheque, where the amount of security is greater than ten thousand dollars;”

And we are dealing with the professional bailors, and we dealt, I think, in large to do with that.

Now, Madam President, if I could move on. You have to ask yourself, and this is what so peculiar, is that the magistrates have the power to grant cash bail, and in fact they do it all the time, and yet still they choose often to go with the property bail. And it appears to me that no study has been done as to ask them why do they do that? And it is said that this is an illegal practice and it should not be tolerated, and we need to outlaw that and get rid of that. I would prefer to look deeper into it, into the social aspect and understand why it exists. The magistrates,

they are qualified. They sit down there day in day out dealing with literally thousands of cases. They are in contact with the people before them, they are in contact with the police, they are in contact with the system, and you have to ask yourself, why do they constantly do that? And there must be some positive reason for that. And to pass a law like this where you are imposing on them a cash situation, when they prefer to use another, that begs questions.

The Attorney General says, well section 18 and section 19, that outlaws it. It makes it completely illegal. I am not saying no, but I am asking the question. Section 18, and let us look at section 18. Section 18 of the parent Act reads:

“Where a person agrees with another to indemnify that 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 I would ask you to look at that word “indemnify”. Now, indemnify means compensate totally. In insurance terms, it means you suffer a loss, you are totally indemnified for the losses that you have suffered.

That is not what is happening here. What is happening here is persons are buying a service for 10 per cent of the value. It is a loan. It is loan. [*Desk thumping*] So I am not even so sure or convinced that this is illegal. What is illegal and what is the spirit of what this is designed to do—and that is something that we do not do enough in this jurisdiction—is to try and look behind the spirit of the law of what is intended. And this is intended, I put forward, is that when persons say okay, you stand bail for me for \$100,000, you come out of bail, you are outside now, you say, “Look pardner, thanks a lot, but I eh going back. Ah giving yuh ah \$100,000 back. You eh go lose nuttin, I free, everything good.” That is indemnification, and to me that is what section 18 is designed to cover.

This other Bill of bailing cash is not going to cover that, you know. It is not going to stop the use of professional bailors. That is a red herring. That is a red herring. We are trying to outlaw professional bailors because it is an illegal act. Well, if it is so illegal, how come the magistrates use it every single day? [*Desk thumping*]

Section 19 of the Act says:

“It is an offence for a person to stand surety on the consideration of property which, at the time of standing such surety, is being used as security for the purpose of standing surety for any other person unless the approval of the Court is first obtained.”

Second:

“A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for two years and to a fine of three thousand dollars.”

What is the issue with that? The issue with that is that you do not want people running around using deeds for three, four, five persons. How do you solve that? Not through this Bill. “This ain’t curing dat?” You just need to computerize the system. [*Desk thumping*] How could you tell me that this law is going to computerize the system? How could you have a Magistrates’ Court that does not have a properly computerized system in the first place? It blows the mind. But you are going to invent law to cover that? That again is not acceptable.

Sen. Gopee-Scoon: Why is the law not in place?

Sen. D. Solomon: Really? You are in charge now, but please, the blame game is over. We are not here to blame game. [*Crosstalk*] [*Desk thumping*]

Madam President: Sen. Solomon. [*Interruption*] Sen. Solomon, if only you would address the Chair, you would not get sidetracked like that. Okay? [*Interruption*] No, I am not asking for help from anyone, and once again I say,

desist from the crosstalk, please? This is the second time I have made the request, I am not going to ask again! Sen. Solomon, continue.

Sen. D. Solomon: Madam President, to me this is serious business. This is people's lives. This is our country. This is the criminal system. These are criminals who are running loose. This is a matter of human rights, treating people fairly, people who are incarcerated in atrocious conditions. These need serious analysis and serious deliberation, and serious, serious debate. [*Desk thumping*] I am not going to spend up nights researching this for it to be belittled. [*Desk thumping*]

Madam President, I want to say that even the late Dana Seetahal, she said in an article dated 20th April, 2012. She said:

Trinidad and Tobago it is an open secret amongst the fraternity in the criminal justice system that professional bailors are the mainstay of the bail system. This is so even though this is said to be against the law in this country.

Choice of words as interesting as it always has been with Dana. This is said to be against the law. It is an open secret amongst the fraternity. Everybody knows it goes on, and these are lawyers, eh. They are not going to be doing anything to break the law.

Madam President: Sen. Solomon, you have five more minutes.

Sen. D. Solomon: Really! Wow!

Hon. Senator: Time flies.

Sen. D. Solomon: Madam President, poor people have difficulty in accessing property. It is known. They have certain hurdles they have to overcome. There are inherent problems. The deed must be clear. As you say in the courts, no mortgage must be unencumbered. There is a letter of discharge, you must get a

certified copy, you must have a valuation, some courts say the valuation of the property must be six months. It must not have been used for other defendants.

These are major challenges for poor people who probably do not even have the property in the first place, and when you are hitting 150, 250, \$300,000 bail bonds, you are faced on top of that with all of this. You may even have the property, but you may not have the letter of discharge. That takes time. All this time persons are sitting in the—your family member or your loved one may be sitting innocently in the Remand Yard, waiting for these things to be organized. You also need land and building taxes. [*Laughter*]

So, Madam President, you have a situation where you have a professional bailor, he is outside the court, “he ready to go, he getting your boy out, quick, quick time.” Magistrate know he is being used, everybody knows he is being used, 10 per cent is paid because that is what is affordable, and bail is granted. Why not legitimize that entire process? [*Desk thumping*] But no. No. This Government wants to push this whole thing towards the banks. Now we want the banks to make money out of this situation. And I have warned the Attorney General, I have told him before, justice is not a ministry to make money. [*Desk thumping*] “Doh” come here to try and make a revenue earner to balance the books to pay for your oversized budgets through justice. Justice is something that has to be done. It has to be seen to be done, and it has to be fair. You cannot take into consideration cost. And now you want the banks to be profiteering? How much does a bond cost? How much is the poor man going to pay for his bond? How much he is going to pay for his certified cheque? The banks going to be making that money? How the banks reach into this picture? “I doh know. I doh know.” They are not making enough money as it is? Poor people suffering to pay the banks, now it is that we have to let them go and face the banks.

I “doh” understand how the Government could be supporting that? And then you are coming to me with FATCA and FIU, so what, you are going to have drug lords now bringing thousands, tens of thousands of dollars, rushing it into the banks to get their boys out on bail, and get bonds from the banks. What you are doing literally is legitimizing and money laundering money legitimately. [*Desk thumping*] Why you are tinkering into the system? You know, the Attorney General is always saying, “Follow the money, follow the money. Well, ah following the money and ah seeing what happening here.” [*Desk thumping*]

Sen. Ramdeen: Explain your wealth. [*Laughter*]

Sen. D. Solomon: I would say, and I would humbly say that I think the poor people prefer the current system, and they need to consider legitimizing this entire process. Tell us what banks? Tell us what it is going to cost? Tell us the fees? Tell us what is going on? It reminds me, when you are trying to put poor people out of their “lil” businesses. It reminds me of the second-hand car dealers, when they put them out of business so other big businessmen who sell new cars now in business. [*Desk thumping*] It reminds me of the 7 per cent Internet tax which again, putting small people out of business. [*Desk thumping*] This PNM Government is an elitist Government, masquerading as a Government for the people. Unacceptable!

Sen. Ramdeen: “They doh even want Sea Lots now.”

Sen. D. Solomon: No. No. No.

Sen. Ramdeen: “Dey disowning Sea Lots.”

Sen. Baptiste-Primus: What category Ish and Steve is?

Sen. D. Solomon: God save the PNM, boy. [*Crosstalk*] Madam President, there are a number of articles I would have loved to refer to, maybe the *Seattle Times* article on the 7th June, 2017: Jailing the poor and releasing rich 60 per cent

citizens, that talks about the system that has been implored where certain jurisdictions are moving away from money bail and moving in into the more risk assessment part of it, which is something that I suggested and touched on earlier.

I would like to put some positive things forward. I would like this Government to focus on using alternative—there are technologies out there. Madam President, this Government has got to go. [*Desk thumping*] [*Laughter*] They have got to go. [*Desk thumping*] Great is the PNM—

Madam President: Sen. Solomon, your time is up. [*Desk thumping*] [*Crosstalk*] Sen. Creese. [*Continuous crosstalk and desk thumping*] Members! Members! [*Crosstalk*] Sen. Solomon!

Sen. D. Solomon: Madam—

Madam President: No! No! Hold on. Too many people getting carried away now. Too many. I said I was not going to ask again. But, Sen. Solomon, your time was up. When your time is up, you take your seat. Okay? Sen. Creese. [*Desk thumping*]

Sen. Stephen Creese: Thank you, Madam President. Before I begin my substantive contribution on this Bill to amend the Bail Act, I think there is need to clear the air or to deal with some of the subliminal messages that are criss-crossing the stage that are underlining much of the discourse, and I have a concern that there are some things that are a bit unsaid, and for the casual observer, visitor from abroad—well, students have left, needs to be put squarely on the table before we go forward, so permit me just for two minutes to deal with that.

And it struck me when the issue, I think, suggested between Sen. Sturge and Sen. Ramdeen on whether these amendments will open the prison floodgates. And I think it was Sen. Rambharat who this evening referred to the contributions of Senators Ramdeen and Sturge on the question of prison floodgates being open.

But underlying that really is a perception as we speak of crime and bail for people who are accused of criminal activity. We are really thinking of violent crime. And that is unsaid, but constantly implied. And I think in going forward we need to come to some kind of understanding as to whether there is a pecking order of crime, and whether violent crime is in fact way up in the pecking order, and how does that stand vis-à-vis white-collar crime, and which is the greater violence. The physical blood violence inherent in the average hold-up or kidnapping, or the crimes that are perpetuated against generations yet unborn in terms of white-collar crime.

Because when we speak of the floodgates being open by this Bail Bill, we are in fact suggesting that violent elements are going to be let loose on the society. From this we all cringe. And I have a problem, because there is then an inherent support for this bail amendment, because the focus is on the perpetration of violent crime, and I am really, truly unsure that acts of corruption are not crimes against humanity, even unborn humanity. So, I thought there is need for us to seriously reflect on this lest we get carried away and up for this amendment, because our eyes are set on violent criminals, or our perception of violence is that of blood and gore as opposed to the whisking away of millions, either through tax avoidance schemes or whatever mechanisms men or women may come up with to raid the Treasury or to raid whatever common, you know, institutions there are.

And in that sense we cannot deal with the perspective of crimes of violence without the geographical space that is associated with it. Because inherent in all of this, are certain geographical spaces, whether we say it or we do not say it, that are linked to the notions of violent crime, and I make no bones about putting it into *Hansard* that, yes, the majority of us are thinking of places like Laventille and places like Beetham and places like Sea Lots and some parts of Enterprise, and

when I was growing up, it was some parts of Fyzabad.

4.30 p.m.

But, there are all kinds of psychosis, there are all kinds of subliminal messages that prevent us from seeing the thing clearly, and whatever we do here with this Bail (Access to Bail) (Amdt.) Bill, inherent in it must be the capacity to liberate places like Laventille. And as I move off that generic subject and come to the particulars of the Bill, I cannot help but note with greater irony, that there is a place in Laventille called Picton Road. And for those of us who are unfamiliar with who and what Governor Picton was famous for and for those of us who have been in power and saw no need to correct those subliminal messages by changing the name of that place, because I will just refer you to the public library and who Governor Picton was, and what he did to a certain woman of mixed ancestry for which he eventually was charged, and what he did to several other people all over the British empire.

We have had changes from PNM for how many years to NAR, to PNM again, to UNC, to PNM again, to UNC and no attempt has been made to deal with the psychological and subliminal messages that are inherent in the persistence of those names and those places that are reminiscent of a very violent past. And I am not here talking about crimes against the Treasury, but crimes against humanity. So read up on Picton, friends, colleagues, and perhaps a government will come that will see the need to deal with all that violence that is inherent in our history that we try to sweep under the carpet.

So that to come directly to the amendments themselves and there is a provision for cash or certified cheque where bail is \$10,000 or less and for the use of certified cheques, sums over \$10,000. That is at subsection (4A) and which takes us to subsection (4B). And (4B) introduces the role of the Commissioner of

Prisons and the prison officer as being someone to process bail. On paper it sounds like a good idea in terms of providing increased opportunity, increased avenue for the quick processing of bail. But that is tied to subsection (4E) and at (4E) there is a Schedule of days and times when these payments can be effected. And apart from the comments, I think made by Sen. Ramdeen about going with cash up that lonely road, so there is no need to repeat that, what I found interesting looking at that Schedule was that it is Monday through Saturday; 8.00 a.m. to 6.00 p.m., Monday through Friday; 8.00 a.m. to 4.00 p.m., on Saturday. So it would appear—and this is where some of the institutional biases come into play. Clearly there is a prohibition against Sundays. Is that a Christian prohibition? Sunday, because it is a public holiday, justice grinds to a halt? Is that the intent? And if we are saying that here every creed and race finds an equal place, then what about Seventh-Day Adventists on Saturdays? How are they to fare in that scenario?

So we need to be careful that what we are about is consistent with the provisions of our Constitution, the Fourth Schedule is inherent with problems. But on the one hand it is good to see that there is an extension of the provision of bail service by including the Commissioner. But the class bias that is inherent, the institutional bias that is also inherent and the religious bias that is also inherent is cause for concern.

I think one of my colleague Senator, on the Independent Bench says, well, there is access to the bank up to midday Saturday now, thereby implying, at worse, it is only one day the prospective accused may be forced to stay in prison. If we are to take seriously the tenet that someone is presumed innocent until proven guilty, the one-hour processing in the police station is too much, far less one day.

You see, we have to make up our minds, it is either we pay lip service to this concept that you are presumed innocent until proven guilty or we are serious. And

if we are serious then one day, someday, of all days, is too much for the innocent man. So are we, because of our perspective on violence and violent crime, going to cheaply sell the notion that this man or woman may be innocent and one day, Sunday of all days, whatever your religion, you end up in the western societies being a family type day, one day is too much.

So the presumption of innocence has to be there until the man's day in court is over and the jury, or if it is trial by judge, finds him guilty. Otherwise, we end up like that thing we use to see in those western movies, accuse him, arrest him, try him and then hang him, "because we done know he guilty". Presumption of innocence must have weight. And in what is supposed to be the highest court of the land, this place here, most of all, that the notion should be firmly planted in our mind's eye as we go through this bit of legislation.

But there are some other questions we have to ask ourselves, because as I listened to the various presenters, Senators, the question comes up all the time, do we trust the police? Do we trust the prison officers? Because we cannot expect to reach very far on the reduction of crime and the management of law and order if we have not come to terms with the fact that two of the critical institutions involved in the whole question of crime and the rehabilitation of criminals, the police service and the prison service. So do we trust the police? Do we trust the prison officers? And perhaps I will add to the confusion and give you a quick police story and this story came out of my early public service as an investigator in the Office of the Ombudsman. The issue that often came up was the question of the service of warrants. Many a time, and I will probably one day ask the Minister of National Security, through you, Madam President, as to what percentages of warrants are served and not served and are outstanding. Because there was this maintenance warrant that was outstanding at a particular police station in a remote

rural area. It was a maintenance warrant and the contention was that the gentleman concerned could not be easily found. To cut a long story short, the gentleman concerned was a cleaner in the relevant police station. “Cut ah long story short”, to save on my own time. So that is a police story for you. I do not know whether that leaves you better off on the question of: do we trust the police? [*Laughter*]

And I will give you a prison officer story and this, like the police story, is repeated ad infinitum. It is like a serial. “Remember the old days ah serial?” You are very old Senator. It is like a serial and the story goes like this. So somebody is charged for a violent crime, could even be rape or sexual assault and he is in remand. And he is conveniently placed in a cell that has the relatives of, or friends of, or neighbours of the victim. Anybody wants to hazard a guess as to what is his fate on the first night he is in that cell—

Sen. Solomon: Licks in the cell.

Sen. S. Creese:—and whether the prison officers are complicit in placing him there? That is the prison officer story. If you are to take this further, then the question is: Are we just expanding the opportunity for revenge within the system by widening the avenue of participation of prison officers in the bail system? This is Trinidad and Tobago, this is the 21st Century. We cannot afford to be naive. This is the highest court of the land. The buck stops with us. So are we clear in our mind’s eye that we really want to do this, that the risks involved are not mind-boggling.

I think it was Bro. Valentino who has a line about mankind running out of time and space. Well, I have joined the police bashing by my police story. I have joined prison officer bashing, my prison officer story. So justice would demand that I turn my attention, I think to clause 5, which deals with the whole question of the court’s role in applying any part of the bail with the victims, you know, the

accused consent to the payment of his fine or to any compensation to the victim.

And the question there, which brings me to the third pillar in the whole judicial and jurisprudential system, the court itself, the question of time and space. And the question that comes to mind is the High Court, like the Industrial Court, have they been tried and found wanting? Juxtapose this against the question of a judicial officer retiring or resigning with critical unfinished matters. I do not think I have to give any specifics here. I do not think it is necessary to relate like I did a police story, to relate like I did a prison officer story. I think we all know the judicial story. The OWTU has complained endlessly about Industrial Court judges and there is a classic case of one involving Texaco that took about 20 years to deliver. And recently, I think the President had to intervene and disappoint and reappoint somebody so that the matters left pending could be dealt with. And even more recently than that is the example I would not go into. But we all know.

So, the first amendment to the amendment I would like to propose, to recommend is that at clause 5 here, a time frame be set. If the judge is to do anything with those moneys deposited by way of bail, there should be a set time frame for doing it at the determination of the matter after which the moneys are to be automatically refunded. We cannot allow the little money that the poor people gather to take their son out, to be languishing. We just cannot allow that. So that there should be a time frame. Once the judicial officer is interfering with the moneys placed for the bail, there should be a time frame for the disposal or the disposition of that. So you do not have somebody dying, somebody resigning, somebody retiring and the poor people money jumping up literally in steel band.

But there is a larger issue once we are talking about money, about the question of plastic and the use of plastic. And it will appear to me that it is time to drag the judicial system, vis-à-vis, the whole bail question, screaming and kicking

into the 21st Century. [*Desk thumping*] Plastic is here.

And to share with you another story, the reason why I got involved with the credit union movement. Way back in the 1980s I was attending the north-west chapter of the league. And at that time I was more substantively a member of one credit union, but roped in to one of the committees of another. So I was in two credit unions. And the credit union from which I had a mortgage, the president of that credit union had returned from a conference abroad and I am talking here, this is in the 1980s, eh. And someone asked him, well you know, what was it all about. He said, well, "They trying to get we to use plastic and them machine". And this was around the time, it was the very year in which Mary Anne, the Worker's Bank ATM, was introduced in Trinidad. That is why I remember it. And he was so skeptical of this plastic and I said, you know, that is the turning point for me. I am not going to have much to do with the credit union that had my mortgage, I am going to stay involved with the other credit union because they were more proactive. And he was adamant that that was a waste of time. And I was saying, but here are these poor people, take their money and send you up to the States to a conference to get you on the cutting edge of the technology and instead of taking your credit union forward, you are dismissive of the new trend.

So I am saying all of this to make the point, that wherever government institutions on the whole, not just for the bail system, not just for the prison, wherever government institutions on the whole are not keeping abreast of the times, are not into plastic money in a serious way, then we are wasting time, we are certainly wasting technology. And at this juncture of our history where we need to be more cost effective on all fronts, we cannot afford not to be fully plasticized. And the irony is, if the subject, if the subliminal message, if the thing that has us all cringing in our homes, behind the burglar proofing, behind the alarm systems

and the vicious dogs that guard our gates, if it is the fear of home invasions and violent crimes, then you have to go plastic.

As Sen. Ramdeen pointed out, you really do not want to send anybody up that lonely road by the prison with \$10,000 in their pocket. That of itself is a crime to set people up for criminal intent and I would not be a party to that. This is the 21st Century. And you see, we need to recognize and to see the extent to which the law has been a pool of social control and not just the question of the codification of norms and values, but increasingly, particularly in Caribbean history, how we entrap, how we enslave people and there is a sense in which law can easily degenerate, legislation can easily degenerate into instruments of oppression.

And our sacred duty as a Senate and as part of the Parliament is to ensure that the Senate strikes a blow for a new perspective in jurisprudence. [*Desk thumping*] And I do not know the extent to which we realize that the move away from property based bail is significant. It is significant because property has been an instrument by which the lower income groups have been kept in their space. The right to vote, universal adult suffrage, was preceded by property as the basis for voting. So it was only between 1945—when the Act was passed in 1946 when the first election under universal adult suffrage took place that Trinidad experienced this. Before that, sexism, women being kept out. Even racism, because the history of our Legislature, and we need to be wary, is replete with examples where our Legislature was part of a racist oriented system.

The requirement that the East Indian indentured arrivals have to pass a language test, an English language test, before voting, is what that was all about. The challenge has been to break down these barriers, these artificial barriers that sought to keep certain groups relevant and certain groups irrelevant to the political process. So there is a sense in which we could see that expanding bail opportunity

beyond property is in fact a good move. But we have to be careful that we do not become the willing tools of a new class of entrepreneurs and that the State finds itself enjoining a battle between entrepreneurs. That is—I think Sen. Solomon pointed out, there are a group of people who are entrepreneurs in the field of facilitating bail and whether it is our intent in this legislation to rein them in and invite a new set of business people who really do not need the business, because they have been declaring on untold profits, but inviting them into this area.

But as I pointed out, it has been the role of our successive Government regimes, administrative regimes to pay pensions to bank accounts and not credit union accounts. I say no more on that subject. But here we find ourselves bringing the banks into a new area of business, a new boom and bust for them. But it is part of our history for our regimes to do this, to indulge in almost like class warfare against their own people, because after the Morant Bay rebellion in Jamaica, the then legislature in Jamaica, and they had an assembly type government, voted themselves out of office, voted a return to crown colony government to keep the emerging “mulattos” and free blacks from ascending to political office. Our history is replete with these kinds of examples where the State take sides in class warfare.

So the Senate, you know, has to resist the temptation—

Madam President: Sen. Creese, you have five more minutes.

Sen. S. Creese: So the Senate has to resist the temptation to take sides and elevate one class of businessmen over another. The other thing I think that comes out of this is that as the recession deepens, the demands of the money groups for a greater share of the national pie would increase. But it is against that background that the challenge of this Senate, of the Legislature on the whole, is to delineate a new perspective for jurisprudence.

5.00 p.m.

And as in when I was referring to the fines that the traffic Bill has proposed, the point I want to make, and I want to take a little more time this time to get that across, is that as presently structured our fines and bail is much the same. Our fines relate not to people's income and earning capacity, but to some other standard that bears absolutely no relation [*Desk thumping*] to our economic situation. I made the point then, as I do now, that the driver of a super elite vehicle getting a fine of \$5,000 or \$10,000 or \$1,000 does not have the same relationship, the same consequence, as the driver of some foreign-used vehicle, some local-used 20-year-old vehicle that he paid \$10,000 for, paying a fine of \$1,000. That is fundamentally unjust, and the inability of this society to recognize how that is unjust speaks volumes of our sense of justice.

Bail has the same issue because the ease with which somebody could raise bail of \$100,000 whether cash surety or whatever form, and the ease with which the average resident of a low-income place, like the Beetham, could raise that money, speaks volumes of our understanding, our concept of justice, and equity and fair play because bail for the guy who works for \$150,000, \$200,000, half a million, a million a year, and bail for the person who is just at the tax border, \$60,000, where you are not paying any taxes—right?—cannot be the same, cannot by any measure be equitable. So that we need to peg our fines on income, and I am saying that the quantification of bail has to have that same basis, otherwise we are perpetuating an old order of jurisprudence that punishes the poor.

Madam President, I want to close by making the point that the challenge in this Bill, as in the traffic amendment Bill, is for us to strike a blow for new and innovative ground and not add to the stock of woes that our people collectively have had in the past. We need to take stock of the quality of justice that has been

the lot of our people and resist the temptation to continue with more of the same.

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

Sen. Rodger Samuel: Madam President, I want to thank you for the opportunity to join in this debate on the Bill, a Bill to amend the Bail Act, Chap. 4:60. Madam President, the issue with regard to the present scenario in Trinidad and Tobago is not so much the issue of bail, but it is the issue of the inefficiency of a judicial system, a judicial system that has caused citizens of Trinidad and Tobago to be held primarily in remand and suffer the consequences based on the inefficiencies of the system.

It is a fact that people are left to suffer behind bars because of a poor system, and no one can ever argue against that because speedy trials are not readily available in Trinidad and Tobago, and because of the poor system we have found that in the prison systems, remand and as well as others, we have a tremendous congestion of people who are accused and not yet sentenced.

I would have thought that in piloting this particular Bill that we would have had some data saying that there is this move to grant cash bail—and I am not talking about anything else. So people who have been incarcerated and who have found themselves a victim of a poor judicial system, that we would have had the information given to us of how many people in Trinidad and Tobago are presently on bail, how many persons on bail would have had their bail rescinded that would give us an idea of the operation of the system, how many people who have been on bail died while they are on bail.

As a matter of fact, Madam President, we have had some newspaper reports—*Daily Express*, May 17th, by Susan Mohammed, Michael Jacob of Princes Town shot dead. Recently released on bail; *Daily Express*, January 15, 2016, La Brea man who was recently released on bail shot dead outside his house; *Guardian*,

December 13, 2013, “Man released on bail shot outside PoS prison”. He was on \$30,000 bail. So we have a lot of situations that we need to look at. Not only that, but how many persons who were on bail committed subsequent crimes and were rearrested? Those are the kinds of data that I believe is essential for us in determining the outcome of this particular debate.

As a matter of fact, it is essential for us to realize that on the Judiciary’s website—and it was reiterated by Sen. The Hon. Clarence Rambharat that cash bail is no new thing, reiterated by Sen. Senior Counsel Chote. And according to the Judiciary’s website, cash bail, the person who is presenting himself as the surety for cash bail is required to show proof of the source of funds. This requires the production of a recent bank statement usually not more than six months to the Clerk of the Peace. So I understood from the learned Attorney General that this is supposed to be sort of reducing and assisting in the whole judicial works, and bringing down, and relieving the tensions that are in system.

Madam President, if I may quote, in the *Newsday*, “Make access to bail easier” by Jada Loutoo, Sunday, December 04, 2016.

“PRESIDENT of the Single Fathers Association in Trinidad and Tobago Rhondall Feeles is calling on Chief Justice Ivor Archie and Attorney General Faris Al-Rawi to dispense justice with a human side and make bail accessible to the poorer class in the society.

According to Feeles, the administrative system at the St. George West District Magistrates’ Court (Port of Spain and environs), which requires accused persons who were granted cash bail by a magistrate to produce bank statements for the previous six months to prove that their bank account had sufficient funds to cover bail, was arbitrary and unfair.”

In other words, the average person, the poorer class, still cannot get bail because

they cannot prove that they had \$50,000 in the bank for six months. So this does not help the situation. [*Desk thumping*] Which poor person has \$50,000 in their account to say, “Okay, I had this in my account for six months and, as result of that, it can be acceptable”? It is a strange phenomenon that we are trying to ease the system but the system is not set up to even ease itself.

Madam President, not only that, but the former learned counsel, Dana Seetahal, said in an interview in the *Daily Express*, April 20, 2013, that the court has been reluctant to utilize and embrace cash bail. She said and she was dealing with the whole issue of bail in T&T:

“Occasionally some courts may accept cash bail but for administrative and other reasons most magistrates appear reluctant to embrace this option.”

So the question has to be asked: Why? Why are magistrates reluctant to embrace the situation of cash bail and what are the other reasons given? We were not told that, that there was such an issue by the Magistracy. In other words, what was the problem? Why is it that they can do it but they now are reluctant to embrace it? What is the situation that is causing magistrates not to want to do it? Those are the kinds of discussions that we need to have, Madam President.

And as a matter of fact, I found out in a statement in the *Daily Express*, entitled “The Free World” published on November 05, 2016, and the publisher is Senior Counsel Sophia Chote, and I would like to quote Senior Counsel Sophia Chote in dealing with the administrative issues when it comes to cash bail. So really, unless we deal with the administrative issues instituting and attempting to embrace cash bail will continue to be an issue. I want you to listen to Senior Counsel Chote, Madam President, if I may read to you.

“It is difficult for the average person to understand how bail works. The reason is that the law seems to be sealed off in a silo where legal arguments

are made in the courtroom and then there is another silo which houses the dreaded phrase ‘approval bail’.

If someone is granted bail, the order may say the bail is granted in a particular amount, with a surety to be approved by an officer of the court. That person is usually the clerk of the peace in the magistrates’ courts or in larger catchment areas where there are more senior administrative staff, by the clerk of the peace II or III.”

And I am going somewhere.

“Among the documents which the bailor/surety, must provide is ‘a clean deed’”—and we know that and—“that is to say, a certified copy (not a photocopy) of a deed or certificate of title, for a property which is not mortgaged.

Many people have paid off their mortgages thinking that is all you are required to do. Not so—you need to have the bank or financial institution with which you took your mortgage, prepare and register a deed or memorandum of release.

Another requirement which people are not familiar with is that even if the certified copy of your deed shows that the purchase price of your property is equal to, or more than the figure given in the court order, you still need to have a valuation report.”

So it just gets more tedious. That is why people are not getting bail.

“And this is where it starts to go a bit hazy. Some courts, and I use the word in its administrative sense now, require that the report should be no more than six months old, others three. There is no reason for the difference.”

Now I come to cash. Sen. Chote SC:

“Courts are now prepared to grant cash bail as an alternative to bail with a

surety. This means that the production of a certified manager's cheque made out to the senior magistrate is brought to the court. It is received by the cashier and should be deposited into an account and returned upon the conclusion of the matter.

Initially, the cheque was made out to the clerk of the peace, but this was changed, and without sufficient notification to members of the public and/or their attorneys.

If you go to the judiciary's site you could find an explanation for what cash bail"—is, and I just did that.

"This week I discovered"—Senior Counsel Chote—"that the cash bail in one district requires just what I described above, but in another"—district—"the surety is required to produce bank statements for the previous six months, to prove that that account always had sufficient funds to cover bail (set six months down the road)."

In other words, there are disparities, there is no connection between one district and the other. In other words, what appears to be acceptable in one district is not acceptable in other districts in a small country like Trinidad and Tobago.

"People cannot be asked to respect a system which is arbitrary and constantly in flux and this is what has been the position with the approval of bail orders for far too long..."—in Trinidad and Tobago.

"Why is an order of the court blocked by administrative checks which are unnecessary, invasive and punitive? Why should a surety have to disclose his financial affairs to the clerk of the peace?" [*Desk thumping*]

"How many people are now going to have access to those documents which carry the surety's name, address, account number and account balance?" [*Desk thumping*]

In other words, Madam President, when you have this kind of situation, your private financial matters are made public to people in the system. [*Desk thumping*]. So, if for some reason they see your financial statement where you have a lot of money, you may have to set up some cameras at home, you may have to find 10 “Doobermen”, two German shepherds, and you will have to have security by your gate because now your financial matters are made public. Those are the problems. This is, by the way, by Senior Counsel Chote.

So, Madam President, it is not just about bail. It is what protects the people who are going to put up the surety, the people who are going to stand bail. What protects them when the system demands that their financial status be made public or, open to the clerk of the peace, open to any clerk in the system who—you know how it goes, Madam President, not everybody is everybody. So we have a problem. There is an administrative issue and that administrative issue has not been addressed by the learned Attorney General because that is something that is real and practical.

Not only that, in the Bill, clause 4 of this amendment, it talks about where bail is granted to the defendant, now he includes the idea of the prisons being able to accept moneys, bail. But I went up on the Prison Regulations and the prison regulation No. 127, where it talks about the “Receipt of Monies” says that:

“The Steward shall receive all monies paid for fines”—fines. Not bail. So this has to be amended—“work orders, prisoners’ properties and see that same are promptly brought to the account and paid into the Treasury.”

It is important for us to take note of this. So in other words, are the present regulations of the prisons opened up sufficiently so that the prison authorities are now given the reassurance and the legal right to collect such large sums of moneys

that will be now walking through their system?

Madam President, I happened to visit the prison system recently with a Joint Select Committee. I went to the Remand Yard, I went to the Women's Prison, I went to the Maximum Security Prison, I went to Port of Spain prison, and I was so baffled. I saw a lady, she was standing outside for a long period of time, and then we were inside and she came in and she was standing by this old area with little benches and all dim and looking all scary and I wondered what on earth she was doing there, and then I found out she was paying a fine, and I said, "That is how they treat people who come to pay fines in here?" It is terrible, and it means that the system is now a mess and now we are going and make people walk outside. She stood up outside for a while, you know. Could you imagine standing up outside the Port of Spain prison with a large sum of bail money—

Sen. Ameen: On the pavement?

Sen. R. Samuel:—on the pavement. Madam President, cars are stolen outside there, you know. You know how many cars are broken into right outside? Now, the prison officers have had to access a car park to secure their things. You know "how much people cars" are broken in? Now in Golden Grove, they have a particular area cordoned off for cars of the officers. Why? Because when they park at the side of the roads many a times they come back out and their decks gone and things are broken into—the officers. I am talking about the officers. They suffer the consequences and now we want citizens to go and sit down in a pen—which I call a pen at Golden Grove, right up across the road—and now have moneys to be attended to. That sets some stuff that we do not want in the system.

So, not only there is an administrative issue, there is a security issue. There is a regulation issue that needs to be addressed, and added to that, the judicial system is not getting better in Trinidad and Tobago. There are people who are

imprisoned, they found two sticks of marijuana in their fob—in their little pocket, if you do not know what a fob is, for the modern people. The older folks would know what a fob is. Sen. The Hon. Khan, you know what a fob is. Young people do not know with a fob is. [*Crosstalk*] You do not know what a fob is? Good—and this young guy said to me “I am in here now for two and half years, ah waiting a case to call”.

Madam President, why do we not have a ticket system for things like that? A man is found cussing, the police issue him a ticket, he chooses to go and pay it, or—it is just like a ticket. A ticket, he does not have to go to court. I am certain if you are found using obscene language, you give him a ticket, he goes and he pays it and he is done with that. You understand where I am coming from? But you lock him up, you drive him down the next morning to the court, the court grants him bail and then he cannot afford it because the bail is far greater than what the ticket would have been anyway. He is locked up in jail in Remand Yard, he is subjected to all kinds of cruelty—I was looking at the Prison Regulations, and, Madam President, the entire prison system is a breach of the Prison Regulations. Absolute breach of the Prison Regulations when it comes to health, when it comes to everything else. So he is locked up inside that—am I right? I am 100 per cent correct. He is locked up in there—so what?—for obscene language or for two sticks of marijuana. I am not in any way advocating that people should be walking with marijuana. I am not saying that. But he is locked up for that, he loses his job, his family suffers, his children suffer, when he could be given a ticket and he go and pay the ticket. Easy stuff, or there could be a petty crimes—

Madam President: Sen. Samuel, please, I just need you—you are putting things in context, but you are going away. You are letting the context take you away from what we are dealing with here. So I would just ask you to be a little more

focused. Okay?

Sen. R. Samuel: Madam President, cash bail pertains and bail pertains to people who, one—and this Bill wants to justify or to help a thousand people who are in the system, who are incarcerated in remand, who are suffering for a while, and I was just trying to bear out some of the sufferings because these people are being attended to by this particular amendment in the Act and we are attempting to help them but there are flaws in the attempt.

As a matter of fact, as I always quoted, “good intentions, but the road to hell is paved with good intentions”. So without data we are now amending things and there is no justification. As a matter of fact, I would love the learned Attorney General to really clarify if this amendment will deal with the serious administrative flaws in the system, administrative flaws that seem to be unrecorded. Madam President, because of this we now are faced with trying to cover up a poor system by amendments and enactments of new laws. We are trying to cover up the flaws.

In foreign jurisdictions—and it does not happen here—according to an article on crime by Isaac Avilucea, dated the 13th of the 10th, 2016. In foreign jurisdictions, cash bail may work because defendants who are detained without bail are guaranteed a right to a speedy trial. So a person who is detained without bail knows for sure that their case will call, knows for sure that the trial will come up. That does not happen here. So we are now resorting to a system that will kind of appear to ease the problems, but it is not easing the problems. There may be more problems involved in the problems we are attempting to ease.

In foreign jurisdictions—and I hope the Attorney General would listen—bail reform is supposed to make the criminal justice system more fair and equitable for poor defendants, and the way they do that, in talking about bail, is judges and magistrates will use what is called a risk assessment tool which considers a host of

factors about each defendant that will guide decisions at the detention hearings that must be held within two days of someone being arrested. You see how quick, you see how swift, Madam President.

It is very, very, very important that besides we coming here to say let us give bail and cash bail to people and that is a flaw because a lot of people—and it has been reiterated over and over—who cannot even attract the attention of a professional bailor, or an illegal professional bailor if I would put it that way, because we are clear that it is illegal, and even though it is illegal, magistrates and judges accept the illegal bailors who come and do an illegal act, but they accept it as legal. And, Madam President, these people cannot attract those people. Why? Because first and foremost, you have to have some means of down payment, and if you do—

Madam President: Hon. Senators, at this juncture we would suspend and we will return at 6.00 p.m. So this sitting is suspended until 6.00 p.m.

5.30 p.m.: *Sitting suspended.*

6.00 p.m.: *Sitting resumed.*

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

Mr. Vice-President: Sen. Samuel.

Sen. R. Samuel: I want to thank you, again, Mr. Vice-President.

Hon. Senator: “Yuh eh ha nobody to thump the desk fuh yuh, boy.”

Sen. R. Samuel: Mr. Vice-President, I am a good soldier; good soldiers could fight on their own, “doh worry ‘bout me. I could stand on meh own”. I normally do that for life, do not worry. I do not need any applause, I am a preacher. [Crosstalk] Yes, Mr. Vice-President. [Crosstalk] Mr. Vice-President, could I be protected by the noise here?

Mr. Vice-President: Continue.

Sen. R. Samuel: Good. Thank you very much. As I was saying prior to the break, it is not so much the issue of attempting to assist 1,000 or so people who are behind bars but it is whether the system or the offer that is being made by the Attorney General in his quest to do that is fair enough that will now assist those of the poorer class, which really is 100 per cent of the people who are incarcerated on remand. If you look at the population and the financial status of the people who are at remand, you would recognize that they are not of a certain clout in the society, they are poor people. And if the bails that are executed on these people are not equivalent to their income, is not equivalent to their status, then offering bail to people will also continue to be in the same rank; in other words, they still will not be able to afford it.

Mr. Vice-President, at the end of the day, we have to determine from those that are incarcerated, those that will present a risk and those who will not and those that will not present a risk through some assessment, can be released because they do not present a risk to the society. But here is part of the Bill, Mr. Vice-President, that talks about now almost the institution of bail bonds:

“a bond issued by a licensed financial institution as defined in the Financial Institutions Act...”

I want to read something from NBC News dated May 12, 2017. It is entitled:

“Bail-Bond System Exploits the Poor and Undermines Justice...”

Bail bond companies both weaken and profit from the criminal justice system—by keeping poor people in debt even after they’ve been cleared of charges...”

It goes on to say that when this article was written, the bail bond industry was some \$14 billion annually in that foreign jurisdiction and they were underwritten

by nine large insurance companies, including some owned by multinational corporations, and perpetuates a system in which people who cannot afford bail remain in jail.

There is another article: the rich gets bail and the poor gets jail. That is another article. From India:

“Rich get bail, poor remain in jail”

Because the whole system is skewed. As matter of fact, in some jurisdictions, when judges and magistrates are looking at the bail scenario, they have some kind of information as to the income and the financial status of the individuals that are before them. And it makes no sense, Mr. Vice-President, just like the lady who is on \$100,000 bail because of a child situation and who needs tremendous counselling, she cannot even probably afford to mind the eight children, and now you put her on \$100,000 bail, which she will not be able to afford, in which she will become indebted to or her family will become indebted to it for many, many years and the cycle of poverty continues and broadens.

So really, the articles about bail bonds say there is a fundamental moral problem with profit margins playing such a significant role in whether someone ends up being free or incarcerated. It said bail bond agents are the surety insurance companies behind bail bond systems and they are there to exploit the poor and undermine justice. Very, very clear, Mr. Vice-President. So while we are heading in a direction that appears to sound good, in other jurisdictions, these systems that are put in place are reaping havoc on the system and you know who suffers the most or in all situations?—those that are at the lower financial echelons of the society. So it is important for us to understand that.

One writer says in an article from the *Wall Street Journal* entitled:

“Cash Bail, a Cornerstone of Criminal-Justice System, Is Under Threat”

He says—and that is a senior judge on the D.C. Superior court. He says:

“If we are keeping in jail people on the basis of the accident of their wallet rather than on the basis of the risk they pose, that’s just complete irrational folly for us to do that as criminal-justice policy...”

In other words, people remain in jail because of their wallet or they get out of jail because of their wallet and it is something that must be taken into consideration.

In the same article, it talks about the bail bond agencies. It says that:

“Bail...”—agencies—“are pouring money into lobbying.”

In foreign jurisdictions.

“Since 2011, bail-bonds companies and insurers have donated more than”—
\$288 million—“to...campaigns...”

And all kinds of stuff. So they get involved in the politics of countries and as a result of that, we would find ourselves being owned. The judicial system would be then governed by lobbyists and they determine a great deal of stuff. It is important for us to understand what we are beginning to legislate because it is very easy for the rich to set aside \$2 million and decide I am going to establish a bail bond company, and they set it up and they work with insider trading and they understand how the system operates and they know who is getting bail and who will not and what is the kind of bail and they go by the families and they have touts who will go about and lobby, just like how, you know, “when ah person dead, it ha touts duz go and look for the body and say—” It have touts doing that for dead bodies likewise and they will lobby and who will lobby more, and before long, the bail bond company system will be huge and large and it will be owned by the rich and the elite, but who will suffer? The poor.

At all systems that we are trying to deal with in the country, Mr. Vice-President, you know who has been suffering the most in every aspect of the

legislation brought in this Parliament, from motor vehicle to, you name it? Poor people. [*Desk thumping*] Poor people, more taxes; poor people, more this; poor people, more—and now you are trying to put a system that really does not say anything. The system says we want—

Mr. Vice-President: Senator, you have five more minutes.

Sen. R. Samuel: Thank you. Much obliged. The system says that we want to offer bail, cash bail, to 1,000 people or 800 people who are incarcerated and cannot afford bail through some illegal acceptable bailor. “Da’is how tuh put it?” [*Interruption*] Because it is illegal but it is acceptable by the court. So they are trying to get rid of the illegal but acceptable bailors by now instituting bail bond systems so you have a legalized system that can now overtake and now exploit people.

That is what we are doing here and then we are saying that is to help the poor so that helps the poor by putting the poor in more indebtedness and they cannot afford the little 10,000 or 5,000 to the illegal bailor but then they have to now find money to take—they will borrow from these bail bond—Mr. Vice-President, you understand the kind of web that this is creating? It is a web and the web is only created to keep the poor under the pretence that we are trying to help you get out, but in other words, you may get out but you get into serious debt for life. That is where the issues are and if we are not careful and if we remain as careless as we appear to be going, the system could get worse. And while we want a get-out card, while we believe that this is a get-out card, it might not be a get-out card really.

Mr. Vice-President, and I heard people talk about you should not talk about the situation that happened in Malabar. That is a grievous system; a grievous situation that took place. But you know the police said—and I want to just read

that in the record and I am reading from the *Guardian*, Thursday 29th, June, 2017, and headline is:

“Bandits slit throats of woman, teen

Malabar grief

Police said Mohammed was robbed eight years ago and the men responsible were held, jailed and reportedly released recently.

Mohammed’s husband...confirmed...”—that their home—“was broken into some years ago, and but added ‘nothing came out of it’.”

Mr. Vice-President: Senator, two things. One, that particular article came up before from another Senator in this course of this debate. So what I am going to ask you, two, is also to caution you on cases that may come up or be pending in terms of in the court. So I will just ask you to step away from that particular article and that particular point and continue on as you wrap up your contribution.

Sen. R. Samuel: And I appreciate your guidance. I was reading it for the record and for the record because how are we assessing those folks—seriously assessing those folks that you want to now offer cash bail to? What is the assessment process? Is it because they were offered bail? Is there an assessment process to determine the type of person that has received bail but because of the longevity they have stayed in the system, they could be worse off today because of their long stay than they were when they were offered bail in their previous case? And they were offered bail probably five, six, seven, eight, nine years ago and they could not afford it; and now, they are in a system locked away with people who are hardened, locked away with brilliant criminal ideas, locked away with mercenaries, locked away with all kinds of persons, and now that person’s mental state is not the same as when they entered and they got bail. Now you are saying to me: offer them cash bail. That person’s mental state is not the same, so it is not the same

person that you are going to try to give cash bail to.

It is something—some kind of assessment has to be placed and taken and if not, we are heading down a slippery slope and hear what would happen. It is not only the man locked up, going down the slope, it is the whole nation going down the slope, and we will suffer the consequences if we do not put the right things in place to deal with the assessment of people who are now going to be offered this but who have had bail and could not pay because they are in the system, and we have a system that is only breeding wrong. The prison system is not there to breed right, it is not there to change people. It is there to destroy people in Trinidad and Tobago. Every person in the system, right now, in Remand Yard is a sufferer. Thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Paul Richards: Thank you very much, Mr. Vice-President. I appreciate the opportunity to contribute to this Bill entitled “An Act to amend the Bail Act, Chap. 4:60”.

From the onset, I would like to show the appreciation for quite a bit of the work done by hon. Attorney General who has obviously piloted and championed several causes in this session coming to an end soon but sometimes I think we need to be careful. Volume is not always quality and we have done a significant amount of work in the last two months in particular. But even with that said, I appreciate his vision in terms of the amount of work that he has done or continues to do in terms of trying to reengineer the criminal justice system.

I also want to put on the record, the *Hansard*, Mr. Vice-President. Sometimes I get despondent in here, I will be very honest and in the last four, five weeks in particular, I have been given a boost of enthusiasm and I want to put it on the record because I think it is important before I go into my substantive contribution, because the level of collaboration I have seen between the Attorney General and

Sen. Ramdeen in the last four and five weeks in the committee stages needs to be commended, [*Desk thumping*] because I think that kind of engagement cannot go unnoticed and uncommended. And the contributions of Sen. Chote and others, in particular the committee stages of those technical legal issues, must be commended. I have seen a different kind of engagement and I really appreciate it and I want to put it on the record. [*Desk thumping*] With that said—

Sen. Ameen: However.

Sen. P. Richards: No however. [*Laughter*] You know, I appreciate the vision, hon. Attorney General, through you, Mr. Vice-President, but I have some challenges that I think must be dealt with if I could even begin to support this move.

Let me start by using a quote by Dr. Martin Luther King and I think it is applicable in this state and it goes:

“The moral arc of the universe bends at the elbow of justice.”

And it is used in the context of atrocities like slavery where class and race warfare, sometimes justice does not serve everyone equally. Our own Constitution mandates equality of treatment under our Constitution. Our anthem has: Every creed and race find an equal place. We are supposed to have the right of the individual to equality before the law and sometimes, in retrospect, the term “equality” is not the same as equity. There is a huge—they are sometimes used interchangeably but there is a huge disparity between equality and equity, and we have seen that in several aspects of the criminal justice system in Trinidad and Tobago.

I have mentioned this before. A lot of what the hon. Attorney General is trying to do with laws and amendments to laws and Bills is predicated on the assumption that institutions are working. Institutions like the Trinidad and Tobago

Police Service, like the prison service, and that is far from the truth in Trinidad and Tobago. It is like having a car that has issues—I have used this analogy before—putting the right fuel in place, shining up the outside and not fixing the engine and thinking that because you do some of the other work—and I am not saying, I am not trying to diminish the work of the hon. Attorney General in any way, it is not my intention—that the car is going to work how it is supposed to work and that is simply not so. We have to fix these institutions.

A lot of this Bill, in particular my concerns are with (4B) and (4C) where the Bill seeks:

“...to provide for a person acting on behalf of a Defendant who has been taken into custody to give security by way of cash or certified cheque to a prison officer designated to collect same by the Commissioner of Prisons for that purpose should that person be unable to pay the said security into Court due to time constraints;”

And (4C):

“...seeks to provide for receipts to be issued to persons who pay cash or certified cheques to a prison officer appointed by the Commissioner of Prisons to receive same and for the Commissioner of Prisons to cause the cash or certified cheque to be deposited into the relevant Court on the next working day.”

Now, I would not go over and regale you all with the issues of class disparities and who can afford what and I underscored the issue of equality and equity before, because as Sen. Samuel and others have indicated, we do not have all access to justice equally in this country because justice is expensive. Very expensive, so if you know what is good for you, do not find yourself with an incursion before a criminal justice system.

I want to reference Minister Rambharat in his contribution, always eloquent, he indicated that, you know, we are placing responsibility on the T&T Prison Service and if we cannot trust men and women who guard thousands every day, we should not have a problem with this. And you know what, Sen. Rambharat? We cannot trust them. Bottom line, let us not pretend. You, in a contribution last week or week before, said you do not hold favour with a lot of what is happening in the Trinidad and Tobago Police Service for the very same reason, so how is this different? If we cannot trust the Trinidad and Tobago Prison Service in terms of process, procedure, effectiveness, efficiency, accountability, transparency, standards of operation, why should we be putting more responsibility in their hands? Responsibility of this nature. I have a serious challenge with that. Not with the vision for the Bill, you know, with the agency that is charged with the responsibility to operationalize this in a fair, just and accountable manner. I have seen no evidence of standards of operations in the T&T prisons.

I had the misfortune, I call it the worst day of my life, to visit Port of Spain prison, Remand Yard, the Women's Prison and I was heartened by the work being done at YTC because I do not want to lump them in that because quite a bit of good work is being done, but let me tell you something. Any citizen who walks into the Port of Spain prison and/or Guantanamo Bay, as they call it, will be ashamed to be a national of this country. Because what I saw has nothing to do with global standards, has nothing do with restorative justice and it is a cesspit of criminality and indoctrination into a university level of criminality in this country that this Bill will not fix.

It is unfortunate that we feel that we have any semblance of restorative justice when you have five to 12 men in an 8x10 cell in darkness with no ventilation, four bunk beds, no mattresses or pillows, six and 10 on the floor. The

ventilation is clogged by muck and they are out, if they are lucky, 45 minutes to a 24-hour sweep. How can that person be rehabilitated when they come back out? [Interruption] “Ah doh even want to go into the slop-pail in this day and age.” It is inhumane, it is unconscionable and it is uncivilized.

It takes you back to the days of slavery. The Port of Spain prison should be condemned, closed down. And this is not an indictment on this Government or any or Government, as a country that is supposed to be civilized because it has relevance to this Bail Bill. It has relevance to this because those individuals—if I go in there with all my common sense and my good parents’ upbringing, for one month, “me ent sure I coming out ah normal person”. I am not sure I will be the same person, respond to society in the same way and be able to be rehabilitated and “da’is ah month”. I was sick with one day—as a matter of fact, eight hours. And I do not know how we expect as a country to be treating people in that way, particularly those on remand who are there, if I am understanding it correctly, at the behest of the courts of Trinidad and Tobago and presumed innocent, and in one instance, someone I spoke to was there for 14 years.

Mr. Vice-President: Senator, the issue I am having is because I am aware of exactly how you would have come into that information and as much as you are having it in the debate and it might be relevant to the debate before us, I just caution you. Because you know as well as I, how you came into that information and there is a Standing Order regarding that so I would just caution you as you continue on your debate.

Sen. P. Richards: I am obliged, Mr. Vice-President. Well, let me change it to the reports I read from Daniel Khan and others in terms of the atrocities and not my own experience, because the Daniel Khan report, which I agree with the hon. Attorney General, is verbatim the same thing I am describing. So I will reference

to the Daniel Khan report and much obliged, Mr. Vice-President, and we need to fix that as a standard of operation.

I want to stay also on the T&T prisons because this Bill, as I said, puts more responsibility on an institution that has shown that it is lacking responsibility, and reference the report I had the honour to lay on our last sitting, the Fourth Report on the Joint Select Committee of National Security into the Port of Spain Prison Break on July 24, 2015, where, in spite of that report, I do not think the population has gotten the answers they want as to what happened, how it happened, who is or is not responsible, and I will tell you that if we do not get to the bottom of that, it can happen again. A police officer lost his life in that jailbreak and we do not know who is responsible, if they are still stationed there, if he or she had accomplices in there, and a worst-case scenario, if there was dereliction or neglect of duty in terms of securing that institution. So I am not comfortable with putting any more responsibility in the hands of anyone at that institution as is mandatory or suggested in this Bill.

In addition to that and I can offer this as a suggestion to the hon. Attorney General, in (4B) and (4C) or elsewhere, I am seeing no indication with that increased responsibility of increased penalties for breaches by prison officers commensurate with this increased responsibility.

Hon. Al-Rawi: That is coming.

Sen. P. Richards: Well, coming is not here and I have a problem with that because if these individuals are—and I will draw a scenario. Parts of this Bill, without those caveats, is really a business model for malfeasance.

Imagine a bright prison officer—because we have creative people in this country—\$10,000 to the lower end of the spectrum, in or out of collusion with a leader of a gang who has access to hundreds of thousands of dollars, get bright and

realize you know what? This system in place, all I need to do is get \$30,000 and have it on standby. Somebody come in, “Boy I eh ha de money yuh know, see wah yuh could do fuh meh. Ah go post yuh bail fuh yuh, \$10,000. Gimme ah 25 per cent interest on that, pay it to X and Y. This is ah real scenario.” This can happen without the caveats for increased penalties because we know that, in addition to the prison break that took place that day, cell phones and marijuana are common trade, laptops, iPads, television sets and in some cases—and I do not want to call them contraband but I understand individuals make their way into the prison for entertainment purposes and that is all I will say. Okay?

So do we want, without answers and accountability where those issues are concerned at something as so critical in the criminal justice system as the prisons, without answers, remedies and accountability, to put more responsibility into these individuals’ hands or into this institution’s hands without the necessary checks and balances, without the answers we need, without the accountability we need? I do not think so. I am not comfortable with that.

Mr. Vice-President, I have seen this honourable House do what I would describe as legislative gymnastics regarding Bills brought by the hon. Attorney General in committee stage to put a million checks and balances in place because we do not trust the police, and spend hours after hours because we cannot reasonably—we know all institutions will have some level of corruption but we cannot reasonably trust the police not to be malfeasant.

6.30 p.m.

So the amount of legislative gymnastics we have to go through, caveat after caveat, because we cannot trust the police service, and because no significant headway has been made in terms of identifying the levels of corruption and sorting it. Similarly with the T&T Prison Service and that, I think, needs to be where our

heads are at collectively in this honourable House and the other place. Because we cannot simply say and comfort ourselves by the statement: “Well it is only the minority.” Based on what? How do we know that at this stage? How do we know it is the minority? We know there are hardworking, honest police officers, we know there are hard-working prison officers, but we do know it is the minority. Because I would tell you something, Mr. Vice-President, I am not a legally trained mind but I know there is an element of complicity if you see something wrong happening and you do not say something. And several times, as with the prison break, as with other issues in the prison service and the police service, officers may not be overtly involved, but they will know what is happening and not report it. That is a level of complicity that I am very uncomfortable with. I note— if I am not mistaken, it is against the law. These things have to be repaired, because do you know what?

It is interesting that yesterday, Mr. Vice-President, we had the SEA results coming out and 15 per cent of those who sat the exam, 15 per cent, did not make a 30 per cent passing grade and we are boasting about we have made improvements. At a 30 per cent passing grade? How globally competitive is that that our passing grade in Trinidad and Tobago for transition from primary to secondary school is 30 per cent? Whoopee, pat ourselves on the back. Let us move forward. We are going to beat Japan and Singapore.

Hon. Al-Rawi: Finland is number one.

Sen. P. Richards: With 30 per cent?

Hon. Al-Rawi: No, Finland.

Sen. P. Richards: But with 30 per cent passing grade? [*Crosstalk*] Okay. All right. [*Crosstalk*] That is my point. I keep saying when you have such a significant level of—I do not want to say failure—but lack of performance, it is not

the children, it is the system. [*Desk thumping*] It is the system that is failing them, and I will make the link to the Bill, because more than likely because of research done, seminal research by Prof. Ramesh Deosaran and Prof. Selwyn Ryan, those are the ones who are going to have to option this. Those are the ones who are going to have to end up in the criminal justice system with incursions and option bail, because we are not fixing that also, because we want to focus on the three bright kids and parade them around town. That is not inclusive to this administration, so let me not even say it is a party or politics thing. It is a general practice we have.

We need to fix the education system, and 30 per cent should not be our benchmark for claiming success, because if we have 15 per cent not making 30 per cent, if you do an exponential curve, you more than likely have 20 per cent or 23 per cent not making 40 per cent. Madam President, 30 per cent passing grade basically in a large wide sense tells you that student has 30 per cent competency in the subject matter. Does that make sense? Is that student really able to cope with Form 1? And then we pass some others who did not make 30 per cent on to secondary school. They are going to struggle and end up having to option this very same Bill because society has failed them and they end up falling through the cracks, or rather the cracks swallow them, and end up with incursions in the criminal justice system. This is not an holisticway to move a country forward. It is not.

[MADAM PRESIDENT *in the Chair*]

As I would say again, I am not laying this at the feet of the hon. Attorney General. I think that his vision for the reengineering of the legislative options to Trinidad and Tobago is admirable, but it has to be in an holistic sense and it has to also be, Madam President, based on some sort of reasonable confidence in the institutions like the prison service, like the police service, to operationalize these

with some modicum of trust and confidence in the public, and right now that is not the case and we have to address that.

We need to look at those institutions and fix them. If we do not, we will constantly have to come back to this honourable House and the other place to update legislation to deal with an ever increasing criminal cadre in Trinidad and Tobago, and even more sophisticatedly so.

When we look at the contributions of honourable Senators today and the last time we met, we have seen the kind of creativity and loopholes that can come, though well intentioned, because of what has transpired before, in terms of people finding loopholes with the law. This is no exception and we need to be forward thinking and deal with it so that we do not have to constantly come and invent laws and amend laws and be five steps behind the curve, because we seem to be constantly playing catch-up in Trinidad and Tobago.

When you think of what has happened—and as I said I am heartened, Madam President, by the fact that we seem to be moving forward by a meeting of the minds with contributions from—the collaboration between the hon. Attorney General, Sen. Ramdeen, Sen. Chote and others that we now understand that in legislation such as this Bail (Amdt.) Bill, we need to put timelines in place for reports and not leave it up to the agencies to give reports as they feel.

It took almost a year to get any semblance of understanding of what happened with the prison break, and if this Bill, in terms of the intricacies, recordkeeping:

“...(4D) would seek to provide that the Commissioner of Prisons ensure that a proper record of all bail monies received is kept;”

A record when and how and in what format and due when? That, I am not inclined to leave those subtleties open anymore, Madam President, based on what I have

seen in terms of agencies charged with these responsibilities, because they have proven time and time again, that they are only not responsible or irresponsible but, in many instances, they are fraught with corrupt agents who can creatively, very easily thwart the system which presumes some level of honesty and competence. From what I have seen, with many of the examples I have outlined, all I am seeing is largely incompetence and, further to that, corruption, overt corruption.

When we look at one of the aspects I am also concerned with, in terms of—I would not go over the vicissitudes of it, because many of the other speakers have also dealt with the issue of access and equity of access in terms of the wealthier being able to post bail, get the cheques made and, thereby—not only that, as indicated earlier, \$100,000 to somebody who is worth \$50 million is nothing for freedom. I asked Senior Counsel Chote about this, because she is a legally trained mind, if there is any time limit on bail given the long remand periods we have had. It is quite conceivably that someone could have an incursion of the law, be granted bail and be out on bail for 15 years because I can afford it and it has happened.

We need to put caveats in place to take care of all of that, because they are realities in Trinidad and Tobago. Just depending on goodwill and honesty, at this stage, is not good enough. I want to draw an example, Madam President, I hope I am not stepping over the line, because it speaks to incompetence in the system, the cost of incompetence, the cost of unchecked corruption and the cost of unchecked efficiency and it goes to—just like the prison systems with the level of lack of accountability—the police service and the fact that the hon. Prime Minister was forced—because he is educated, he is experienced and he is an astute politician—to revoke an appointment based on information he has at a National Security Council level, that the police cannot convert into intelligence, on somebody who is of interest to the State. [*Desk thumping*] He was forced to make a decision like

that. I am obliged.

But it speaks to what even someone in a senior position has to deal with because agencies cannot do their jobs and that is a sad indictment on this country, because we cannot even at a basic level—with all the accolades about police and most of the police are good—if we do not understand or know how many are corrupt in the police service or the prisons, how can we make an assumption of how this Bill and others of its nature will work? How can we make an assessment honestly and objectively in a scientific measured way of how much corruption is in the system and how much this corruption will affect the implementation of this and other pieces of legislation? We are basically shooting in the dark.

As well intentioned as the hon. attorney General is, putting legislation in place trying to reengineer the legislative framework in the country, if we do not arrest these situations, we are basically shooting in the dark and all this work will amount to naught because agents who are hell-bent on malfeasance will continue to thwart the system and become rich and, in many instances, cost lives down the road.

I did not intend to be long today. I just thought it was very important that I elucidate these points. The prison service is there to house inmates who have been convicted and who are on remand, for security purposes, which is critical for the national security good in the country, and I disagree with Sen. Ramdeen in his contribution who said it is a prison. We need to change the mindset from prisons to corrections. The mindset of the word is critical, because more than 80 per cent will return to society and under the conditions they are presently being kept, they are coming out worse than they went in and creating more havoc and costing the State more and more. Those are the same ones who in many instances will benefit from this as opposed to providing the kind of intervention that I believe the hon.

Attorney General has in terms of his intention for this.

I want to close, Madam President, by using a quote again and it goes:

“Injustice anywhere is a threat to justice everywhere.”

And that is, once again. Dr. Martin Luther King Jr.

When we have as a country and we accept the injustice as being perpetrated in the prisons because of corruption, we mete out to ourselves the injustice that we are feeling now in terms of criminality. It is a revolving door, it is a cycle. We need to change the system. We need to address the police service and its inadequacies; we need to address the prison service and its inadequacies and other critical institutions including the Judiciary that will have to operationalize these pieces of legislation and try to move our country forward. With those few words, Madam President, I thank you. [*Desk thumping*]

Sen. W. Michael Coppin: I thank you, Madam President, for the opportunity to contribute to this debate on a Bill which is cited as the Bail (Access to Bail) (Amdt.) Bill, (2017). Madam President, this Bill is a mere six clauses with one Schedule, and if we look at the Bill in its entirety really it is only about three clauses and the Schedule. In fact, it is a very simple piece of legislation. Madam President, I want to start in a slightly different manner from my previous contributions by saying, very first, what this Bill is not about. I will, in the course of my contribution, return to these issues.

Madam President, this Bill is not about legalizing professional bailors. It is not about preferential access to the wealthy for bail. It is not about creating the right to bail for repeat violent offenders, and it is certainly not institutionalizing or creating a new system for banks to issue bonds. And finally, Madam President, it is not an indictment on the prison service.

Madam President, what this Bill is about is rooted firmly in the statistic that

the hon. Attorney General would have pointed out, or would have given to this honourable House in his opening and also in the other place. It is a statistic that we in the Joint Select Committee on National Security last year would have enquired of the Commissioner of Prisons. In his response to us in a memorandum dated December 06, 2016, he would have indicated that the number of remand detainees who have been granted bail but have been unable to access bail is in the tune of 764 adult males, three juvenile males and no females.

Now, Madam President, that is much different from the number of remand detainees who have been charged with non-bailable offences—and those offences are listed in the First Schedule, Part I of the Bail Act—and those persons who have committed offences such as murder, treason, piracy, hijacking and any other offence for which death is the penalty fixed by law.

Now, Madam President, it is also not about those detainees who have been charged with bailable offences but have been refused bail by the court's discretion. Those are the individuals who section 5(2) of the Bail Act and who I think Sen. Sturge in his contribution regaled this House, or tried to create a sense of fear or panic that violent offenders, repeat offenders were going to be released. Those individuals are listed or the category of those individuals are listed in Part II of the said Schedule, and I gave some indication of those types of individuals who we are not speaking about in this Bill. Those individuals are repeat offenders; those people who have three offences on separate occasions for offences such as possession and the use of firearms and ammunition with intent to injure; shooting or wounding with intent to do grievous bodily harm; robbery; and robbery with aggravation, armed robbery.

So this Bill, Madam President, is not concerned with those individuals who judges and magistrates have no discretion—those murderers—to grant bail, and it

is not concerned with those repeat offenders who Sen. Sturge has come to this honourable House and says we are trying to release. It deals simply with those individuals who the courts say, the magistrate or judge, has a discretion to release.

I want to repeat or to elucidate on some statistics that were given to us in our joint select committee responses, and those individuals or those types of individuals who are locked up in Remand Yard for no reason save and except that they have not the wherewithal or the means, those individuals are charged with simple offences such as breach of Immigration Regulations, breach of motor vehicle regulations, breach of the Bail Act, breach of forestry Act—imagine—breach of a protection order, breach of the persons who threw missiles, persons who use obscene language, persons who were loitering and people who were found on lands. And those totalled of the 700-odd persons I just mentioned, those individuals accounted as at December 06th for 149 individuals. Now, Madam President, we must therefore understand that this Bill is not about letting violent persons out on the street or those persons who ought not to be there.

I listened to the debate in the other place and, Madam President, I think, for once the other House was much more spot on than we were in this House. I think we opened up this debate in a manner that it really ought not to be opened up. In fact, with three substantive clauses, the duty was on us—the simple task was on us to consider those clauses and to deal with them in a way that they ought to be dealt with, using the statistics that were available and the experience that we have in the criminal justice system.

So, Madam President, I want to speak about those individuals who were granted access but for whatever reason, because of the current law, were unable to access bail. And Prof. Deosaran tells us in 2003 that the type of individual who is most likely to be incarcerated or who is incarcerated in Trinidad and Tobago, 97

per cent of those individuals come from low income households. That is a key statistic, 97 per cent from low income households. And Madam President, that is a 2003 study.

And when we understand and when we look at the Bill Essentials, it is very clear. The simplicity of the Bill, the mischief that this Bill seeks to address is quite clear that notwithstanding the fact that judges apparently can grant access to bail or give bail in cash, for some reason they chose not to. Now, Madam President, I want also before we get there—because Sen. Sturge raised the points about judges arrogating or magistrates arrogating onto themselves powers. Now, Madam President, if we look at the Bail (Amdt.) Act—and all Senators should have in preparation for this debate—what we find is that nowhere in any of the sections, namely section 12, does the Bill actually enumerate or say what the magistrate's power—what forms of bail the magistrates can actually grant.

So the first thing this Bill does is to remove a lacuna in the law, that is to say, something that is missing from the law, because if the magistrate has no legal foundation for granting cash bail or bail in any other form, then the question must arise: where does the magistrate get this power from? So the first thing this law does, it enumerates the types of bail that can be granted by a magistrate. It is interesting, Madam President, because when we look at the Schedule, the Second Schedule of this Bill, the form of recognizance, we see that the magistrate has the power to grant certain types of bail that is not in the actual body of legislation, but we are only given an indication in the Second Schedule. Now, Madam President, that is a problem, because we have a law where it is unclear—we do not know where the power comes from—and the only indication we have is what the judges currently do and what is in the Schedule which is not clear. A Schedule is not something that is in the body of the law. For those who know about the law, that is

a serious problem. So this law fixes a number of lacunas in the law.

Now, Madam President, when we look at Judiciary website—this is what was published—we see that the Judiciary tells us the types of bail that magistrates can grant but, again, there is no legal basis for that. So the Judiciary, effectively, again, has not only arrogated onto itself a power for which there is no legal basis, but they have now published it and the hon. Opposition Leader in the other place would have pointed to this. She says, why are we here? Why are we even talking about these powers when the judges and magistrates already exercise it. But, I think, Madam President, that is a misguided approach. If something is broken, we must fix it. I must congratulate the Attorney General because this Bail Bill has been on the books for so many years but no other Attorney General had the foresight to do a simple amendment which would give the legal basis for magistrates to actually grant bail.

So, Madam President, those are the two issues that I would have liked to raise and it dealt with the access to bail for those persons who are required. As a Tobagonian myself, the issue of landlessness—it was brought up by temporary Sen. Moore when she was here. The issue of judges granting bail to those persons who possess land only is a serious problem for Tobagonians who—only 17 per cent of the actual population is in possession of titles. But, Madam President, the problem is not localized in Tobago, because one joint select committee on the issue dealt with the issue of landlessness in Trinidad and Tobago. I am sorry Sen. Small is not here, because in that Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities, the First Report, an “Inquiry into the Land Settlement Agency in relation to Squatter Regularisation”, we were told, the population was informed that 55,000 households in Trinidad and Tobago currently do not have titled land, they are squatters.

When we extrapolate that, according to this report, it means that 200,000 individuals are landless in Trinidad and Tobago. When we juxtapose that against the numbers of persons who are currently applying for HDC houses, during the last administration's tenure, 2010 to 2015, 200,000 persons applied. The problem is more acute for young professionals like myself, Madam President. If I get locked up, who is going to bail me out? My friend, no, because most of my friends are also landless or without property. Sen. Sturge would have told us that the problem is also acute for those persons with leasehold lands. So the courts appear not to want to accept persons with valid leasehold titles.

So, Madam President, we have a certain arbitrariness that pervades the entire system that this Bill, I think, by enumerating what the courts can and cannot accept—in the figures they can and cannot accept—will go a long way in helping the magistrates in the exercise of a discretion, a power that they appear to have arrogated onto themselves.

So, Madam President that is the sociological context. That is the problem that currently faces those persons in Remand Yard who are not the violent offenders—the persons who are guilty of obscene language, persons who are guilty of minor offences—but through no fault of their own cannot access bail and that is what this Bill is about.

Now, Madam President, Sen. Rambharat would have touched on the point that this Bill does not trample or it does not amend sections 5 and 6 of the Bail (Amdt.) Act. It is quite clear that there are certain offences for which there is no bail; there are certain offences which the court has a discretion and it clearly enumerates the way in which a court needs to exercise such a discretion.

Now, Madam President, I started off by saying what this Bill is not about, and much has been said about the right to be presumed innocent. That is a

constitutional right enumerated in section 5(2)(f)(i) of the Constitution; that is the right to be presumed innocent, and that is a right no matter whether you are rich or poor, that must be afforded to all, equality before the law. So for those individuals who somehow have come to this honourable House with the notion that persons who are wealthy ought not to be provided with the same access is a misguided notion in law, notwithstanding the fact that we may have a certain amount of disdain for persons with wealth, it is not enough to say that those persons should be treated any more differently from persons who are landless.

If we were to follow or to take that suggestion on board, and were to pass legislation that would entrench a system of inequality in the law, I am sure that the first persons who would go to the courts would be the United National Congress.

7.00 p.m.

They have a certain propensity to come to this House, say one thing and to do another. Madam President, I say that to say that the issues in the other place were quite narrow, and somehow, notwithstanding the fact that we are almost at the end of term, a certain amount of politics was brought into this Bill. Madam President, just today I woke up and I do as I normally do, I read the newspaper, and there was a certain article about a lady who was granted bail, she was charged for fraudulent qualifications. She posited herself as someone who had a certain degree. She was working for—I think it is a regional health authority, and she was granted bail in the sum of \$150,000 surety, or \$15,000 cash bail. So that is the approach the courts normally take, it is either they give you a big some for surety or they give you a smaller some, like a fraction, 10 per cent, with cash.

Now, a lot was said by persons on the other side about persons walking to the prisons with a bag of cash. Now, it is obvious they have not read the Bill, because clause 4 of the Bill clearly states that if the sum is over \$10,000 the court

would only accept, I think, a certified cheque. So it is not a question of a person going with a bag of money to the prisons and the risk that that poses. Only those individuals who have been granted cash bail of less than \$10,000 would face those types of risks. So the question remains, therefore— and in those circumstances they can also give certified cheque, so it is mind-boggling to me that persons would come to this honourable House and try to confuse the conversation, to obfuscate, Madam President.

But, Madam President, I want to deal also with a criticism that was raised by Sen. Mahabir, and I think, as eloquent as he is, persons took the suggestion and I think they ran with it without understanding the true implications of what he was saying. The system of bail bonds is not the same as bonds issued by financial institutions. It clearly is not. A bail bond is a sort of agreement that is entered into. It is an agreement, and if you follow the American system a bail bond is an agreement whereby persons enter into an agreement with a bail bondsman for the repayment of a certain sum over time. A bond, however, is a financial instrument, a security. And if we understand, because if we read the Securities Act we will see in a particular section, the definition section, a bond is also a security. So they are two different things. It is not that banks are going to wake up in the morning and somehow want to give security to persons who are charged with a crime. That does not even make sense. We know how risk-averse banks are.

Could you imagine a bank suddenly wanting to, or a financial institution wanting to get into the business of lending to persons who are likely to flee? What is the interest rate going to be on something like that? So I say that to say, it is not that there is going to be a system of financial institutions going to somehow get involved in bail bondsmen, and, in fact, Madam President, we would understand that because securities are regulated by the Securities and Exchange Commission.

Bail bondsmen are illegal, so there is a clear dichotomy in the two, one is illegal and one is not, and this Bill in no way, shape or fashion, tries to legalize the system of bail bondsmen in this country. It is clear.

When I read the newspaper this morning that article also jumped out at me. I know Sen. Small, he has a certain aversion for banks, because he understands sometimes that they are less than forthright with persons of low income, but there are two different systems, and I felt that, Madam President, I could not allow that misinformation. As well intentioned as it may be, Sen. Mahabir, he has a brilliant mind but he surely does not have a criminal mind. *[Interruption]*

Sen. Dr. Mahabir: Will the Minister give way? *[Assent indicated]* Thank you very much, hon. President, for the Member giving way. Hon. Member, you see, the concern I had, and just for clarification, it says:

“a bond issued by a licensed financial institution as defined in the Financial Institutions Act;”

And as far as I am aware the only bonds which are issued by any one of these licensed financial institutions is a bond issued by the Home Mortgage Bank of Trinidad and Tobago. Could you advise me on which other institutions offer the bonds to which we are referring which will then be used for the purposes at hand?

Sen. M. Coppin: The Attorney General has informed me that he will deal with such a situation.

Sen. Dr. Mahabir: Thank you very much, Member. Thank you.

Sen. W. M. Coppin: No problem. But, Madam President, as is apparent, and the Attorney General would deal with it, bonds are, as I said, financial instruments, and these types of bonds, I know there are performance bonds, and those sorts of things, but I do not believe that this is what is meant. The Hindu Credit Union, for instance, and Clico, these institutions, when they got into a certain amount of

trouble, certain bonds were issued to depositors. In the case of the Hindu Credit Union, those individuals with \$75,000 and up, whereas I think in Clico the sum was \$50,000.

So those institutions there is the circulation of those types of bonds in the economy and persons are seized of those types of bonds, and what this Bill essentially does, in my estimation, it gives holders of those types of bonds to pledge them for the security of persons who are in need of bail. So it just broadens the types of categories of individuals and literally access to those individuals. And you would be surprised, Madam President, I once had a client who had no money. He came to me, he is a high net-worth individual; he had no cash but he had quite a lot of bonds. So even amongst the rich, Madam President, there may be a liquidity problem but those individuals have a certain access to other types of financial instruments which may be used for the grant or access to bail.

So, Madam President, I thought that I just needed to clarify that piece of, what I would say, a mischaracterization of what this Bill sets out to do. Madam President, I do not want to be too long, however, I want to raise an issue that Sen. Sturge would have raised as well. He spoke about conditional bail. A number of speakers would have raised the fact that the Administration of Justice (Electronic Monitoring) Act, which allows certain bracelets to be placed on individuals is in fact law in this country. It is not operationalized. In fact, in our Joint Select Committee on National Security, I know Sen. Richards could testify, we were quite flabbergasted, and I was shocked when we learnt that only this year they had set up—or last year—a certain implementation committee to get that piece of legislation off the ground. In section 10(2) of this Act, Sen. Rambharat would have raised it, there is provision for, as a condition of bail, certain monitoring devices to be placed on individuals. So it is not that we did not contemplate, or

that this Bill alone is what this Government plans to use as a condition of bail, but, Madam President, it is clear that for those who understand and have a full understanding of what is going on in this country would know that certain steps are afoot for the implementation of these devices. So I thought that was just another misinformation that was out there in the public domain that needs to be addressed.

So, Madam President, in wrapping up I would like to say that this Bill is not meant to guard against fantastic possibilities. It is not everything we can legislate for, but, Madam President, we can surely do all within our power to right the wrongs, to fix the lacunas in the law, to bring consistency to the exercise of a certain discretion that magistrates seem to have arrogated upon themselves. We can do all in our power to ensure that the right, the constitutional right to equality before the law, and the right to be presumed innocent. And, Madam President, there is actually a right to bail, to the access of bail in section 5(2)(f)(iii) of the Constitution. What that means, Madam President, has never been truly ventilated in our jurisdiction, but what we can say is that no one is supposed to be denied bail except for a just cause, and having access to wealth, to money, to land is surely not a just cause that can be justified in this society.

So, Madam President, I thank you for the opportunity to contribute. I hope that I have addressed a number of concerns of persons and misinformation that has been permeated in this debate. I hope that hon. Senators will do all in their power to right the wrongs that have been perpetuated in this land, and to support this Bill. And I thank you. [*Desk thumping*]

Madam President: Sen. Edwards. [*Desk thumping*]

Sen. Nikoli Edwards: Now, Madam President, I thank you for the opportunity to contribute to this debate, an Act to amend the Bail Act. I just want to start off by saying that while the Bill is not about a number of things that would have been

articulated by Sen. Coppin, which he is right, it should be about some of the things that he mentioned. Because we do have an approach, and I would say this, in the lead up to today I was speaking to a colleague who asked me what we will be debating, and I said to him, it was an amendment of the Bail Act, and his response to me was that in Trinidad and Tobago we are always debating some amendment here, there, and where have you, and it is true. We have to update our laws as time goes by, but the fact is that we need to be able to treat with things in a holistic manner, as far as is possible, because we cannot be coming and making amendment upon amendment, upon amendment and not getting it right.

So, therefore, I do wish that this Bill would have been about a lot more than it currently is, to ensure that we get the system right. That is the only way that we can fix this judicial system, because the fact is that while the hon. Attorney General would usually say that we have pieces of legislation coming, as Sen. Richards said, coming is not now. We need certain pieces of legislation and amendments taking place at the same time. Now, jumping straight into this debate, as has been ventilated time and time again, because I would not go into depth in terms of a lot of the things that would have been said. Now cash bail paying, there should be an option for persons to rightfully be able to pay with a card, debit card, credit card, whatever the case is, especially in cases where it is below \$10,000. I am not so moved by the whole discussion about persons walking with a paper bag of money, and stuff, because I do not really see that taking place as being said in the manner of that taking place. But the reason why I would want to see persons being able to pay with a card, or so on, or so forth, would be for the accountability and the transparency that may be involved in that process. Because the fact is that when someone comes with \$10,000, or how much ever money, no one really does a check on where that person would have gotten that money from.

Now if someone had to put that money through a financial institution then they would have had to explain their source of funds, and then you would have a certain level of accountability taking place where that person has to justify where this money is coming from. Because it may very well be a situation where the reason a person was arrested, they benefited from that, whatever scenario, and that same money is what they are using to get bail. So we have to put systems in place to ensure that that money that is being used as bail is accounted for, because what we would have is just that continuation of a system in place that fuels and encourages corruption in this country.

Now Sen. Creese stressed that plastic is here, and I want to stress that as well. Recently Jamaica would have announced their whole decision to go the route of an eGovernment, Trinidad and Tobago, we are lagging behind. We need to ensure, in the sense that every service that the Government offers a person should be able to walk into an institution and pay with their card. I can assure Members that going into the Registrar's office where you have to pay to register a business, for the longest while there is a sign saying that the LINX machine is not working. When we go into many other offices, Government offices, we are not allowed to pay for certain services. We should be able to even do this online, as the case may be. But I digress, the fact is that we need to do better when it comes to how we handle money in this country. Persons should not have to be walking around with money when they do not need to.

Now when bail is forfeited why do funds go into the Consolidated Fund? What I am coming to realize more and more is that all the funds, all the taxes, everything just simply goes into the Consolidated Fund. Why can some of that money that is being received under the judicial sector not be used to improve the judicial sector? We have prisons being the way that they are, you can pass in front

of any prison on a morning and see crowds of people standing there, waiting to see their relatives and they have no place to shelter, they have no place to be seated, unless the gates are opened and they are allowed in. So the facilities are horrible. We should be using some of that money to assist the judicial sector in moving forward and then, and only then we could really talk about separation of powers, because as it stands the Judiciary is heavily dependent on central government to ensure that it can move forward and implement projects. It does not have the sole discretion to implement projects as it would like to.

So I would really want to see funds, some cut of the funds, or so, being put, very specifically, toward the improvement of the judicial sector, especially in cases where we are accepting it as someone's bail being forfeited. Now, the whole idea of recognition of professional bailors have been coming up throughout this entire debate, and the fact is that we do need to regularize that system. We cannot continue to acknowledge that we have this side industry taking place and just walk around it and give it a side-eye, because that is what we are continuing to do. We are continuing to acknowledge that they exist, but what are we doing about it? And the perfect example of how that kind of thinking has failed is Licensing Office, because we know for a fact that there are licensing officers accepting money on the side to process licences, and so on, and so forth. So let us get down and deal with it.

I remember, I went to San Fernando Boys' RC, so on the promenade there, and passing the San Fernando Magistrates' Court every day and I would see all these people outside and not knowing what they are doing there, and it was only after a time that I have come to realize, well, those are the persons who are trying to get clients, right, to be able to provide that service of being a bailor, and so on, and so forth. And years after, I mean, the fact is—yes, I am not that old—but years

after the system still remains, and you still have all these persons outside, so what have we done since then? What do we plan to do? We need to fix that system. We need to regularize it. This way, when the whole idea of 10 per cent being paid to the bailor, that has now gone out of the window, because persons are paying more than 10 per cent in some cases; 20 per cent, 25 per cent, 30 per cent and upwards on the value of the property, and that is something that we need to regularize if we are to move forward.

Now, the Bill does nothing to make people safe and secure, according to Sen. Solomon, but I would want to disagree, because getting the bail Bill right would assist those who deserve to be on the outside get there. And, also, we know of stories of persons being held in remand for years only to be found innocent later. And what happens in those instances? You have persons coming out of the prison system, hardened criminals, and they feel that they must now seek out justice against the society that they feel has put them there. So if it is that we do not have the bail Bill correct then you are going to have these persons coming outside and posing a bigger threat to society. So I do see it as something necessary to correct, and we do have an opportunity to correct that here, and so I do think that it is worth our while in that sense.

Now the whole argument about it being right to allow persons to get out of the system or behind bars unjustly can also be used when we think about persons who are actual criminals and are being put back onto the streets. The fact is that you have many persons who, after they have gone through their trial they are found guilty, and we come to the realization that, yes, you know what, this person deserved to be corrected or deserved to be penalized, as the case may be, for the wrong, even though I do firmly believe in restorative justice as opposed to retribution. But the fact is that we need to ensure that the system is efficient

because you cannot have persons up in the air about what their future is going to look like. We need to have a system that is responsive to the threats to our peace of mind, safety, security, and that of the victim and offender involved in this process. One of the things that bothers me is that these persons would be simply accessing their bail and then going out, coming back out into society, but what is put in place to really capture data on these individuals or to really make an intervention where it is necessary?

If a person is held on domestic violence charges and they come, they get arrested, what have you, they receive bail, and they are back out there, have we done anything to fix or prevent a situation like that from reoccurring? And the answer is, no. We should be able to make an intervention there. So as opposed to a person simply accessing bail and then going out on the outside, let us put some more provisions in place where we can actually make an intervention and prevent the cycle of crime taking place in our society. Because we have seen time and time again where persons come out and there is a revenge attack. We see situations where domestic violence takes place and the husband or the wife—*[Interruption]*

Sen. Ameen: The accused.

Sen. N. Edwards:—the accused returns to the household and then you end up seeing the spouse of the accused murdered. We had a prime opportunity to fix that or prevent that from happening, and the same thing goes with persons on drug charges. Why do we not make an intervention at that point to ensure that they get the help that they need as opposed to arresting them now for the possession of drugs, and then when they have accessed bail they are back out there involved in the same thing that got them there in the first place? So what I am saying is that we have an opportunity to make a proper intervention, and as it stands right now it seems as though this is not being allowed through the whole idea, the whole

concept of bail, which is to allow someone to be on the outside ahead of their matter actually being started.

Now, also, I do not fully agree with the whole idea of bail being pegged on simply income. Many other factors should be taken into consideration, and some of them could be a person's educational background, thereby lending to their ability to—*[Interruption]*

Madam President: Sen. Edwards, the matter before us, the Bill that we are dealing with is dealing with one aspect of bail, which is talking about the issue with cash, cheques, that sort of thing. It is not about everything about bail, and what you are doing in your contribution is, you are talking about everything about bail, you are giving a treatise on bail, but you need to limit it to the matter before us, the Bill before us. Okay?

Sen. N. Edwards: Thank you, Madam President, and I will be so guided. Now, getting back to the Bill before us, one of the things outlined is that an officer would be able to receive the bail and thereby issue a receipt, and what have you, but the whole argument has come up time and time again about trust, and these things, and I am not one to go out there and say that I do not trust the police service and the prison service, and all of that, because I do think that I am doing an injustice if I go down that road, an injustice to all the hard-working police officers and prison officers who live right and who do things by the book. So I would not put that entire sector into disrepute whatsoever. What I would say, though, that therein lies an opportunity through this clause that a whole other industry, an underground industry can be started, because persons can now solicit funds from those who come forth to pay bail asking for something on the side, and asking them to come forth with something extra to ensure that everything is processed, and the fact is that there are many persons in this country who do not know their right.

They do not know they right so they will go into a situation thinking, well, you know what, this is probably something that I have to do, and then you have someone else telling another individual, well, if you go and pass a piece of this, or whatever the case is, you will get through. So how then do we prevent those things from taking place? I am not saying that it is not a provision that we should not have, but, at the same time, what measures are we putting in place to ensure that instances of wrongdoing and corruption do not take place moving forward. One of the other things is that the whole idea of persons not being able to properly fund or come up with the money for their bail, and what have you, and this being pegged on their circumstance, I do think that those individuals, a lot of the times, are what we perceive as being the small fish, and they actually have supporters in the background, the big fish who will fund them to come out, or whatever the case may be. And those are things that we need to also look at to ensure that we find ways and means by actually solving the issues that come about, and this is where this Bill can actually play an integral role.

Going back to that whole idea of source of funds, and so on, I do think that we can make a proper intervention. So, in a nutshell, I am actually happy to see that we are making amendments to this Bill. However, we need to do better, and we need to stop coming with small changes and look toward bigger changes that would have a greater impact, because the fact is there are so many other things that need to be fixed, and there are so many persons right now who are in our prisons, who are in Remand Yard, who are there for years, and what have you, and they simply cannot come out because they cannot access bail through the right means. We do not want a society that encourages, and, especially, because of a laissez-faire approach that encourages persons to seek out loopholes and other means to access bail in this country. So I welcome changes, but we need to do better, and

we need to look at the bigger picture as we move forward in addressing the issues that impact on our judicial sector. With those few words, I thank you. [*Desk thumping*]

Madam President: Sen. Heath. [*Desk thumping*]

Sen. John Heath: Madam President, thank you for the opportunity to contribute to this Bill, an Act to amend the Bail Act, Chap, 4:60. Madam President, the perennial problem with bail is that persons who have gotten bail and are not able to access the bail, the bail itself becomes punitive in that they essentially serve a sentence not having gone through a trial. Now the thing is, if a person comes before a court and either, (a), he is not granted bail, or he has been granted bail and cannot access bail, the usual alternative is to get that person to a speedy trial, because of the fact that he is incarcerated. This, of course, becomes even more important when the offence is of a trivial sort of nature, because the offence might very well attract a fine, or some non-custodial sentence. So if it is that he is not able to access bail, he is essentially doing time.

7.30 p.m.

Madam President, the system of the professional bailor is, in my view, a necessary evil in that there is, in my view, an inextricable link with this system and the number of persons who have been able to access bail and come out. That is to say, without them we would have even more persons in the prison system. The problem is the system is illegal. To a large extent, persons in the criminal justice system turn a blind eye to it. So for instance, as an attorney-at-law, I inform my clients that there is such a system, and I tell them, "But I am not getting involved, you are on your own". Because a number of persons have been burnt by the system.

So this professional bailor, who is really a facilitator, who has a catchment

of persons who have valuable security, usually a deed, and he is the link between those persons and the family member of that person who has gotten bail. He takes his down payment and then he goes before the Clerk of the Peace and then some problem arises with the deed. That family member is not going to get back that deposit, and has no recourse to go to the police or anyone else to try to get it back. So to the extent that the proposed Bill seeks to create an avenue, which can direct persons away from this system, is commendable. There are, however, some of the clauses which I would want to make some suggestions.

Cash bail, as my colleagues have stated, is nothing new in the system. I have never seen cash bail given as a first option or an only option. It is, in my experience, only given in the alternative. So in other words, the tribunal says you are given bail in the amount of \$100,000 surety, in the alternative cash bail in the sum of X or Y. It is never given as a first option.

When you look at the proposed Bill, at subsection (4A), it gives the four circumstances under which forms the bail can now take. My concern, particularly, is for the magistrates who are creatures of statute. Looking at it in black and white they may simply say, well we can only really give one form. So it takes away from what presently obtains, in that, some persons simply do not have valuable land security and, to that extent, the cash bail alternative is real. They can all pool their resources together, and in some measure of comfort, it really does not matter how the matter is determined, the money is safe, whether the person is guilty, not guilty. Once the matter is determined, their money is safe, so it is a sort of savings in a sense.

But if in effect the magistrate looking at this says, "Well, I can only really give you the cash bail", and they do not have the cash, but they have the land, then that option is taken away from them. So I am wondering if, in those

circumstances, and having regard to what presently obtains, if subsection (4A) could be worded in such a way so this magistrate, this creature of statute, who really works within the parameters of what is written in black and white, can understand that they would have the option of maintaining their current practice of putting it in the alternative where persons have the choice of one type of bail or another.

Madam President, when I look at subsection (4B)—and it is not that the current legislation says any differently—it speaks about the defendant taking his own bail. The only circumstances I know of in which a defendant can take his own bail, is when he is granted own bail, and that is usually for very trivial offences. The own bail really is that he signs as his own recognizance and he does not part with any money. His own recognizance in the sum of \$5,000 or \$10,000, and if he does not show up, then he is called upon to say why that money should not be forfeited from him. But how it is worded here, Madam President, it would seem to suggest that he can provide valuable security by way of a deed.

Now, that has never happened. It has never happened where—and certainly I know of no circumstance—where someone can present a deed with their name on it and stand security for themselves. Certainly with respect to the money because he is in custody, he would not be able to come out and get the manager's cheque in the first place. So that does not seem that it would be possible, although if he has a joint account his liquid cash money can be used. So in those circumstances there is a concern that the practice as it is now, is that if you have a deed and it bears the name of the accused person, it is not utilized at all, because one of the functions of the bail is so that person—there is a third person who is now putting up valuable security to ensure the attendance of the accused person, who may very well have an interest not to come to court.

So you have this other safety measure, in that, I am willing and it shows the court that I am putting up my security, because I have faith that this person will attend, and I will do all in my power to ensure that he attends. So it is certainly not the case at all, that I know of, that a person could ever use security in his own name by way of immovable property. So that seems to be something that needs to be addressed. As I say, in the current legislation I think it is also worded like that, but in actuality that never ever happens.

I also see, Madam President, that when one looks at clause 5, which seeks to amend section 17—5(2)(c), which seeks to insert the following part:

“Where the security has not been forfeited and the defendant is convicted, the Court may with the defendant’s consent...”

If it is the defendant is not the person who is putting up the security, it cannot be that the defendant is the one who is giving the consent to part with a security which is not his own. So I cannot see in any circumstance why the defendant who would probably say, “Well yes go ahead and use it”, should be the one and not the person in whose name the security is taken out. So I think that should change, and that should be amended to reflect, instead of the defendant, the person in whose name the security is taken out. Bearing in mind, of course, that I am saying I know of no circumstance, save and except where a person is giving his own bail, where the defendant can stand security for himself. So it never happens, but yet we have it here where the defendant must give consent.

Then further down at subsection (6):

“Where the Court makes an order under subsection (5), any remaining balance shall be refunded to the defendant.”

So the opportunity there is for the defendant to get refunded moneys for which he has not put up. The practice, of course, is now that when the matter has been

determined, the person who has taken out the bail, goes to the Clerk of the Peace, presents the relevant documents, they verify it, and that person is the person who gets back the money, no one else can get back the money. That too, in my respectful view, needs to be looked at.

Madam President, while I say it is commendable to create this other avenue, we still must be mindful. I know, for instance, in some instances—and I suppose this would be more a function for the courts—that if a person is charged with certain types of offences, the cash bail alternative from the court's perspective, they are less amenable to it, unless it is in terms of drug trafficking, in terms of money laundering. Because of the nature of the type of offences, one can see why the court will be a little more hesitant to engage in this form of bail.

Where the proposed Bill could be a little more open to further options, and I have seen it done at the level of the High Court is that—[*Interruption*]

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.

Question put and agreed to.

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

Sen. J. Heath: Much obliged, Madam President. I was simply at the point where the Bill could be a little more open to other options, whereby, for instance, persons can be examined by the tribunal, whether it be the magistrate or the judge, and upon the provision of a statutory declaration, which, for instance, would say that they are gainfully employed and that they own certain assets, bail could be granted with that person in a named surety in a sum which would exceed normally \$100,000.

The practice now is that you would get a named surety in circumstances where the person is more or less of a tender age. So a young adult 18, 19 or a child under the age of 18, you would get a named surety who is usually the father, the mother or the guardian of that child. I am saying there are persons who are in a catchment whereby they may own property, but the property is encumbered by a mortgage, so they cannot use that. They may, however, be gainfully employed. They may have certain investments which are tied up on fixed deposits or certain other funds which they cannot readily access. But apart from all these, these are persons who should be able, upon proof of these things, to be named sureties. And certainly in my experience, the persons who abscond and do not come to court are very few. In my experience, I have never had a client who has absconded—never. The simple reason is that unless you have the means to fly and disappear, which is expensive, and not be around your family and get the sustenance of your family, you are not going to go away. You are going to stay and try to fight your case.

So it is not that we have a problem where people are absconding left, right and centre. The problem is the access to bail. There are a number of persons who have served virtual sentences simply because they cannot access bail, and because we do not have a right to a speedy trial, they have not had their trial and they find themselves languishing in prison.

So, Madam President, I have touched on the areas in which I say that the movers should look at the particular clauses and address it. It is commendable. It is heading in the right direction of creating options for this access to bail. As we seek, as my colleague, Sen. Edwards said, to move away from this professional bailor system, which is illegal and which we all know exists, but nothing is being done.

I am much obliged.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Somebody used the expression a little while ago that today is the last day of school in the Senate, in that, we are literally on the cusp of the mandatory recess that the new Standing Orders provide that both the House and the Senate must engage in.

I wish to start off by thanking, most sincerely, all hon. Senators for engaging in very useful and reflective deliberations on this Bill. But permit me at this juncture to also express a profound gratitude on behalf of the Government, and certainly for my own part especially, to hon. Senators for consistently good debate on a number of Bills that we have had and which we have wrestled with. [*Desk thumping*] I wish to say that, very pointedly, including the Opposition. I think that there has been a very good effort on the part of hon. Senators, and I wish to express my pride that we as a country can actually come together and do some very good work.

I say so because—and forgive me for putting it this way—I sat in Opposition for five years, did very much like some Members of the Opposition are doing right now, contributed considerably to work, and I do not think I ever once heard a compliment or a thank you. And I really do think that you can very often wish that you can do something differently, and very rarely do you get the opportunity to be on the other side and to say thanks where perhaps you had not heard it yourself. But I wish to be very pointed and to express my gratitude for the collaborative work that the Senate has done in all of its deliberations. I say that as well because I think that there is nothing to stop us from still exercising our politics as robustly as we do, and I think that our country develops well from the multiple perspectives to be gained.

Hon. Members perhaps noted and last night—and I think it had to do a lot with the amount of work that we had done yesterday—was it yesterday? Sorry, the

day before, Tuesday. It has been a long day. It is always long days for me, Madam President. I sometimes forget if I am in the House or Senate.

Hon. Senators commented on an apparent rush by the Government, and I wish to put that into context. There is no rush by the Government. We have been asked as a Senate to observe—we have been asked as a House to observe the Standing Orders. There are only so many sitting days that are permitted. Hon. Senators asked that the Senate do not sit for very long hours. The Government complied by making sure that we ended, almost on all days as best as possible, at an early enough period. And the recommendation was taken up and the Government exercised that role, because hon. Senators committed that they were prepared to sit on more days than one if we took that approach.

So last night I have to say that I felt a little disappointed to hear people complain, understandably so, I mean it was a late position on Tuesday. But I want to remind that certainly in the five years that I sat in Opposition, we worked for much longer days than we are now. I certainly view this as a privilege to sit in the Houses of Parliament, and I know all Members do. So I wish to just point out that we have done our very best to be measured.

A lot of this work, including this Bill, has been significantly delayed because the Law Association asked for an opportunity to give commentary on the legislation, notwithstanding the fact that we, for instance, on this Bill, consulted with the Commissioner of Prisons, one, two, three, four times; the Judiciary in writing and on several occasions; the Director of Public Prosecutions, July2016, September2016, December2016, January2017, January2017; the Criminal Bar Association—I want to put on record we wrote to them July04, 2016; September27, 2016; December16, 2016. The Law Association we wrote, July 04, 2016, September27, 2016, January04, 2017, January 12, 2017, February08, 2017.

We met with members of the Criminal Bar and the Law Association on three occasions, including the Presidents in two successive terms, and we were insistent that we had given enough time for commentary.

But most respectfully, the work that we have before us is one upon which there must be consultation, but I cannot compel people to take the request for consultation seriously. And I have demonstrated by reading out the dates and events that we have not had a degree of reciprocity coming from other members of society, and one must recognize that the work we are doing is serious work.

I heard Sen. Edwards say a little while ago that we need to do more, that we should not take the little approaches to the bail Bill. We should do more. Much of this debate on this particular Bill has circled and centred around the whole host of the criminal justice system, and the ills in the prison system, et cetera. But I wish to point out it was the Government's insistence that hon. Senators received invitations to go to the prisons, because we felt that it was very important for hon. Members to see, smell, feel, understand what we know, taste.

I recalled vividly the day when hon. Senators came back to the Senate, many of them could not go to eat because they said they had to wash from fingertip to elbow, and head to behind head, because they understood for the first time—and I can tell you that when I sat in Opposition I am not aware in the five years that I was there, that any Member of the Senate ever went to the prison system. That is why we started our interrogation on the prisons first as the litmus test on the criminal justice system. That is why Trinidad and Tobago knows now—snap, snap, snap—2,220 prisoners on remand, 986 for murder, 71 per cent granted bail but cannot access bail. Trinidad and Tobago is now using the statistics that the Government has put out into the open. Madam President, \$25,000 a head to maintain a prisoner. This did not happen by magic. It happened so that we could

expose the persons who are called upon to make the law to the conditions of law which we are considering.

Most respectfully, we are amending the Bail Act. The Bail Act in 1994, which is the substantive law as it stands now, there were 12 amendments to the Bail Act:

Act No. 19 of 2005;

Act No. 32 of 2005;

Act No. 30 of 2006;

Act No. 10 of 2007;

Act No. 15 of 2007;

Act No. 25 of 2007;

Act No. 17 of 2008;

Act No. 9 of 2011;

Act No. 11 of 2011;

Act No.12 of 2012;

Act No. 1 of 2014;

Act No. 7 of 2015.

That is how many times the Parliament of the Republic of Trinidad and Tobago in both Houses sat and debated the laws in relation to bail.

You know what my own view is in relation to the Bail Act? It is in need of significant reform. Why have we not dealt with the significant reform? Because there is current litigation going on in relation to the Bail Act, which is yet to be resolved, and therefore it would be irresponsible of me to come with the amendments that I wish to bring immediately, because there is some resolution that is outstanding. And what has the Government then said? The Government has then said, "Let us take the definition of common sense, fix the bits that we can fix

now, because no one piece of legislative approach is going to be the panacea to all of the ills, and let us put it to work”. Because it is a fact, as Sen. Creese pointed out, that many of our persons who are incarcerated, as Sen. Richards reflected upon it, if even for three hours, can have life changing experiences.

Sen. Coppin gave a fantastic contribution today, because he put it in the context of the social construct of Trinidad and Tobago. There are 174,000 applicants on the HDC database. There are 250,000 families squatting in Trinidad and Tobago. That is half of the country applying for a home or land—half of our country. The Bail Act, as it is constructed, has survived simply by way of judicial summersaults. What do I mean by that? This Bill proposes to do only a few things.

Clause No. 1, long title; clause No. 2, commencement date; clause No. 3, interpretation; clauses 4 and 5 seek to amend two sections of the law, 12 and 17. Clause 4, in amending section 12, treats with one aspect of bail and clause 5, in amending section 17, treats with the forfeiture provisions. The Bail Act as it is construction is rather simple. The Bail Act as it is constructed says in section 5 a court can grant bail. That is the first thing it does.

Secondly, in section 5, you can grant bail, but you cannot grant it for certain things. That is in the First Schedule: murder, treason, hijacking and any other offence for which death is prescribed. That is what section 5 of the Bail Act says. Section 6 of the Bail Act says that these are the things which a court ought not to grant bail for. They are the conditions for refusing bail. That is what 6 deals with; 6(1), there are definitions, considerations, and 6(2) tells you the things which you should review and therefore refuse bail for. That is what section 6 does.

The opposite to section 6 is section 12. Section 12 of the Bail Act says these are the things which are to be considered as conditions for granting bail. Section 6

of the Bail Act talks about the concept of a surety. It is the first time you see the word “surety”. Section 12 of the Bail Act talks about security. It is the first time you see the word “security” mentioned.

Section 17(3) and section 19(1) and the form of recognizance, which is in the Schedule, those are the three other areas of the law that talk about what a security may or may not be. You see, the law, the Bail Act does not define what a security is in a positive sense in the parent law. Sen. Coppin was right, nail on the head. The form says you can use movable or immovable security or valuable aspects. But there is no definition for “security” as it is used in the Bail Act. In section 12, section 17 and section 19 there is no definition, and what has grown up in the law has been that magistrate to magistrate keep applying different standards. We heard it today. We heard hon. Senators reflect upon their experiences in the court. Sen. Solomon, for instance, where you get one magistrate doing one thing and another magistrate doing another thing. And the fact is that the preponderance of security has now been sought and grounded in immovable property, meaning land. The only place in the law in the substantive sections which talks about security, meaning what is now to be provided for bail conditions, is section 12 which we are amending.

Section 12(4) has become a clause which is used almost on every single occasion. Section 12(4) of the parent Act is the clause which says, “If yuh think somebody is going to abscond from the jurisdiction, if they are a flight risk, ask for security.” That is what 12(4) does. But every person who has practised in the criminal courts or even civil lawyers who have had clients who passed through there, can tell you for sure that the courts now use this section 12(4), flight risk, absconding risk, for almost every single matter. That is a fact.

And what this law seeks to do by inserting a new (4A) is very simple. We

are seeking to put into an expressed statement of law, that you can consider four kinds of security: cash, certified cheque, bond from a licensed institution licensed under the FIA, or immovable security. From an interpretation perspective, it can include any one of the opportunities or a combination of them, so constructed because of (a) the application of the Bail Act over the many years; and (b) because of the conditionalities of section 5 and section 6 of the Bail Act, if you look at it as a whole.

So I heard Sen. Heath in the observation made that we may need to tighten the approach to use multiple aspects, or to have the judicial discretion to allow what is, as you put it in common law, the case. But it really is an hybrid position because it is a blend between the common law and statute as has come to be applied.

8.00 p.m.

So, (4A) comes about. Let us put in the expressed forms of security; (4B), (4C), (4D), (4E). What did we do there? It is really quite simple. In clause 4, we have inserted a (4A); that is the type of security. We have put the four types. Subsection (4B) says pay the prison officer so designated. Why did we put (4B)? What is rationale for (4B)? Why do we say put the prison officer? We heard Sen. Chote on Tuesday. Number one, prison officers receive money as it is. It is a fact. Sen. Samuel did some good research. It is regulation 127 where the steward receives the money.

We seek, in the parent law, to put in a positive obligation, that the Commissioner of Prisons must have a designated person in the parent law to receive the money, so we have receiving officer in parent law and not in subsidiary legislation in rule 127. This is why we are adding in a new (4B).

Subsection (4C), where we are adding the new (4C), we are saying that the

prison officer shall issue a receipt. Do we trust prison officers? Do we not? We are making sure the receipt goes to the person who pays and also to the Commissioner of Prisons. So we are bifurcating the expression of a receipt.

Subsection (4D), we are adding in that the Commissioner of Prisons shall keep a record. We do not want this thing not inside of the parent law. We put it in the parent law so that there is a positive obligation. Subsection (4E), we say the days and times. Subsection (4F), we say that the Minister can amend the Schedule, which prescribes days and times. Why did we not put Sunday, an hon. Senator asked, Sen. Creese I think it was, because the prison officers effectively do not work on the Sunday administratively in that provision, and in our consultations with them, they had excepted out Sunday.

However, because we intend, and I am going to speak to prison reform in a little while, because we are intent on driving the prison reformation, we have put in the fact that the Minister can amend those Schedules by Order. So we intend to go to Sundays and we intend to deal with the hours of operation. So that is the whole of clause 4.

Clause 5, what does clause 5 do? We are amending section 17. Sen. Ramdeen raised a very interesting point, and I had to look at it in many different ways. So section 17 deals with the forfeiture provisions of the law as it stands in the Bail Act, Chap. 4:60. We are keeping 17(1) exactly as it is. Section 17(1) says:

“Where a person has given security in pursuance of section 12(4)...”

And we note that:

“...in pursuance of section 12(4)...”

So where security is given in pursuance of section 12(4); section 12(4) is the absconding risk.

“...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.”

That is the existing law; that stays as it is.

We are proposing in, clause 5, to amend what is subsection (2), 17(2). We are keeping the forfeiture but we are adding in the event where the person has given their own cash, because we are now adding that position in. The court does have a discretion to do that. It may not have been utilized where one secures one's own bail, et cetera, it is a quid pro quo. Yes the court may have better persuasion when John Brown comes and says: “Well look, I will encourage this boy to come to court or this lady to come to court and I am risking it. I am putting my money where my mouth is.” But it still is a technicality.

What we do, in section 17, in the amendments that we asked the honourable Senate to consider, is we take the position a little bit further—if I can find my Bill. We take the position a little bit further. We are actually asking the honourable court to consider making sure that the new (4A) and (4B) apply. It seems that my Bill has somehow managed to disappear. If I can just lift anyone's. Thank you.

So we are asking for in clause 5, we are substituting the new section 17(2), we say that the court may order a forfeiture and in subsection (2)(b) we are saying that the defend, where he has given his own security but failed to, we are asking him to show cause why. And there was an observation that seven days may be short. We are prepared to look at that. The seven days we have referred to is after the order for forfeiture. But when we add in new subsections (5), (6) and (7), I wish to point out—and this addresses a point raised by Sen. Heath—we are not allowing for the provisions to apply to security given by a surety.

In adding in the new subsection (5) and subsection (6), we are allowing for

the case where security has not been forfeited and the defendant is convicted, “the Court may with the defendant’s consent”. We are solely dealing with the provisions where the defendant has offered his own form of security. It is not the surety security, because in that instance you would need to have the surety’s consent for the forfeiture. So albeit that Sen. Heath’s experience was that there are not many examples of that, the fact is that we are providing for it.

Now, let me speak to the recommendations which we have put for the Senate in the new 12, the amendments to section 12 which is in clause 4. We were talking about cash, we were talking about cheques, we were talking about the bonds and, of course, real property. And Sen. Dottin was very passionate last night about why it is bonds should not happen, a number of persons asked questions about bonds. Sen. Mahabir asked the question about whether the concept of a bond by an institution so permitted under the FIA offended section 18 of the Act.

Section 18 of the Act provides it to be an offence if someone has offered an indemnity for the surety. And then Sen. Mahabir went on to say: “Look, you are paying the bank for the thing and therefore you are running afoul of section 18.” But most respectfully that is not the case in law. The indemnity in section 18, which is said to be an offence. If you said to someone: “I will be your surety. I will be your surety upon consideration and the understanding that if I lose my thing you are going to indemnify me against the thing.” That is a whole indemnity.

The fact that there may be a banking product, and you know, jump high, jump low, we may criticize banks all we want, they provide a service in this country. There is a free market economy, the regulation and control of the banking sector is often driven by the market. But the point is, that when a bank considers the issuance of a bond, a bond could never be within the terms of a full indemnity, that look, if I lose my security you have to pay me back everything. That would be

an offence under law and that therefore cannot be the case.

Sen. Mahabir asked of Sen. Coppin a particular question, relative to which institutions other than the HMB provide the bonds. To the best of my knowledge, the HMB is the sole institution that does so currently. However, I am absolutely aware that there is a discussion afoot right now as to the provision of bonds in certain circumstances. And why? Because we are coming to what Sen. Heath recognized, which is that illegality of the professional bailors. And that is not something that we can continue to turn a blind eye to.

And I must say to hon. Senators, as passionate as we may be about the need for justice and to reform ourselves and our systems to achieve criminal justice, it cannot be confused with criminal justice reform. Because there comes some sort of point where we still have to hold on to idealism and drag our way out of the mire that we are in.

How else do we develop? Do we wait till we get it all right? Let us go big, not small, as Sen. Edwards says? Let us get the right product. In 2016, when we came to ask for the continuation of the Anti-Gang Act and the savings of the amendments to the Bail Act, when that did not pass, what happen was the law cascaded right back to 1994. The law, as it stands, is the 1994, principally, with a few exceptions, as it relates to the appellate rights, et cetera, which were inserted in section 6A and other provisions of the law. However, I can tell you that as a result of that cascade, the Government went back to the drawing board and most respectfully an entire Bail Act is required.

If you look to the prescriptions where you cannot get bail for three strikes, the three strikes are counted in 10 years. You cannot get bail if you have had three convictions in 10 years. What does that really mean when you put it into effect? What is the sentence likely to be in a 10-year period? And how long does it take

you to get a sentence? If the current preliminary enquiry route or criminal justice route is that you are waiting six and seven years for any one trial, if you get the first conviction, and let us say it was two years, how long before you get the second conviction, or the third conviction? Is it not, therefore a logical nonsense to suggest that the three strike rule has any persuasion behind it? Is not that the fetter against the Judiciary granting bail in and of itself a challengeable position? You see, there is a lot more work that is not as easy as it sounds.

And most respectfully, when I said to Sen. Richards that we were looking at certain reforms, we are and have drafted. We were looking at. We are looking at, in the sense of something to come, and we have drafted amendments to treat with corruption and wrongdoing across the protective services. But for the prison officer who is wrong, it is not the Bail Act that we are going to amend to do that, it is going to be the Prisons Act that we do it, like the Police Service Act and Regulations, like the TTDF Act, like the immigration, like the Public Service Regulations and rules. That is where we are amending the law, because we intend to ratchet it up.

What do I mean by that? We intend to bring, for consideration, that if you interfere with a policeman or a member of the protective services or someone in discharge of public function, and you do so maliciously, you do so wrongfully you are going to have the book thrown at you. We must protect our officers but we are balancing it off by saying if we catch you in corruption “crapaud smoke yuh pipe.” We are throwing the book at you on that end.

Now, I want to raise something. We are in an active hands-on relationship with the Canadian Government right now. Hon. Members would have seen, in whatever capacity, whether as attorneys-at-law, social work, missionary work, hon. Members would have seen the prisons of Trinidad and Tobago. And yes, the

reason why I read the dicta from Madam Justice Carol Gobin in the Edgehill case, was because the similarity between conditions of slavery, indentureship and the prison system is the same.

How many of us know that the Remand Yard was built in 1950? I said it on purpose. Do you know what the purpose of the Remand Yard is, or was? It was a hanger for aircrafts. That is what it was built for. The Remand Yard, yes has 12 people sleeping in a six by nine, razor blade as they said, four bunks, no mattresses, no plumbing, muck. Sen. Richards gave a very good and proper description. So what do we do? Coming into the prison system, having done the litmus test, the first thing I did was to say: "We are going to sober up the prisons." Sen Ramdeen was so very right when he said until prisons are truly prisons, meant to lock you in and deny you the privileges of the world, then we are really just wasting time.

Let me give you an example of what we did when we went in to sober the prisons. When we went in, in 2015, and I went personally, it was to do a reconnaissance of what we are dealing with. No CCTVs. Let us start with the conditions for detention as described. Yes, I accept everything Sen. Richards said, abhorrently inhumane. No plumbing facilities, no ventilation, no room, 45 minutes out of 24 hours. Mothers see their children one day a year, under the Prison Rules; one day a year, under the Prison Rules. We have no exercise yard, no place for reflection, et cetera, depending upon where you are.

The first thing that we did was to say: "Right, what is the reform that is required?" The Government of Canada is in partnership with Trinidad and Tobago. We have a team in Canada right now. We have earmarked the works to be done at Remand Yard, for instance, for the retrofitting of all of the cells, to put in plumbing, to create an environment where less people are in the physical area.

That entire work is going to cost us roughly \$50million. We have taken the bill down from \$2 billion to build a new jail, and we can possibly spend \$50 million and remedy that situation, with fencing, with areas of reflection, et cetera, and I want to prove how sincere we are.

Sen. Richards said that he was impressed with the exception that is YTC. That did not happen by mistake. The Office of the Attorney General went to work with the Ministry, that is under the Office of the Prime Minister, of Gender Affairs, the Children's Authority and the prison service and we created 36 new dormitories at YTC, with proper conditions, not the best but as best as we could get and we are working a way out there. There was supposed to be construction of new dormitories and a new area for a YTC, by the way YTC is now a child rehabilitation centre, under law, so designated by law. But it was supposed to be built for upward of \$600 million. Do you know how much it cost us to do it, just by hands-on management? One million TT dollars. So what Sen. Richards reported to this Parliament did not happen by mistake. It happened with direct supervision, and I can tell you I was personally involved at every inch of the development for TT \$1million, which is why we are working or way back in the entire prison system.

But what else happened? We put on the grabbers and jammers, which were in a box. And do you know what the numbers of calls intercepted are, Sen. Dottin, through you, Madam President? Two million calls in a two-month period; two million calls in a two-month period.

I went and personally engaged in witnessing, after I had received a phone call from death row in the prisons, on my cell phone, in my office, as Attorney General. I received a call from death row telling me certain things. I relayed the information to certain authorities and a raid was conducted. Listen to what was

found, I am giving you an example. So in the same pails, the pig tail buckets, the little black buckets, the slop with whatever was in it, the handheld scanners were used to check the buckets, nothing found.

People observed prison officers, using the scanners to check the buckets. They checked every cell, nothing found. They used the handheld scanners, nothing found. I then instructed, by way of a suggestion to the relevant authorities, I said: "You know, we have full body scanners in the prison. Perhaps it may be useful if you took the buckets and scanned them in the X-ray and let us look at the picture of the buckets." There underneath the false bottom of every bucket here is what we found, on one pass through, 28 cell phones, 12 chargers, 21 batteries, 5 memory cards, 15 SIM cards, 16 headsets, 8 razor blades, store-bought knives, digital scales, projectiles from ammunition, marijuana, cocaine, 77 cell phones, Wi-Fi hot spots, 23 memory cards, 44 SIM cards, 146 chargers, 102 batteries, 104 ear pieces, 1,000-plus boxes of cigarettes, 98 smoking devices, lighters, 686 improvised weapons, shavers, cash, flat screen TV bolted on to the wall of a cell.

So, is the Government blind to what is going on in the prison system? No. How did it get in there? I have a fair idea. What are we doing about it? The reform that we are doing. The CCTVs that are installing as we speak, some of them have been installed already, are being fed into background areas, which are being double-supervised. And what is going on is the reform of the rules that I am expressing right now. You see, I cannot wait, most respectfully, as an Attorney General to get it all right on the first go. I have been operationalizing this, thank God for the help of the Minister of National Security who has been leading the charge, on a constant basis. But most respectfully, hon. Senators, there is no one occasion where we can get all of it right. And what the Government has done is to approach the Parliament on a consistent basis to say let us inch our way forward,

inch our way forward, inch our way forward. And I really do believe that we are on the right track as a country. [*Desk thumping*]

And I am only saying this because we have spent, to date, from 2010 to 2017, we have spent \$26.5 billion in the police service. We have spent \$15.3 billion on the Trinidad and Tobago Police Service. It is clearly not a matter of money. That is plenty money. It has been a matter of will and common sense and inching your way out of the problem and being resistant to the blows, the licks, you have to do better, you have to come again, let us go perfect. Nothing in this country passes on perfect basis.

That is why we took the approach we did on several pieces of law which this honourable Senate has considered. Motor vehicles is one of them. We have been talking about reforming the motor vehicle, in terms of red light and demerit points and technology and spot cameras, for 26 years, when the provision for regulations came about. So why should we give up the vision of dealing with professional bailors? Why should we give up the ability to provide new forms of security? Just because the banks are thieves, as some people say it? Really, as a concept of criminal justice reform, we have to look towards the positive.

I read out the encounters with the prison service to tell you that it is not that we are not aware and most anxiously aware of what is going on. Hon. Senators will recall that I said that I would ensure that hon. Senators were given the invitation to go and see the prisons and that was a very purposeful decision on the Government's part. Unless you have seen your prisons, your old age homes and your depth of squalor and poverty in this country, we are living as somnambulists in la-la land. That is where we are. People get into their cars. They go to work. They cannot remember the trip between leaving home and going to work. It is a blur. You socialize with the people that you know but the ability to stretch oneself

into the zone of real effective and meaningful change is really something that requires perspective. And most respectfully, some hon. Senators said that we had not taken as aggressive an approach—[*Interruption*]

Sen. Ameen: Madam President, on a point of clarification to the Attorney General. You mentioned that Members of the Senate were invited to visit the prisons. I received no such invitation and I am wondering if it were the members of a particular committee. If you could clarify?

Hon. F. Al-Rawi: Yes, Sen. Ameen, you are correct. It was *infra dig* to say all Members of the Senate. It was via the respective committees, where the Government Members had the ability to cause the invitations, et cetera, but it was done specifically because many people have not had the opportunity. I mean, the attorneys who practise would know these things.

Sen. Ameen: Only the human rights committee.

Hon. F. Al-Rawi: Correct. So what I am trying to demonstrate is this Bill is part of a consideration which must be engaged in.

Madam President: Hon. Attorney General, you have five more minutes.

Hon. F. Al-Rawi: Thank you, Madam President. The consideration which we must treat with is the unregulated phenomenon of professional bailors who demand and receive exorbitant sums which are never checked.

I wish to put on record that we specifically intend to put plastic into operation, Sen. Creese. The Exchequer and Audit Act, in combination with the Exchequer and Audit Electronic Funds Transfer Regulations, 2015 are already built out to allow us to put plastic into operation. In fact, the Government is on an aggressive approach for the implementation of plastic across the system. And that is why we did the amendments to motor vehicles, because the operationalization of electronic transfer of funds did not happen when it should have. The Electronic

Transactions Act was passed in 2011. In 2012, 2013, 2014, 2015, nothing happened. It fell to us to operationalize the system. And I understand that certainly the intention to do it was there. I think that what happened was a lot of the public service issues came into the mix.

There are two amendments which we have circulated, which we would come to; one of which treats with Sen. Ramdeen's observation of how we could probably improve section 17, and we propose to actually remove the reference to section 12(4), as a limitation, so that we can apply certain of the provisions and we have also sought to improve the time frames for consideration.

But hon. Senators, if we limit ourselves to the material before us, I would be hard-pressed to understand why it could not be supported in a genuine, honest sense. Because this Bill, as Sen. Coppin put it, is not about a lot of things, but it is about something which is very important: definition of types of security, dealing with professional bailor issue, dealing with the access to bail, which 71 per cent of remandees cannot access because of the circumstances they find themselves in. The rest of it is going to come by way of amendments, which we are going to bring in the month of September onward, to the bail legislation, because we intend to approach the Parliament in a combination of events, including a reflection upon anti-gang, in a different form, after having pulled some information, which was requested.

Madam President, I do hope that hon. Members can lend support to this. The Government is wide open to listening to views in the committee stage, and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

8.30 p.m.

Senate in committee.

Mr. Chairman: Is everyone in receipt of the proposed amendments?

Mr. Al-Rawi: Madam Chair, I understand that Sen. Mahabir has circulated amendments, but I have not received any.

Mr. Chairman: Could I, by a show of hands, see those who have not received the amendment proposed by Sen. Mahabir?

Mr. Al-Rawi: I guess it was just me.

Madam Chairman: Attorney General.

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

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

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

Madam Chairman: There is an amendment proposed by Sen. Mahabir. Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam President. The amendment which was circulated, refers to (4A)(c), and that is:

“a bond issued by a licenced financial institution...”

The hon. Attorney General in his summing up did indicate that there is interest in this market for risk, and what my amendment does is, recognizing that the financial institutions are governed by the FIA are profit-making institutions, in order for them to participate in this new area of the economy effectively, I am recommending for consideration of the hon. Attorney General that we recognize that a priori as opposed to post facto. And a priori we recognize that there is going to be a cost attached to this particular type of financial instrument, and I am

recommending setting the path now, given what has come about in the debate, that the problem has always been the cost the accused has ultimately had to pay the professional bailors. I think if you were to regularize as of now, and regulate the financial institutions with the cost of their bonds, the cost of their particular instrument, not to exceed 10 per cent of the face value of the bond, as is done certainly in the United States jurisdiction and in the Philippines, it will go some way, hon. Attorney General, to starting the case where we would begin to recognize that in this industry, there is going to be a business emerging, and we in the Parliament should start to regulate it now, so that it is in the interest of the accused, as opposed to the interest of the suppliers of these bonds. So I put this for your consideration, thank you.

Mr. Al-Rawi: Madam Chair, it is an excellent submission. The difficulty that I have with it is that, most respectfully, I think that regulation of instruments really are dealt with in another piece of law. It is certainly open in terms of the supervisory functions of many other pieces of law including the SEC if it was determined to be that way or the Central Bank insofar as it has supervisory function under the FIA and under the regulatory environment that exists there for that regulatory environment to happen there.

If we left it that way it certainly would be the position that we could test what the market actually produces, and then work the market into what ought to be tolerated, less this thing run afoul of sensibility or substitute one exploitation for another. So, I understand the intention behind the amendment, but the flexibility really is found in other pieces of law that can deal with that as opposed to this piece of law.

Sen. Dr. Mahabir: Through you again, Madam Chair, the concern I have hon. AG, is that I have looked at the Central Bank Act which will regulate the

commercial banks, and I have checked the Securities and Exchange Commission, I have checked the FIA as well, and nowhere did I see any provision being made for the regulation of this type of instrument with respect to the interest charged which will be determined by the market or with respect to what it will be charged by a third party.

You see, AG, we do not have a secondary market for bonds in Trinidad and Tobago, as is known we only have one financial institution that currently sells bonds to the public. So what we are dealing with would be bonds which are issued by bona fide financial institutions.

And I just want to put on the record that I have a concern that we are not protecting the public interest in this piece of law, that is the accused, unless we recognize that these financial institutions may engage in a practice that is going to be to the adverse interest of the accused.

And so I really would like for your office to monitor the situation so that if, in fact, it requires recommendation, we modify, since we are dealing with bail, we would modify this instrument as a condition of bail so that we can put a charge on it that is reasonable.

Mr. Al-Rawi: We will certainly monitor, but I beg to differ. The legislation does permit for the assessment and approval of products, and it is in the approval product in particular that one has the ability in law to be circumscribed as it relates to this kind of positioning. So there is facility in the law, and we will certainly be monitoring it as this product potentially emerges. There may be no risk, no appetite for it, but it is certainly worth the while from this perspective. I should add that this recommendation came specifically from the Judiciary, the concept of the bonding aspects.

Madam Chairman: Sen. Ramdeen, you wish to say something on Sen. Mahabir's

proposed amendment?

Sen. Ramdeen: Not on that particularly.

Madam Chairman: Okay. Well, let us just deal. Sen. Mahabir, are you?

Sen. Dr. Mahabir: I have just put position on the record, Madam Chair, and I am happy with the response of the hon. Attorney General. So I will withdraw the amendment.

Madam Chairman: So, we are still dealing with clause 4. Sen. Ramdeen, you wanted to raise an issue?

Sen. Ramdeen: Thank you, Madam Chair. Attorney General, through you, Madam Chair, when you looked at the structure of section 12, Attorney General, I had flagged that the giving of security under subsection (4) and the giving of security under subsection (4B) potentially two different, how I read it, under subsection (4) would be for the persons who, if you want to use the word in inverted commas abscond, “have a risk of absconding”—

Mr. Al-Rawi: Yes.

Sen. Ramdeen:—and then you have inserted subsection (4B) which is to capture everyone else who may not have the risk of absconding. That is the way I read it. If you agree with me that that is the position, then when you come to subsection (4C) and it is circumscribed to apply only to (4B), ought we not to also include the security given under subsection (4) as well?

Mr. Al-Rawi: If I could just ask, Sen. Ramdeen, we are on—okay. I want to follow the argument carefully.

Sen. Ramdeen: Can I flesh it out like this?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Do you have the principal Act there?

Mr. Al-Rawi: Yes. I do. I have it right in front of me.

Sen. Ramdeen: Good. So if we go to the principal Act at page 12—

Mr. Al-Rawi: Yeah.

Sen. Ramdeen:—which will be subsection (4) of section 12.

Mr. Al-Rawi: Yes.

Sen. Ramdeen:—that 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.”

Now, I consider that to be a separate section applying to persons who there is some evidence by virtue of the prosecution that will be brought to the attention of the court on the application for bail that they are unlikely, and that is what triggers that section to be applied.

If that section is circumscribed to the circumstances as defined under that subsection, when you come to subsection (4B) at page 2 of your amendment to section 12, your new subsection (4B), that will catch everyone else who is not caught specifically by subsection (4). So that there may be people who are applying for bail who the prosecution does not advance any evidence that they are unlikely to remain in Trinidad. The purpose, as I understand it, of your (4B) is to catch those persons who will not be caught by the original section 12 subsection (4).

Mr. Al-Rawi: I catch your concern as arising under section 17 not section 12, where section 17 makes the cross reference back to section 12(4). Well, (4B) as we have it here is solely for the ability to pay after the close of business. I am looking at page 2, 4 big B:

“Where bail is granted to a defendant and he or a person acting on his

behalf...”

Is it that you are pointing out that where bail is granted in any circumstance which is beyond 12(4)?

Sen. Ramdeen: Correct.

Mr. Al-Rawi: I see. So your point here now is where (4B) applies to circumstances not limited to 12(4).

Sen. Ramdeen: Correct.

Mr. Al-Rawi: So that is your point.

Sen. Ramdeen: Yeah. So, my reading of your amendment is that one aspect of your (4B) is to catch the payment, but the principle— if I can call it the first part of the subsection is to actually to catch all of those people who are not caught by 12(4) in the original legislation.

Mr. Al-Rawi: I understand you now.

Sen. Ramdeen: So my point is, when you come down to subsection (4C) which allows the prison officer—*[Interruption]*

Mr. Al-Rawi: I am sorry. Sen. Ramdeen, I caught you. If you will just permit me a moment, through you, Madam Chair? *[Interruption]* Madam Chair, Sen. Ramdeen, I am thinking, and aloud, that perhaps the mischief or perhaps the policy of having it as broad and not circumscribed by subsection (4), I think, that your interpretation is perhaps one of the two interpretations, but a very strong one. I think you are right. It could help us if we were in (4A), 4 big A, to remove the generality, to remove the specificity of subsection (4). So if we were to say, the security—words to the effect that, “where security is ordered by the Court to be provided”, not only in (4), so we are removing subsection (4), “it may be in the form of”. And then where bail—then (4B) would follow, “where bail is granted to a defendant and he or a person acting on his behalf is desirous”, et cetera, it would

then flow from there.

Sen. Ramdeen: Well it perhaps could be caught exactly in the way that you are suggesting, if we perhaps shy away from the words “under subsection (4)” and to simply say something to the effect of “where security is given pursuant to the grant of bail”.

Mr. Al-Rawi: Yes. I think that that captures it perfectly.

Sen. Ramdeen: So that it will catch (4A) whatever—

Mr. Al-Rawi: Yes.

Sen. Ramdeen:—and deal with it there.

Mr. Al-Rawi: Yes. So, Madam Chair, instead of the words appearing in clause 4 described as (4A), we propose to delete the word “The” and it would instead be “Where”, and then after the word “security” insert the word “is”. And then after the word “given” we insert the words “for the grant of bail it”, and then we delete the words “under subsection (4)”. So the chapeau to (4A) would read in full as follows:

“Where security is given for the grant of bail, it may be in the form of—”
—and then it continues. So, I think, the technical way to describe that is delete the chapeau in (4A) and replace with those words.

Madam Chairman: Members, any other comments?

Sen. Ramdeen: AG, yes. Sorry. In (4B) now, I have a concern that could perhaps be dealt with by the drafters is that we use the word in the sixth line, we say:

“...the close of business at the office of the Court...”.

And the only concern I wish to raise, AG, is that under the principal Act in the interpretation section there is a definition of:

“Court”—as including—“a Judge, a Magistrate, a Justice of the Peace or a

Coroner and, in the case of a specified Court, includes a Judge or Magistrate or, as the case may be, the Justice having power to act in connection with proceedings before the Court;”

I was wondering if the section would not be a tighter draft if you go to insert after the word “Court” the words “granting bail” so that we take out all of those people that are included in the definition of “Court” in the interpretation section itself—

Mr. Al-Rawi: I see.

Sen. Ramdeen:—and limit it only to the person who has granted bail whether it be the High Court because it can lead to confusion in a technical sense because “Court” is already defined under the principal Act and we are using that exact term here.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: So perhaps if we can include the words:

“...close of business at the office of the Court granting bail”

and you continue there:

“on the day on which bail is granted...”.

Mr. Al-Rawi: I think that that is a very good suggestion. You are right. I had not looked at it that way, that “Court”, well, the definition of “Court” was done to allow the court who was granting in the circumstances where JPs are sitting there for magistrates.

Sen. Ramdeen: I think we have to be careful because it is actually defined under the principal Act.

Mr. Al-Rawi: Yeah.

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

Sen. Heath: Yes, Madam Chair, it is with respect to subsection (4A), I still have this concern about the present practice where persons are granted bail in the

alternative, and certainly if the intention of the Bill is to create a wider option as does not currently exist in statute, I am afraid that magistrates reading the proposed Bill, if it comes into law, will go by the strictures of what is written.

I understand the Attorney General to be saying that common law would exist and there is the statute, but the statute will override the common law, it being codified and the magistrate being a creature of statute. And where a magistrate believes that they can really only give one form mentioned under (4A), it will deprive persons of getting that alternative in circumstances where they do not know which one they will get to first. So they may be able to get the security by way of the immovable property or they may get the cash, and usually it is a toss-up to which one they get to first. So, I am afraid that the intent of the proposed Bill will be defeated if, in fact, magistrates read this strictly that they just need to choose from one.

Mr. Al-Rawi: Madam Chair, may I? Thank you, Sen. Heath. I had understood the drafting as capable of allowing for the range of options to be applied because of the use of the disjunctive “or” as it appears after (4A)(c). However, I hear you loud and clear that perhaps magistrates sometimes need or judicial officers sometimes need a little more clarity. So, please correct if I am wrong. What we are trying to catch now is the circumstance where alternatives may be utilized, well permutations, combinations and/or alternatives may be utilized out of this array. Is that what we are trying to catch?

Sen. Heath: Yes.

Mr. Al-Rawi: Okay. And the suggestion is that we consider something which would, out of an abundance of caution, allow the judicial officer to know that there is that discretion.

Sen. Heath: Indeed.

Mr. Al-Rawi: Okay. Madam Chair, what we are wrestling with from the CPC's team is the fact that it is usual that we do not express what is already known that the court has a discretion to exercise its discretion in any way, so the focus is upon the fact that the court may do something. The forms are expressed as that which is achievable, but that word saying that the court may do anything in its discretion is really what we are trying to catch in the alternatives. Sen. Rambharat?

Sen. Rambharat: What about in (4A) in that first line, what about if you add, "it may be in the form of all or any of". I think that is what—so you may have a scenario where you have a combination of all.

Sen. Ramdeen: On the grant of bail, not the form of the security. What he is trying to do cannot be in these sections. It has to be on the grant of bail, that when they grant bail, it could be in the form of X or Y. This is dealing with—

Mr. Al-Rawi: Madam Chair, the advice from the CPC's department is that the clause as drafted with "may" and the disjunctive "or" is the correct terminology to express here because if the Bill becomes law and the law is read as a whole, when one looks to the conditionalities expressed in section 12 as a whole against the prescriptions set out in section 6(2) as a whole, and then the general practice of this, there is nothing to change the fact of how the court exercises its alternatives because that has been left undisturbed.

So if the fear is that the codification of an expressed statement of the types of securities which may be acceptable to the court, then it is not going as far as saying how that security is to applied. All that (4A) is providing is what type of security a court may look at, not the permutation or combination of that security. So that the operation of (4A), as it stands, does not go as far as saying the methodology for applying it.

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

Sen. Raffoul: If I may, Madam Chair. I wanted to echo what Sen. Chote had said on Tuesday since she is not here. She had said that the clause 4 in the proposed amendment (4A) is contradictory to what exist in section 6 of the parent legislation, specifically 6(2)(a) and that is regarding reasons for not allowing bail if someone is a potential flight risk. So what she had suggested is that we eliminate (4A) and go straight to (4B) and look at how we can reword it.

Mr. Al-Rawi: I listened to Sen. Chote's contribution clearly. Her statement as we recorded it as well was that section 12(4) collided with section 6(2)(a), but that is why I was very careful to say what 6 does versus what 12 does; 6 is where you reject and 12(4) is where you consider flight risk, the conditions. So there were two different aspects of it.

So when you looked at the phrasing of the law, section 6 versus section 12, there was not collision now. Now, of course, do not get me wrong, I thoroughly respect and accept the fact that Sen. Chote has long-pants experience in these particular courts, but (4A) as it is here does not collide with 6(2)(a); 6(2)(a) is where you can reject bail for that ground, (4A), as we are putting it, is saying what forms of security you can use, because security has never been defined in the Act. It is just to be interpreted.

Sen. Raffoul: Okay.

Mr. Al-Rawi: So I thought that she was making the general observation that the flight risk clause which is section 12(4), which we are not amending at all, may be viewed to collide with one of the reasons why you can reject. Maybe—and then she went on to say it is perhaps superfluous, but that has stood as the law and there has been practise on this since 1994, so I did not want to disturb that particular perspective. But subsection (4A) as it stands in the Bill is only the forms of security.

Prior to that subsection (4) only says, where a court is giving security, it does not say what a security is, and then what happened is the practice went squarely to land effectively.

Sen. Raffoul: But just to clarify. Is it not the first sentence, the first line of (4A) about, let me find the exact wording, about where a person might be considered a flight risk. I will find the wording.

Mr. Al-Rawi: Sorry. Say that again.

Sen. Raffoul: Is it not subsection (4A) introduced by the qualifier of where an accused might be considered a flight risk?

Mr. Al-Rawi: Sorry. So if we look to the parent Act—

Sen. Raffoul: Not the parent, proposed.

Mr. Al-Rawi: All right. I know. So, section 12(4) is the flight risk. The tie-in to the flight risking we have just removed by deleting the reference to 12(4) consonant with Sen. Ramdeen's recommendation that we think broader than just the flight risk clause, and so now we are outside of the flight risk clause.

Sen. Raffoul: Okay. Thanks for clarifying.

Madam Chairman: Sen. Mahabir, you wanted to make—

Sen. Dr. Mahabir: Yeah. Thank you very much, Madam Chair. And, Madam Chair, I did concede to the hon. AG with respect to the amendments I proposed on (4A)(c). But what I want to raise with respect to (4A)(c) is this. Given what has occurred prior, you see, what (4A)(c) does is that it binds the magistrate to the following, "a bond", one bond issued by a financial institution. And I am wondering whether in spirit of the law you would not want to amend it, hon. AG, to say, bonds issued by licensed financial institutions. Reason is, if you have bail for 100,000—

Madam Chairman: I understand you. The drafting terminology in Thornton's is

that the singular includes the plural, believe it or not.

Sen. Dr. Mahabir: Okay.

Mr. Al-Rawi: So it is squarely captured.

Sen. Dr. Mahabir: Okay. However, this is my concern. Does it mean that when you say a licensed financial institution that someone who has a \$60,000 bond from one institution and a \$40,000 from another financial institution, that those two bonds can be pooled for a \$100,000 bail although they came from two different financial institutions?

Mr. Al-Rawi: Yes.

Sen. Dr. Mahabir: Very well. Thank you very much.

Mr. Al-Rawi: And, Madam Chair, if you will permit me. In thinking aloud on the issue raised, it may be useful to meet Sen. Heath's observation that we think about, and I would welcome, through you, any views on this, if we dealt with a qualifier to (4A), that is 4 big A, and if we said expressly, "notwithstanding subsection (4A), a Court may continue to grant such other forms of security as it thinks fit". That would put it in an expressed sense open, for instance, for chattels or other forms of security that are beyond that.

9.00 p.m.

Sen. Heath: It certainly would. It certainly would, but I do not know if the magistrate will be able to wrestle within (4A), those four types of forms of bail within themselves. So, for instance, and, of course, the irony is we need to consider that even though the practice is, it is given in the alternative, I do not know that the magistrates are exercising that discretion properly now, in that the law as it is now, I do not know that they are following it properly. But that being the case, and looking at the intention of the Bill, we certainly would want to maintain it, because it is a very viable way of getting persons out on bail sooner

rather than later.

Madam Chairman: Sen. Ramdeen, you wanted to raise something in addition to what Senator Heath has said?

Sen. G. Ramdeen: I just wanted to, through you, Madam Chair, to the Attorney General, perhaps to take away the fears of Sen. Heath in terms of the very point that he is making, perhaps it can be solved in a non-legislative way. If you, through your office to the Chief Justice, have indicated to the magistrates that this has been passed and this is the position in a non-legislative way, through some form of judicial education, the magistrates can be informed about the provisions of the Act, the way in which it is meant to be, I cannot see a judicial officer in the position of a magistrate not understanding that a discretion has now been changed by virtue of a piece of legislation and they apply, they exercise their discretion accordingly.

Mr. Al-Rawi: Thank you. Through you, Madam Chair, I have in fact invited the Chief Justice to put a general practice direction in relation to the granting of bail, because it is chaotic. But, I think Sen. Heath may have uncovered something which we can prescribe in another alternative way, and I invite this, through you. It may very well be that we should add an € , a (4A)(e):

“such other form of security as may be acceptable to the Court.”

That would take care of that form of security not expressed here. It would allow the law to continuously develop, and it could probably provide for the alternatives to be layered in that paragraph. So, Madam Chair, if we add paragraphed (4A)(e).

Madam Chairman: A new €?

Mr. Al-Rawi: Yes, Madam Chair, at clause 4 in what is described as 4, big A, capital A, at paragraph (c) we delete the word “or”. At paragraph (d) we delete the

“.” and put a “;” and insert the word “or”, and then we insert a new (e) and we put the words “such other forms of security or”—we can even go as far as to say—“combinations thereof as the Court sees fit.”

So the (e) would read, Madam Chair:

“such other forms of security or combinations thereof as the Court sees fit.”

Madam Chairman: Okay, Members—Sen. Ramdeen.

Sen. Ramdeen: AG, I just want to flag the point I think that was expressed by Sen. Chote in a different way, which is, if you look at the principal Act,—

Madam Chairman: Sen. Ramdeen, what clause? If you could just—

Sen. Ramdeen: We are dealing with the same clause 4. If you look at the principal Act, section 7 of the principal Act, you will see that it provides:

“Subject to subsection (3), where the defendant is granted bail, the conditions mentioned in subsections (3) to (6)”—which would include your 4 and all of your amendments—“of section 12 shall not be imposed unless it appears to the Court that it is necessary to do so—

- (a) for the purpose of preventing the occurrence of any of the events referred to in section 6;
- (b) to enable enquiries or report to be made into a defendant’s physical or mental condition.”

Now, that is going to provide a very serious hurdle as to how these amendments are going to operate. Because, I think the point that Sen. Chote was making was that when you go back to subsections (3) to (6), they cannot be applied, which would include your subsections which you propose to amend. Unless it is necessary for the purpose of preventing the occurrence of any of the events referred to in subsection (6).

Now, when you go to subsection (6) of the principal Act, you would realize

that (a) to (g) on page 7 are those circumstances where the court is prevented from granting bail because these are the situations in which the more serious considerations are to be made. Now, this affects the actual policy of what we are doing, because the conjoint effect of the amendment married with 7 and 6 would mean that what we are really doing, when you consider the way in which the principal Act would operate with these amendments, is that we are actually going to be giving the persons who are the greatest risk, under the principal Act, the ability to be granted bail by virtue of this section. I am not sure. It has not been fleshed out in the debate, and it is not the subject of any of the amendments.

Now, I am not sure as a matter of policy that that is what we want to do. I do not know if the drafters have considered it, but it cannot be, or it strikes against common sense, that (3) to (6) cannot apply to everybody. Because the principal Act actually says that it does not, because you have to impose on the principal Act which has not been amended. You are going to run into a real difficulty, because the preconditions of section 7 (a) and (b) have to be satisfied before (4) could kick in at all.

Mr. Al-Rawi: I actually flagged and looked at 7 in its cross reference to (3) to (6) as (4A) to (4E) was being added in. And when I went back to work out how much in need of reform this whole law is, and I looked to (6), (6) being circumstances in which bail is to be denied in general, general provisions from (a) to (g) on subclause (2) of (6); then I went to 12—skipping past 7 for a moment—and I looked at securities in certain conditions, flight risking, and the fact that the court has for some reason been using this flight risking provision for everybody. So, that seems to be the practice whether right or wrong. I went back to 7, and I had to read it a good few times.

Sen. Ramdeen: Can I just intervene with you and say that, when I read 7 the first

time was to find out what is the event that you are trying to prevent under A. Clearly the event was not to be found under section 6(1). It had to be under 6(2), which is why I went into (g). Now, that is how you understood it. Now, in order for this thing to work the way in which we want it to work, we have to make some amendment to section 7. We have to, otherwise it just would not work. Because, when you read the legislation, you do not get to our amendment which is in 12(4).

Mr. Al-Rawi: We can actually treat with it if “shall” was “may” in the chapeau of 7(1); not necessarily as put that way, but I am just talking now to the conditionality as opposed to the expressed objection. So, subject to subsection (3) where the defendant is granted bail—you are granted bail, the conditions mentioned in subsections (3) to (6) of 12:

“...shall not be imposed unless it appears to the Court that it is necessary to do so—

- (a) for the purposes of preventing the occurrence of the events...
- (b) to enable enquiries or a report to be made into the defendant’s physical or mental condition.”

It could have been qualified by insertion or any other circumstance which the court considered fit, and that could probably do it.

Sen. Ramdeen: Perhaps, that might be the cleaner cut, but I do not suggest that we just simply substitute “shall” for “may”. The reason why I am saying that is because the way in which the clause is drafted in the principal Act, it is followed subsequently by an exercise of discretion by the court. So, it is not simply cut off “shall” or “may”. Say for example you impose “may” instead of “shall”, it would then read:

“...in subsection (3) to (6) of section 12 may not be imposed unless it appears to the Court that it is necessary to do so—”

It just does not fit with the exercise of the discretion on the later part of this section, because the “shall” is really what triggers of the exercise of discretion.

Mr. Al-Rawi: The problem that I am having is that—and I mean this now insofar as there is a general review of the Bail Act going on—the entire Bail Act reads wrong.

Sen. Ramdeen: No, no, but AG, I understand that, you know. I understand that. I am very firm in my view on this, because we are actually amending section 4, which, there is a precondition for that section to even be activated by virtue of section 7(1). So that all that we are doing here may amount to a very little assistance to anyone unless you can satisfy—let us go back to the position, the judicial officer exercising their discretion is going to look at it and say, well, if 4 does not apply, because section 7 makes (3) to (6) conditional upon (a) and (b).

Mr. Al-Rawi: And then would have to work its way into seeing how it is 7 did apply exceptionally—7(1)(a) for instance, for the purposes of preventing. You see, as I read it and as I know, from the application—12 is the general provisions relating to bail, and these have been consistently applied including surrendering passport, et cetera, et cetera, which is the same thing that is not generally supposed to be applied. So, 7 puts start filtration test, but it is almost always the case that surrender a passport, inform the court of need to leave case. All of these things usually happen. So, I did not see the amendment as being problematic in the way that the system is actually applied right now, but somehow I think that the system is applied beyond the text of the law, as it is.

Sen. Ramdeen: AG, I mean, respectfully, through you, Madam Char, sorry. I mean, we cannot really legislate if we know the system is operating in a way it ought not to operate, and base the legislation.

Mr. Al-Rawi: Well, I think that is in part. I think that what happens is that they

allow it to operate by the application of 7(1)(e). That is not to say that I am not open to improving, out of caution, the need for a consequential amendment to section 7 as a result of having now further amended section 4, because we have removed the reference to the absconding persons position to allow for (4B) and others to apply. So, I can see the merit in touching it right now. There are one of two potential options, and I would welcome, through the Chair, views on this. If the construct of 7 is set, shall with exceptions, well then it is discretionary. Option A in 7(1)(a) is, you shall not do something unless it appears, (a) for the purpose of preventing the occurrence of 6, and I read (2), as do you that 6(2)(a) to (g):

“to enable enquiries or a report to be made into the defendant’s physical or mental condition.”

And potentially we can add in the catch all “or for any other”—“to allow for the courts’ discretion.”; a formula of words to allow for the court’s discretion. It should allow us sufficient room for the provisions of (3) to (6) to apply, which are the general conditions of bail. Because clause 7 says the general conditions of bail should not apply unless (a) and (b). That is as I read 7.

Sen. Ramdeen: Well, I do not think I read it like that. Because, in terms of the way in which 12 is structured, my suggestion is that we take out—my suggestion is that for what you are proposing to work is that we take out 7(1) altogether. Because, the way in which the discretion under 12 is circumscribed by 7 it makes it very, very unworkable, even if you try to insert a new (c). Now, (3) can stand on its own. That is just the simple discretion of the magistrate under 66A. But, unless your drafters have some reason as to why we should keep 7(1) having regard to the purpose.

You see, AG, I think the point that Sen Chote was making, and I did not hear it myself, but in listening to what was suggested, the Bail Act is structured in

a particular way that you apply a more rigorous conditionality test, which is (3) to (6), where there are persons who are a flight risk. When I say flight risk, perhaps I should put it in this way. Who there is a greater risk will not appear in court to secure their attendance, and that is why the Act is structured in such a way that (3) to (6) is specifically put in there for the purposes of preventing the occurrence of any of the events referred to in section 6. Now, the clash that I think is being spoken about is the fact that what we are doing cannot be triggered, or will only affect persons who are the more likely people to not appear to take their trial, or to appear there.

Mr. Al-Rawi: I did not read it that way, and I will explain why.

Sen. Ramdeen: Sure.

Mr. Al-Rawi: So, 7 says:

“Subject to subsection (3)”—which is the exception to the Summary Courts Act.

Sen. Ramdeen: That does not apply, so that is out.

Mr. Al-Rawi: “where a defendant is granted bail, the conditions in...(3) to (6) of 12 shall not be imposed...”

Sen. Ramdeen: Can we say that is the general purpose?

Mr. Al-Rawi: So, let me just work my way through that now. So, subsection (3) of 12, providing your passport, information you want to leave the State, et cetera—4, that is the flight risk person. (4A) to (4E) would now be provisions of forms of security.

Sen. Ramdeen: No problem.

Mr. Al-Rawi: No problem, which is the part that we are amending; 5, parent, or guardian, or child consents to be surety; 6, court has granted bail, it may on application by or may have to be the person whom is granted or vary conditions of

bail. So, 7 is saying, do not have surrender of passport, flight risking, issues to deal with parent or child, and variation of bail unless you want to secure (a) to (g) of 6(2)—

Sen. Ramdeen: You want to prevent.

Mr. Al-Rawi: Unless you want to prevent—well, you want to secure risk, is the way I was going to say it.

Sen. Ramdeen: Correct.

Mr. Al-Rawi: Unless you want to prevent or secure risk against 6(2)(a) to (g), and I think that that captures literally everything. So it means that it can be applied on every occasion. Because I view a court as always going through 6(2)(a) to (g) every time it considers a bail application. So that 7 allows for the application of (3) to (6) on every occasion. And insofar as (4B) in particular, (4A) as we are amending, (4A) to (4E) is simply form of payment, which certainly cannot be something which is accepted out, and certainly the other forms of prison officer receiving, et cetera, et cetera. Is your fear that we are making—that we should accept out the amendments (4A) to (4E) from this?

Sen. Ramdeen: Let me tell you what my fear is. You have a first time offender who comes before the court without any criminal record, without any fear of a flight risk, they come before the court and they make an application for bail. That person cannot be subject to the conditions that are set out in section 7 of the principal law, which would be that (3) to (6) cannot apply to that person. So, you may be looking at it from the position of denying bail, think about the person who comes before the court with no criminal conviction, nothing against him that is against the grant of bail.

Now, the person has to apply for bail still, even though they have a clean record. When they apply for bail and the magistrate is considering it, the

magistrate will be wrong to go to section 6. So that if the magistrate is going to be wrong to say that (3) to (6) apply to you in relation to 12, and there is no fear of the occurrences in 6 taking place, (a) to (g), then that person will not be able to benefit from what we are doing here. Because in those circumstances (3) to (6) of 12 will not apply. So it will actually deny bail to somebody—it is really crazy interpretation, because you know, the option to all of this is this: the people who we should be actually trying to benefit from the legislation are more likely to be the people who are not likely to benefit if the law is applied properly.

Mr. Al-Rawi: But I do not, respectfully, see that a magistrate could ever escape the considerations on a first-time offender or any offender for 6(2).

Sen. Ramdeen: No. But, AG, the point is this—

Madam Chairman: Sen. Ramdeen and Attorney General, could I just intervene here, please. We have been going at it—

Mr. Al-Rawi: But it is an important point.

Madam Chairman: It is an important point, but we are also dealing with a clause that is not covered by the Bill.

Mr. Al-Rawi: It is impliedly covered, Madam Chair.

Madam Chairman: I know. I understand that. What I am trying to say is that if there is to be an amendment of section 7 of the Act, it will have to be incorporated as a new clause.

Mr. Al-Rawi: No, Madam Chair.

Madam Chairman: Yes. Just one second, Attorney General, because it will be a new clause, because you are now going to be treating with a section of the Act that is not covered by the Bill.

Mr. Al-Rawi: No, Madam Chair.

Madam Chairman: Well, okay. But even so, we need to get—it cannot be this

toing and froing between the Attorney General and Sen. Ramdeen.

Mr. Al-Rawi: I do not think you have to and fro.

Madam Chairman: We need to move on and deal with—Sen. Ramdeen has raised what the Attorney General considers to be a viable point. I am not saying no to that. But I am saying, we have already proposed some amendments to (4A), we have proposed some amendments to (4B). Can I just deal with the paragraphs of this particular clause and then we will deal with what Sen. Ramdeen has raised. I think that is using the time more efficiently in the committee. Okay, Members? So, hon. Attorney General, we have dealt with (4A) so far, we have dealt with (4B), could we just look at (4C) and determine where there are any proposed amendments from the floor? Any comments?

Sen. Ramdeen: Madam Chair, through you, to the Attorney General, because of the consequential amendments that we have made to subsection (4A), I think (4B) will have to come out of (4C), because it will just be section 4. And I think you will be limiting the discretion under (4C). I do not know how you see it.

Mr. Al-Rawi: We hope it is not, to receive security in the form of cash or by way of certify cheque under section 4.

Sen. Ramdeen: It may be A or B.

Mr. Al-Rawi: This is in reference to the prison officer issuance of a receipt?

Sen. Ramdeen: Yes, but I am just on the position of where we have identified under which subsection, because is he not going to also be able to receive cash under (4A)?

Mr. Al-Rawi: Well, (4B) is where he receives anything at all because the court was closed. And (4C) is the provision of a receipt where he has received anything in (4B). So I think that the reference is correct.

Sen. Ramdeen: As you please.

Madam Chairman: (4D)? (4E)? (4F)? Sen. Mark, you wanted to say something about (4F)? [*Interruption*] We are on page 3.

Sen. Mark: Not really.

Madam Chairman: Okay.

Mr. Al-Rawi: Madam Chair, I would just like to—so that you can move to put it to the vote—put on record the following: I appreciate and understand the observations which Sen. Ramdeen is asking us to be cautious about. I am going to give an undertaking to look at this thing very, very carefully. We have to go back to the House in any event. And between the trip between now and the House amendments, I am going to speak positively to the issue with the relevant stakeholders, and, if necessary, to come back and look at it. I was wrestling with trying to understand the view expressed by my learned colleague. I do not quite share the same view, but I appreciate the need for caution, and I thank the hon. Senator, for that. So, I give the undertaking to look at it carefully and to speak to it specifically, and I thank the hon. Senator for raising it.

Madam Chairman: So, hon. Senators, I will now put the question of the amendments to clause 4 to the vote. The question is that clause 4 be amended as follows at (4A) to:

“Delete the words from “the” to “of” and replace it with the following words, “where security is given for the grant of bail it may be in the form of”, and then after C to delete the word “or” and then in D after the word “property”, to include the words “or”—and then there is an E—“such other forms of security or combinations thereof as the court sees fit.”

And then in (4B), in the sixth line after the word “Court”, inserting of the words “granting bail”. Yes?

Question put and agreed to.

Clause 4, as amended, stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Madam Chairman: Attorney General, you have circulated a proposed amendment?

Mr. Al-Rawi: Yes, Madam Chair. Thank you. Madam Chair, we propose arising out of observations in the debate that we amend clause 5 by firstly inserting a new subclause, and then consequentially renumbering them, and then treating with the time frame. If I could explain. We accept the observation that the law should apply to the generally wider ambit now prescribed for the various forms of security. And that therefore when we look to the parent law, section 17(1) which specifically dealt with security in the limited context of section 12(4), which is the absconding clause, that should be deleted. So that section 17(1), as it stands in the law, with the deletion of the words “in pursuance of section 12(4)” would read this way, and this is for the benefit of understanding of hon. Members:

“Where a person has given security 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.”

So we propose in this circulated amendment to insert that deletion of words so that the clause will read as I have just read. So we are removing the limited circumstance of 12(4). Hon. Senators also—several Senators made the observation that the subclause 5(a), (2)(b) which read:

“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.”

That seven days was an unduly narrow window, and so we propose instead to delete the word “seven” and to insert instead “twenty-eight”.

So that we have 28 days from the making of the order for forfeiture, bearing in mind that the defendant would have been in court himself on some occasions but, of course, may not have been, so that it at least allows some room for that process to happen. And those would be the amendments that we proposed to clause 5, Madam Chair.

Sen. Ramdeen: Attorney General, is there any specific reason as to why we are extracting the entire part of 12(4), which I suggested, and we are not just simply taking out the (4), because the security is going to be given under section 12 in any event, whether it be 12(a) or 12(b).

Mr. Al-Rawi: We could do that. I was thinking of the wider circumstance where security may have been given in general. Because 12 really was in reference to general conditions of bail, and insofar as a court may have given it generally in circumstances that Sen. Heath was describing.

Sen. Ramdeen: Well, remember we are fixing that because you have added the catch all.

Mr. Al-Rawi: The catch all. I think that it could work either way. I mean, we could keep the 12 and take off the subclause (4).

Sen. Ramdeen: So that it applies to everything in clause 4.

9.30 p.m.

Mr. Al-Rawi: In which case, Madam Chair, we would be amending the draft circulated, that is, the amendment circulated under my name. On the page, instead of, in (a), in subsection (1) by deleting the words “in pursuance of section 12”, we will be deleting the words, “in pursuance of section and then we would leave 12 and we will delete the subsection (4), so that the amendment to be circulated would

read instead, in subsection (1) by deleting the word “12(4)” and inserting “12”. I think that is the way the drafters do it. You delete the whole thing, right, 12(4) and then substitute it with 12? [*Interruption*]

So sorry, by deleting the words “section 12(4)” and substituting the words “section 12”. So it would read, in subsection (1) by deleting the words “section 12(4)” and substituting the words “section 12”.

Sen. Heath: Madam Chair, with respect to (b), I know I had alluded to it in my contribution. I cannot think of a situation where the defendant can give his own security if he is in custody. Now, the only circumstances in which he can stand security for himself, presently, is by signing his recognizance, own bail, in the amount of money which is not really given. If the security to be forfeited here is the cash, whether liquid cash under 10,000, well I cannot see it being a certified cheque because he is in custody. What will inevitably happen is, it will be his family, friends or other persons who will be putting in this security, whether in his name or not.

Mr. Al-Rawi: But Senator he is not in custody—(b) is, where the defendant gave his own security but failed to surrender to custody. So it is where he had his own bail, the recognizance, there may have been a cash sum actually put in place—

Sen. Heath: If I may, Attorney General.

Mr. Al-Rawi: Sure.

Sen. Heath: That cash sum is put into place because he is charged and he is in custody. Bail can arise in two circumstances: one can get, what we refer to as station bail at the station, in which case I do not know this would kick in, because you would have to call out a JP and technically it can or at the court, but he has to be charged and he has to be in custody. So I do not envision a circumstance how he can arrange to have this cash. There might be the off chance where he might

actually have the cash on him and ask for personnel from the court to facilitate the payment of the bail. But that would be the exception rather than the norm.

So if it is that he is in custody and he has to provide the security, it would seem more likely than not, that the security would provide someone other than himself. So what normally obtains, any time the defendant does not turn up, the person who is the named surety is summoned to show cause why the money should not be forfeited if sent to them. So I see no harm in that practice being maintained. If on the off chance it is in his name and he is the surety but, as I say, and my caveat is, I can see no circumstance, a person in custody getting that cash or that certified cheque to arrange his own, and bear in mind, I have never seen it where, certainly if it is security of the removable type, where the defendant's own name, he has his deed, the court never accepts that.

So what I fear, when later down you come to the defendant giving his consent to this money to be paid if he is convicted, inevitably what is going to happen is "mammy" or daddy's money who had initially paid it but somehow registered in his name, and he is going to say, yes, go ahead and use it, and what you find is the family members going to lose their money, when that is never their intention.

Mr. Al-Rawi: I thank you, hon. Senator. I read it as one of those possibilities, yes, but I read it as certainly many other possibilities too. So, the expressed language of it is where the defendant gave his own security. If he gave his own security and it was his parents' money, et cetera, it is still in his name it would have been liable to forfeiture anyway. But where the defendant gave his own security but failed to surrender to custody. I cannot see that there is not going to be a case where he could have been out for some other matter, his bail revoked or his bail—or he having a bail aspect whilst out on bail, is required to surrender. It will

always be the case that he was in custody.

You see, I accept your example, being one where it is being posted for the first time and he may have cash on him, but what about the situation where the bail is existing and he is out and he is required to surrender? That is the circumstance of (2)(b) that we are describing here. And we have to provide for that circumstance where he has provided for his own bail, particularly if it is in the circumstance of a bond.

Sen. Ramdeen: Just answer to Sen. Heath's question. He goes into prison, he is beaten, he sues the State, he wins, the cheque comes in the attorney's name, he then makes the cheque payable to a family relative. The relative puts it into his account, he then gets a power of attorney, gives it to the relative and the relative takes out the security and carries it to the prison. It is his money, it will be his own security. So it might be the very unlikely circumstance, but once he has the ability to give a power of attorney to anyone to access his own funds outside of the gift confines of a prison, he will be able to get someone to act on his behalf to get the security, he may come into access to funds while he is incarcerated and he can post his own bond. Once the court and I understand Sen. Heath's point. I am just trying to tell you of the circumstances in which it can happen.

His point is that it is most unlikely, probably never happens that the court will give you the opportunity to stand your own bail. But the point about it is under this piece of legislation because of the amendments that we have made which is in any other form, the court has that wide discretion to allow you to do that. And if you have funds outside you just give a power of attorney to someone, they will go and access the funds, they will bring it to the prison, it will be part of your property and then you can do it. In many cases that I do, that is what happens or sometimes the prisoner will tell you, access the funds and bring it in

cash and they will put it as their property in the prison itself and they can do whatever they want with it.

Madam President: Sen. Dr. Mahabir, you wanted to raise an issue.

Sen. Dr. Mahabir: Thank you very much, Madam President. Madam President, I understand the point raised by Sen. Heath and it was also raised by Sen. Chote. I did not raise it because I had other things to raise. But I am simply wondering, hon. Attorney General, whether, if you were to replace the word “defendant” with “bailor” and the defendant is his own bailor and we are looking at other bailors, what you are doing is that you getting the bailor and it may be the defendant has his own bailor, to seek to have a portion of the bail—

Mr. Al-Rawi: That is in the existing law which we are not disturbing.

Sen. Dr. Mahabir: Right.

Mr. Al-Rawi: So that circumstance is in 17(1) which we have not amended.

Sen. Dr. Mahabir: Right. But I also want to come in to point number six, where you had mentioned the 28-day period before and I am simply wondering whether under 6 you are not going to put a point raised by my colleague, Sen. Creese, that the remaining balance shall be refunded to the defendant within a 28-day period. So you have consistency within the law on the use of a 28-day period which is a reasonable period to refund any balance and you start to impose discipline on court procedures and practices.

Mr. Al-Rawi: Well, it is immediately refundable.

Sen. Dr. Mahabir: But it is not saying that here. And I think if it is implicit and the court is tardy then I think we are saying, well, it should take no more than the 28-day period that you put on another section of the law, 28 days seem to be the maximum amount of time it should take the court to process whatever cheque and so on, because immediate means the second.

Mr. Al-Rawi: I wish it worked that way Sen. Dr. Mahabir.

Sen. Dr. Mahabir: Let us hope it can work that way. You see, if you are saying, AG, that it is immediately refundable and we know it is not—

Mr. Al-Rawi: As a concept.

Sen. Dr. Mahabir: Right. It is a concept, but the reality it is not. You have indicated that a 28-day period for another section of the law is in fact reasonable, I would think that the grant to refund should all—at 28-day period which is 20 workings days should also start to impose upon the court discipline that it may be small, but I think it would start them the correct way and it will satisfy the concerns of me and Sen. Creese that refunds are going to be made in a timely manner.

Mr. Al-Rawi: I wish that I had the authority and liberty to agree to that now but, quite frankly, I accept the point that you are trying to guard against and to ensure it is treated right, which is, that there is some degree of balancing of the powers, I mean it—far be it that one could balance powers where the state has by far a larger weaponry than the individual. But if we were to say where the court makes an order under subsection (5), any remaining balance shall be refunded to the defendant within one day, 28 days, whatever days it shall be. I do not know what happens next. I mean, even prescribing the time frame.

My point here is, saying that it shall be done within 28 days is in fact 28 days later than it is actually done. Because once the courts makes the order it has to be done. So if I put 28 days or immediate it still stands. Your question is, how does the man receive the money back now? Where is the fairness to him receiving his thing? And regrettably nothing is going to solve that because sometimes people still have to go and move a court to say, well, I want back my thing, my property, my, et cetera, and then there is an inconvenience and process that they go

through. But right now as it stands, why I said it was immediate is that the minute the order is made it is payable. So it does not take me anywhere to say, put 28 days. It gives the court 28 days extra.

Sen. Dr. Mahabir: Honourable, through you, Madam Chair, it is payable, but when is it paid? You see, I am looking at the public interest here. We do not know when it is actually paid.

Mr. Al-Rawi: What I am trying to prove in the point that I am making is that if I put 28 days I am delaying it by 28 days. Once the court makes the order unless the court fetters or stays the order by saying, well, this shall happen in 90 days or 28 days or whatever, it is due and payable immediately. So to say that it should be payable within 28 days is to give them 28 days extra. It is immediate. Whether they get it or not, I accept your point, is a process in and of itself which sometimes result in abuse. But that prescription of 28 days would not solve that.

Sen. Dr. Mahabir: But, through you, would a penalty such as the 5 per cent that passed in this Parliament or judgment debts.

Mr. Al-Rawi: Sen. Dr. Mahabir, I hear you on banks, I hear you on regulation, I hear you on state. As an Attorney General I sit and I calculate the interest running on damages that the State should pay and I am astounded. There was a \$10 million order made by the court in respect to something that I have found that was not paid and the interest on it is \$30 million. So the best investment in Trinidad and Tobago is to have a debt by the State.

Hon. Senator: Not now.

Mr. Al-Rawi: Not now, I amended it specifically to drop the rates.

Madam Chairman: Sen. Mark.

Sen. Mark: Yeah, Madam Chair, before you put the question I just wanted to draw to the Attorney General's attention. When you look at (4C), Attorney

General, through you, Madam Chair, we are seeing where:

“...the Commissioner of Prisons shall cause the cash or certified cheque to be deposited on the next working day at the Court...”

However, Attorney General, Prison Regulations, 127, makes it very clear that the prison officer who:

“...receives...monies...for fines”—and other—“work orders, prisoners’ property”—shall—“see that the same”—money—“are promptly brought to the account and paid into the Treasury.”

Now, I was wondering whether we are going to have a bureaucratic nightmare here, or whether under the Comptroller of Accounts manual they define what a receiver of revenue is and what the functions of that receiver of revenue is. And if I am reading the legislation carefully, the Commissioner of Prisons or his designate would be receivers of revenues even though it comes in the form of cash for bail or cheques or even bonds.

So I am asking, Madam Chair, whether, for instance, that should go to the Treasury and, if that is so, whether there is need for an amendment. I am just asking.

Mr. Al-Rawi: Sure. Madam Chair, I can, hopefully easily answer this. Sen. Mark was referring to clause 4 which we have passed, but he is raising it and I understand the point. First of all, we are creating the obligation, we are creating the opportunity that the person can pay it at the prison. Before you would have to wait until the court is reopened again. So this money that is being paid at the prison is always the court’s money, not the Treasury’s money for other properties, fines, et cetera, that is actually going on when prison officers under 127 receive money and put it to the Treasury. So because this money is money which is for bail and must go to the court which was dealing with bail we have to return the

obligation to put it to the court. So there is a distinction between the two. Okay?

Madam Chairman: So, hon. Senators, I would now put the question on clause 5. That clause 5 be amended as circulated and further amended as follows: at (a) by deleting the words “section 12(4)” and substituting the words “section 12”.

Mr. Al-Rawi: So the circulated is—

Madam Chairman: B (a).

Mr. Al-Rawi: In B (a), would you repeat, please, Madam Chair?

Madam Chair: By deleting the words “section 12(4)” and substituting the words “section 12”.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Sen. Mark: Madam, I want to ask the Attorney General, did I hear you properly when you said earlier that you may have to consider including Sunday at some time in the further?

Mr. Al-Rawi: Yes, we are working our way towards that because we intend to fully operationalize payment by credit card, cash or other—sorry by plastic, as Sen. Creese had put it—plasticizing, I think that was the phrase.

Sen. Mark: Madam Chair, I was just asking—Madam Chair, if you will allow, it is, I am making reference to this clause 6, but I am also referring to an earlier provision. I am just wondering, Madam Chair, and to the AG, the Minister may by order amend the Fourth Schedule. In the Prisons Act, is this subject to any kind of supervision by the Parliament?

Mr. Al-Rawi: I am sorry, I am not following. The Minister’s amending of the Schedule here?

Sen. Mark: I am asking the Minister—

Mr. Al-Rawi: Yes.

Sen. Mark:—ability to make order or to amend the order. Is that subject to a negative resolution or is that just given—

Mr. Al-Rawi: You are asking whether under the Prisons Act the line Minister, which is the Minister of National Security to whom responsibility for prisons falls, whether the law there provides for amendment pursuant to negative or affirmative?

Sen. Mark: Yes.

Mr. Al-Rawi: I could not say off hand. I am almost confident that it is negative, because it would have been old law and all old law was negative.

Sen. Mark: So that is why I was asking, Madam Chair, whether—

Mr. Al-Rawi: But this Schedule here, this Act is amended by inserting this Fourth Schedule. So we are amending the Bail Act, by inserting after Schedule Three a new Schedule which is Schedule Four. And we are saying that in the Bail Act that the Minister can amend this Fourth Schedule by way of an order.

Sen. Mark: Just an order?

Mr. Al-Rawi: Yes, because it is only going to speak to the date and time.

Sen. Mark: Okay.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Madam Chairman: Sen. Mark, you wanted to raise an issue that may possibly be a new clause.

Sen. Mark: Yes, for the consideration of the hon. Attorney General. Hon. Attorney General, I know that we have been grappling with the overcrowding. We have been speaking about those persons who are there and have been granted bail and they do not have the wherewithal even with what you have proposed they

would be hard-pressed unless they get very powerful forces to assist them. I would like to suggest for your consideration where a person may be charged with a summary offence, right, and that offence is punishable by—maybe imprisonment for less than two years that the court should grant that person bail on his own merit, character or recognizance.

I am saying that we have petty crime, we have somebody—obscene language, traffic offences and that sort of thing. So, I am wondering, in trying to revolutionize how we do business given, for instance, what could take place in the future and rather than us having this continuous piling up of individuals. There could be instances of cases of a summary nature, soft, petty that can allow an individual, and the court, to allow that individual to be granted his own bail on his own recognizant.

Mr. Al-Rawi: Madam Chair, may I?

Madam Chairman: Yes.

Mr. Al-Rawi: I thank the hon. Senator for a very good submission. I can say that we are doing a number of things to try to achieve the management of this issue. The CPC's team here, actually the head of the CPC's team has the daunting task of revising our fixed penalties and our move to decriminalize those things which can be treated with by way of fines, et cetera. Many people have referred to the famous obscene language. Sen. Dr. Mahabir has referred to them on umpteen occasions. That is one.

Two, we are actually in active work with the Judiciary for practice directions on how the Judiciary ought to treat with certain matters which is why we have gone into what the cost of maintaining prisoners are over time, et cetera. So we are—in addition to that I should remind that there are the alternate forms of sentencing and resolution, particularly for juveniles where that is now a very large

part of what we are doing and on Monday 10th of July, that will be further discuss.

So we are certainly looking at it. I think it is a move in the right direction and we can perhaps report on that during the cost of the next session of the Parliament because we have done a significant amount of work on it and should be able to show the work product for consideration.

Sen. Mark: And, Madam Chair, finally, would you want to consider given the culture of violence in our country and the deterioration that we are experiencing, of course, it will improve I am sure in the coming years. I wanted to ask through you, Madam Chair, to the Attorney General, whether persons who are involved in the use of dangerous drugs, as well as the use of violence, whether those persons should be denied access to cash bail.

In other words, in its forms that you have advanced and be subject to what the magistrates and the judges would put on as, you know, property and surety if they decide to go that route. Because I am seeing some possible dangers emerging in that department, both in terms of the use of violence and dangerous drugs, particular to the drug trade, that we know is so prevalent in our country and whether we will not be opening a Pandora's box to allow these people to access cash bail easily. So that is why I suggesting that you may want to consider that, Madam Chair, through you.

Mr. Al-Rawi: Thank you. Madam Chair, I think that there are marital issues in some camps. Some people are not prepared to go home yet. I am just teasing. It is a very, very, important point raised by my learned colleague, very, very, why would one want to allow cash where you are dealing with a cash rich person prone to violence. I think it is a very wise observation. It is with that in mind, I think that the amendment which came to the fore, as a result of the combined efforts led by Sen. Heath, has helped us a bit, because in adding that other forms of security or

combinations thereof, I think that we can have some layering protection there.

And secondly, the Judiciary has been, as I mentioned a little while earlier we have been in active discussions because the Bail Act is really—even though I have said that there is a need of some reform, it actually has all of the hallmarks of why you should never be granted bail in certain circumstances. When you look at sections 6(2)(a) to (g), there are some circumstances there where some people should never get bail because the court has the discretion and it is in that approach of the practice directions that we believe the Judiciary can get it right.

Sen. Mark: Madam Chair, I want to tell my good friend, the hon. Attorney General—

Mr. Al-Rawi: I take back any difficulties my friend is about to report on. I take them back.

Sen. Mark: That any challenges we may face he would not be exculpated from any direct responsibility.

Hon. Senator: Thank you very much.

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

Senate resumed.

Bill reported, with amendment.

Hon. Al-Rawi: Madam President, of course, taking the opportunity to profusely thank everyone, including yourself for the excellent work done. I now beg to move that a Bill entitled an Act to amend the Bail Act, Chap. 4:60, be forthwith read a third time and passed.

Question put and agreed to.

Bill reported accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move that this Senate do now adjourn to a date to be fixed.

Sen. Baptiste-Primus: Sine die.

Sen. The Hon. F. Khan: Sine die.

Sen. Baptiste-Primus: He did not trust himself.

Sen. The Hon. F. Khan: But, Madam President, before I take my seat, I just want [*Crosstalk*] I know, but before I take my seat I just want to say that we are doing the mandatory break now for—I did not want to call it the summer break, but that is what it is, vacation, and I just want to thank all Senators for the hard work we have put down even though Parliament has not prorogued officially. [*Desk thumping*] And I want to especially thank the Opposition and the Independents, in particular, especially over the last two months where—in conjunction with the AG, I myself, as Leader of Government Business, was pushing very hard where we were meeting twice a week and I know sometime it was a strain on people who are not full time Ministers or Senators and they have their full time jobs otherwise. And we were really making great demand on their time and I really want to thank them most sincerely and I want to wish everybody happy vacation and for those of you who are travelling, safe trips. [*Desk thumping*]

Madam President: Now, after those very lovely words by the Leader of Government Business and before I put the Motion to adjourn, there is a Matter on the Adjournment. Sen. Mark.

10.00 p.m.

COMPETITIVE BID ROUND 2017

NOMINATION PROCESS

UNREVISED

Sen. Wade Mark: Thank you very much, Madam. Madam President, I am very happy to raise a matter involving a very critical issue affecting Petrotrin. Sometime ago on the Ministry of Energy and Energy Industries' website appeared what is called a Competitive Bid Round 2017 - Nomination Process and it dealt with what is called the nomination process for Competitive Bid Round 2017, and one of the things that it outlined had to do with all open acreage, both onshore and offshore are eligible for nomination. Now, this caused a reaction from the OWTU and there was a headline in the newspapers, Saturday, July 1st, 2017, in which the OWTU—the headline was:

“OWTU: Don't not sell energy assets”

They accused the Government of surreptitiously leasing out the lucrative operation of state-owned Petrotrin and has warned that an aggressive mobilization campaign will be mounted against such a move.

In that same papers, Saturday, July 1st, *Trinidad Guardian*, you had the hon. Minister of Energy and Energy Industries indicating that that matter of putting Petrotrin acreage out for bid was not anything new and maybe it might have been a misinterpretation on the part of the OWTU. He went on further to say—now that article stated rather, that:

“Petrotrin has its acreage. It has a responsibility to develop its acreage and also has a responsibility to its shareholder...”

In another article dated July 1st, *Saturday Express*, the hon. Minister of Energy and Energy Industries indicated that Petrotrin will be proceeding—well first of all he said, or it is stated in this article, that Petrotrin does not have the licence for deep acreage. That licence was not renewed in 2006. So since 2006, Petrotrin does not have the right for the deep acreage in its core assets, and I guess it is against that background that the Ministry of Energy and Energy Industries decided to issue

what is called a bid round for nomination.

Now, Madam President, I would like to say that it is a fact that Petrotrin does not have a licence for the deep rights. We know that, at this time, the onshore acreage that is being put out is the deep rights under the Petrotrin acreage and that is to say that anything below 6,000 feet does not belong to Petrotrin. It belongs to the people of the Republic of Trinidad and Tobago. The question that has to be asked is that in 2005, when the Ministry of Energy and Energy Industries gave Petrotrin licences for the land acreage, they only provided Petrotrin with shallow rights, that is, 6,000 feet and above and not under, and Petrotrin, as I understand, has been in discussions with the Ministry of Energy and Energy Industries for the deep rights for some time now.

It seems to us that the Ministry of Energy and Energy Industries has decided to terminate these discussions with Petrotrin and to put the deeper rights out for nomination. The question is why? The issue of giving one company deep rights and another shallow rights creates confusion and it is hard to administer, and I believe, Madam President, ideally, since Petrotrin is the operator for the shallow rights, the Ministry, under the hon. Minister, should have considered giving the deeper rights to Petrotrin, but the Ministry for some reason known to itself, and the Minister for some reason known to himself, have decided to put it out for nomination. Now, this decision to put these deeper rights out for nomination could be seen as an indirect route to privatize a state asset that should have been awarded to Petrotrin.

Now we know that there are certain private operators who are PNM financiers involved in this thing called—Madam President, it is called incremental production service companies, and we do not know if the Minister of Energy and Energy Industries has taken a decision to deny Petrotrin the rights to engage in

deep rights in order to favour certain persons or companies who might be lease operators, who might be farm out operators, who might be involved in incremental production service companies. I know of one and I know the Minister is conscious of that particular company. For the time being, I am going to withhold the name of that company, and the reason why I am going to withhold that name, the information I am getting I do not want to believe it. I want to see when the second round comes around, Madam President, and they actually farm out acreages.

I want to see if this particular company that the Minister of Energy and Energy Industries is very well aware of, and the Minister of Rural Development and Local Government is well acquainted with, and I think the Prime Minister is also well acquainted with this particular company located in south Trinidad. So I am going to withhold that name which I have before me now for the time being. So the question that I am asking the Minister is to come clean: is this an attempt to privatize Petrotrin? That is what we want to know. And why, Madam President, did the Minister not grant a licence to Petrotrin to deal with deeper rights because it is already involved in the shallow rights. As I said, if the mandate is to increase Petrotrin production, then why give away these deep rights? Why cut off Petrotrin's legs? By only giving the company shallow rights, what the Government is doing is tying the company's hands—[*Interruption*]

Madam President: Sen. Mark—[*Interruption*]

Sen. W. Mark:—behind its back.

Madam President:—your time is up.

Sen. W. Mark: I thank you very much, Madam President. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I do not want to pull Sen. Small in the debate, but I saw him shaking his head. Because,

Madam President, the competitive bid round is where the State, as a matter of policy for many, many decades, continues to put out open acreage for competitive bid so that the exploration and production concepts continue to be articulated.

In the exploration production business, which I must say I am versed in, [*Desk thumping*] there is national production decline. The phrase I like to use, it is like walking up a down escalator, because you walk up three “treaders” and the escalator comes back three. So just to stay where you are because production declines naturally 10 to 15 per cent per annum. So just to stay where you are you have to put new acreage on the market and to get companies to bid to explore, to search and find oil. This bid round identifies all the open acreage in Trinidad, and Tobago. It includes land acreage, it includes near-shore, it includes offshore and it includes the deepwater blocks.

There was a bid round in 2010, there was a bid round in 2013, there was a bid round in 2015 in which deepwater blocks were given out, and this bid round has absolutely nothing to do with Petrotrin. Petrotrin has its own challenges which I would not go into today, but the deep rights—and to correct you, Sen. Mark, the deep rights is not about 6,000 feet. The difference between shallow and deep is a geological division, not a geographic division. So it has to do with the mid-Miocene holder, it had to deal with the Cretaceous, it have to deal with the Oligocene, the Eocene, and all these geological [*Desk thumping*] time markers. You just do not give a company acreage like that. When the companies— Madam President, I—when you put acreage for—[*Interruption*]

Madam President: Sen. Ameen. Members on the Government Bench to whom Sen. Ameen is addressing, would you all please desist and let the Minister finish his contribution.

Sen. The Hon. F. Khan: Madam President, you do not just give acreage. You bid

for acreage, and what you bid, you bid a work programme. If you give a company acreage and they just sit on the acreage, it is of no value to the State. You need a work programme that includes seismic, it includes exploration drilling, and if you are successful it will require a development programme to bring oil and gas into production.

So if you cannot bid and compete, and who gets the acreage is who provides the best bid just like in any tender. So in other words, a company will bid so much square kilometres of seismic, and will drill six exploration wells, and if a company gives you half that seismic coverage and no exploration wells, obviously the one who plans to drill all the wells they will have a budget and say, “I will spend US \$50 million in exploration”. The other part of the evaluation is technology, because what you need to find oil, Madam President—and I was a good oil finder in my days—you need technology and you need creativity in the science. You need good geoscientists, you need good geophysicists, you good geologists, you need good petroleum geologists, and most important you need the technology.

The technology today, Madam President, has mushroomed into unbelievable potential. Seismic technology has improved to such an extent that imaging the subsurface—as I said, seismic has moved the way of medicine. You know there was a time in medicine if a doctor has to diagnose you he has to take a torchlight and put in it in your eye to watch something there and then something in your ear. What he was trying to do is relate to some blood vessel here that may tell him you have a tumour. Today there is something called MRI and CT scan. It is imaging, and seismic technology images the subsurface and it images where oil and gas is, and the more robust that technology is—Madam President, seismic technology is the world’s largest user of computer power outside of the US military, and in Trinidad and Tobago we have geophysicists, in particular, and geologists playing

with that data set and that volume of data, and constructively searching for new oil and gas reserve. BP just found two fairly significant gas fields. They were all found by Trinidadians working right in Huston, some of them in London and most of them around the Queen's Park Savannah.

If this country is to survive, we have to continue the search for oil and gas and to diversify the economy, which is in the charge of my colleague here, Minister of Trade and Industry, and we have to forget this foolishness about who getting this, who getting that. This is an international competitive bid round. The people who will be bidding here will be the top oil companies, and gas companies, and energy companies in the world. It will include BP, it include Shell, it will include Exxon, it will include BHP, it will include Chevron, it will include small players also, because some of the land acreage call for smaller players. And, for the first time in this country, under the PNM administration where we brought out the lease operatorship and farm out programme, we got local entrepreneurs to invest in the energy sector.

I want to quote Lease Operators Limited, which is the Brash group of company, they own Well Services Petroleum Company Limited. They have a company called Lease Operators Limited that is producing virtually 5,000 barrels of crude onshore. They have invested millions and millions of dollars. Sen. Mark, sometime ago saying they are PNM financiers. Foolishness! They are businessmen seeking the interest of their business and the people of Trinidad and Tobago. [*Desk thumping*] And why must people vilify people who are investing their hard earned capital into producing in the energy sector?

The lease operators and farm out, Madam President, produces oil, and most of those things are sub-licences from Petrotrin. They pay 12.5 per cent royalties, then they pay a further 20 per cent overriding royalty to Petrotrin, then they pay \$2

operating fee per barrel of oil produced. So that means 37 per cent of their revenue comes off the top. Where in the world will your gross revenue be 37 per cent taken out from the top and they still make a profit? And Petrotrin getting all that, I do not want to say where Petrotrin is today. So we have to understand that the State—this is a state patrimony and the State gets money from its patrimony through royalties and taxes, and everybody pays royalties and taxes whether you are a state company or a foreign company, and if you are a state company and you are profitable there is another source of revenue for the Government, which is dividends. So obviously it would be better for us if we have profitable state enterprises because they will pay royalties, they will pay PPT, they will pay SPT, and then you will still have a chance to get dividend payments for the State.

So Madam President, this whole issue of the State trying to sell out Petrotrin is a fallacy, it is propaganda, and it is absolutely not rooted in fact. This bid round is a competitive bid round where despite the trying times in the energy sector, we are going out to the market to see if we can get bids for open acreage throughout Trinidad and Tobago to sustain the energy sector in the long-term.

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

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.21 p.m.