SENATE

Tuesday, April 02, 2019

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Franklin Khan, Sen. The Hon. Allyson West and to Sen. Hazel Thompson-Ahye, all of whom are out of country; and to Sen. Taharqa Obika, who is ill.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following communication from Her Excellency The President, Paula-Mae Weekes, ORTT:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator Franklin Khan is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 2nd April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Franklin Khan.

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 1st day of April, 2019"

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. AUGUSTUS THOMAS

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

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, AUGUSTUS THOMAS, to be temporarily a member of the Senate, with effect from 2nd April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Allyson West.

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 1st day of April, 2019"

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. JOHN HEATH

WHEREAS Senator Hazel Thompson-Ahye is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, 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, MR. JOHN HEATH, to be temporarily a member of the Senate with effect from 2nd April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Thompson-Ahye.

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 1st day of April, 2019"

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: KARUNAA J. BISRAMSINGH

WHEREAS Senator Taharqa Obika is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you KARUNAA J. BISRAMSINGH to be temporarily a member of the Senate, with effect from 2nd April, 2019 and continuing during the absence of Senator Taharqa Obika 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 2nd day of April, 2019"

AFFIRMATION OF ALLEGIANCE

Senator Ndale Young took and subscribed the Affirmation of Allegiance as required by law.

OATH OF ALLEGIANCE

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

Augustus Thomas, John Heath and Karunaa J. Bisramsingh.

JOINT SELECT COMMITTEE

(REFERRAL TO)

Madam President: Hon. Senators, I have received the following correspondence from the Speaker of the House of Representatives:

"April 02, 2019

Sen. the Hon. Christine Kangaloo

President of the Senate

Office of the President of the Senate

Level 2, Tower D

International Waterfront Centre

1A Wrightson Road

Port of Spain

Dear President of the Senate,

Referral of Income Tax (Amendment) Bill, 2019 to Joint Select Committee

At a sitting held on Friday March 29, 2019 the House of Representatives agreed to the following resolution:

'Resolved:

That in accordance with Standing Order 64(1)(c) of the House of Representatives, the Income Tax (Amendment) Bill, 2019 be referred to the Joint Select Committee established for the consideration and report on the Mutual Administrative Assistance in Tax Matters Bill, 2018 and the Tax Information Exchange Agreements Bill, 2018."

I respectfully request that the Senate be informed of this decision at the earliest convenience please.

Respectfully,

Hon. Bridgid Mary Annisette-George, MP

Speaker"

NON-PROFIT ORGANISATIONS BILL, 2019

Bill to provide for the registration of non-profit organisations, the establishment and maintenance of a register of non-profit organisations, the

obligations of non-profit organisations and for related matters, brought from the House of Representatives [*The Attorney General*]; read the first time.

PAPERS LAID

1. Ministerial Response of the Ministry of Works and Transport to the Sixteenth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), Eleventh Parliament on an Examination into the implementation of the Public Sector Investment Programme. [*The Minister of Works and Transport* (*Sen. The Hon. Rohan Sinanan*)]
2. The Annual Administrative Report of Point Lisas Industrial Port Development Corporation Limited (PLIPDECO) for the period January to December 2015. [*Sen. The Hon. R. Sinanan*]
3. Ministerial Response of the Ministry of Finance to the Sixteenth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), of the Eleventh Parliament on an Examination into the implementation of the Public Sector Investment Programme. [*The Minister of Agriculture, Land and Fisheries* (*Sen. The Hon. Clarence Rambharat*)]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Tunapuna/Piarco Regional Corporation for the year ended September 30, 2009. [*Sen. The Hon. C. Rambharat*]
5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Tunapuna/Piarco Regional Corporation for the year ended September 30, 2010. [*Sen. The Hon. C. Rambharat*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Regulated Industries Commission for the year ended December 31, 2014. [*Sen. The Hon. C. Rambharat*]

7. The Annual Audited Financial Statements of National Quarries Company Limited (NQCL) for the financial year ended September 30, 2013. [*Sen. The Hon. C. Rambharat*]

8. The Ministerial Response of the Ministry of Tourism to the Fifteenth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), Eleventh Parliament on the Examination of the Expenditure and Internal Controls of the Ministry of Tourism. [*Sen. The Hon. C. Rambharat*]

9. The Annual Administrative Report of the Ministry of Tourism for the year 2015. [*Sen. The Hon. C. Rambharat*]

10. The Annual Administrative Report of the Ministry of Tourism for the year 2017. [*Sen. The Hon. C. Rambharat*]

11. The Annual Report of the Children's Authority of Trinidad and Tobago for the period ending September 30, 2018. [*Sen. The Hon. C. Rambharat*]

12. The Annual Report of the National Information and Communication Technology Company Limited (iGovTT) for the year 2016 to 2017. [*Sen. The Hon. C. Rambharat*]

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Land and Physical Infrastructure

Systems Re Maintenance of Drainage and Roadways

Sen. Deoroop Teemal: Madam President, I have the honour to present the

following report:

Sixth Report of the Joint Select Committee on Land and Physical Infrastructure, Fourth Session (2018/2019), Eleventh Parliament, on an Inquiry into the Establishment of Systems for the Maintenance of Drainage and Roadways.

National Statistical Institute of Trinidad and Tobago Bill, 2018

The Minister of Trade and Industry (Sen. the Hon Paula Gopee-Scoon): Madam President, I have the honour to present the following report:

Interim Report of the Joint Select Committee appointed to consider and report on the National Statistical Institute of Trinidad and Tobago Bill, 2018.

Mutual Administrative Assistance in Tax Matters Bill, 2018 and Tax Information Exchange Agreements Bill, 2018

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

Interim Report of the Joint Select Committee appointed to consider and report on the Mutual Administrative Assistance in Tax Matters Bill, 2018 and the Tax Information Exchange Agreements Bill, 2018 in the Fourth Session (2018/2019) of the Eleventh Parliament.

URGENT QUESTIONS

POS General Hospital Fire

(Damage Caused by)

Sen. Paul Richards: Thank you, Madam President. Good afternoon, everyone. To the Minister of Health: Can the hon. Minister indicate how much damage was caused by the fire at the Port of Spain General Hospital

on Friday, March 29, 2019?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. In December of 2016, the Ministry of Health directed all RHAs to do a security risk assessment with eight deliverables, including emergency decanting. Let me say up front, our primary objective is to save lives and I want to thank the nurses at the Port of Spain General Hospital, following our procedures, successfully decanted and safely did so after the earthquake of last September and the fire of Friday. There was no loss of life, no one was injured and our nurses are to be thanked.

As far as damage is concerned, in the ICT department, four Mac computers were lost, two Mac power cords, seven Dell Windows desktops, three printers, 14 Cisco PBX phones, copper and fibre internal networking. It is difficult to give a price at this point because we have to get estimates for replacement. It does not make sense to talk about book value of these things. The physical infrastructure, after an examination by the Ministry of Works and Transport, the building is structurally sound. However, we will have to replace galvanize roofing, ceilings, desks and chairs and so on. What is noteworthy is that our two ultrasound machines are fully functional and will be relocated by tomorrow to restart ultrasound work. Our container CT is functional, was untouched by the fire. So those services will be up and running.

Madam President, I want to thank all the RHAs who gathered and rallied around North West on Friday night. Doctors came out, nurses came out, ambulances came out and all the other RHAs were on hand to take up the slack in case they were needed. Luckily, they were not needed because our nurses, again, performed above the call of duty. Thank you very much.

[*Desk thumping*]

Sen. Richards: Thank you, Minister, for the comprehensive response. Can the Minister indicate, given the fact that it was a fire and there would have been soot and smog, if there had been any displacement of patients and/or staff?

Hon. T. Deyalsingh: Yes, as I indicated, the nurses had to decant some patients because of smoke, so the answer is yes. We also have some smoke going into the maternity hospital which is just to the north of that but thankfully, we were able to get that facility up and running within hours. So neither the NICU was adversely affected and we thank God for that, and by yesterday, operations as far as patient care were not compromised and they were returned to normal, principally again, due to the action taken by our nurses ably supported by the security staff who were on hand at the time. Thank you very much, Madam President.

Madam President: Sen. Richards.

Sen. Richards: Thank you again, Madam President. Thank you again, Minister and finally, given your response regarding the ultrasound machines, can the Minister indicate if ultrasound services have been transferred to another unit or if that is not an issue at this time?

Hon. T. Deyalsingh: As I indicated, the ultrasound machines were not affected. However, they would be relocated by tomorrow to restart ultrasound services at Port of Spain. In the interim, we would have sent them to Eric Williams if they needed to. Or the entire health system came together as one to lend support to North West Regional Health Authority on Friday night including GMRTT in case we needed extra ambulances, doctors at Eric Williams were on standby. Everyone was on standby in case the

incident escalated. It did not escalate but I want to express my gratitude to every single health care worker across the RHAs system. We worked as one and we mitigated loss. Thank you very much, Madam President. [*Desk thumping*]

New Ferry Lease

(Details of)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Works and Transport: Given recent reports that the Government intends to lease a ferry to service the sea bridge, can the Minister confirm the name of the new ferry, the daily charter rate, the period of the lease and the name of the supplier?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Madam President, the Government had indicated its plans to provide vessels for the inter-island sea bridge. Government proposed three time spans to deal with this. There is a short term which the Government indicated, that was the acquisition of the *Galleons Passage*, together with the *T&T Spirit*, which resulted in two vessels servicing the sea bridge. The long-term plan from the Government was the acquisition of two new fast ferries which have already been ordered.

The medium-term plan from the Government was the leasing of a fast ferry to complement the two existing ferries for a period of one year, which will allow the Government to take possession of the two new fast ferries. A tender went out in August of 2018; it closed in October of 2018. A recommendation has been made where the preferred tenderer is Virtu Holdings coming out of that tender where three companies produced options. It was an international and local tender. The name of the vessel is

the "Jean de la Veep". [*Interruption*] "Jean de lout" and the preferred— [*Laughter and crosstalk*] The company is Virtu Holdings and the contract is at this time being finalized by NIDCO, and as soon as that is completed, the figures will be presented to Sen. Mark as requested.

Sen. Mark: Can the Minister indicate, Madam President, what type of contract is being envisaged for this lease arrangement? What is the name? What is the type of contract you are anticipating for this lease arrangement?

Sen. The Hon. R. Sinanan: Yes. Madam President, the name of the vessel is *Jean de La Valette*. It is a lease vessel and I must indicate that NIDCO did utilize the professional and excellent service of a specialist maritime firm out of the UK to ensure that the contract that is being signed with NIDCO and this company is in keeping with the maritime agreements. And the period of time is for one year with the option to renew for a further six months if needed. Thank you.

Sen. Mark: Madam President, may I ask the hon. Minister whether he is aware that this vessel is a defective vessel that was subject to arbitration in England and also court proceedings in Australia? Can you indicate to this Parliament whether you are aware that this vessel is a defective vessel? [*Desk thumping and crosstalk*] Can you tell us?

Sen. The Hon. R. Sinanan: Madam President, I am not surprised at the question because I expected the Opposition to bring fake news and try to damage [*Crosstalk*] all the efforts by this Government to ensure that we have a better sea bridge. Thank you. [*Crosstalk*]

Madam President: Next question, Sen. Mark. And please, Members, please lower your voices.

Sulphur Scented Fuel

(Measures to Address)

Sen. Wade Mark: Thank you very much, Madam President. To the Minister of Energy and Energy Industries: In light of NP's, National Petroleum that is, admission of an unusually pungent scent of sulphur from the fuel at the pump, can the Minister state what measures are being taken to address this situation?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. I am advised by NP that the batch of fuel they received in March—March the 7th to be exact—was tested for compliance on receipt. The fuel met all the requirements of the certificate of quality. However, it was observed that the fuel did have a pungent odour. NP sought to remove the odour from the gasoline by using a chemical scavenger which had some effect.

Madam President: Minister, just one second. Hon. Senators, the time for Urgent Questions has expired but I will allow the Minister to finish to complete his answer.

Hon. C. Imbert: Thank you, Madam President. So NP used a scavenger to remove the odour in the super but the scavenger is not effective on diesel so the diesel remains with the odour. Another batch of super gasoline was received on the 2nd of April, today actually, has met the quality standards, does not have the odour, but there would be some residual odour in the fuel that remains within the tanks.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the Government intends to answer seven questions. These questions are Nos. 93, 94, 137, 138, 139,

167 and 169. The Government is asking for a deferral of Nos. 95, 173, 174 and 175. Thank you.

Madam President: Question Nos. 95, 173, 174 and 175 are deferred for two weeks. Two weeks?

Sen. The Hon. C. Rambharat: Madam President, may I ask you to allow us to answer No. 95 today and the deferral would be in respect of 173, 174 and 175 for two weeks?

The following questions stood on the Order Paper:

HYATT Regency Hotel

(Taxes and Dividends Collected)

132. Can the hon. Minister of Housing and Urban Development advise as to the amount of taxes and dividends collected from the Hyatt Regency Hotel (Trinidad and Tobago) for each year during the period 2015 to 2018? [*Sen. T. Obika*]

US Lobbyist: The Group DC LLC

(Fulfilment of Contract)

173. Can the hon. Prime Minister indicate whether the US lobbyist, 'The Group DC LLC', has met the objectives under the contract signed with the Government of Trinidad and Tobago in October 2016? [*Sen. S. Hosein*]

Special Reserve Police Officers

(Promotion of)

174. Can the hon. Minister of National Security indicate the number of Special Reserve Police Officers who have been promoted in the Trinidad and Tobago Police Service for the period September 30, 2015 to January 31, 2019? [*Sen. S. Hosein*]

Trinidad and Tobago Police Service

(Contracting of Retired Police Officers)

175. Can the hon. Minister of National Security indicate the following:

i. the current number of retired police officers engaged on contract by the Trinidad and Tobago Police Service; and

ii. the ranks of said officers? [*Sen. S. Hosein*]

Questions, by leave, deferred.

Petrotrin Sports Club

(Details of)

93. **Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries:

Having regard to the closure of the Petrotrin Refinery and the consequent uncertainty surrounding the Petrotrin Sports Club, can the Minister indicate the following:

i. what is the status of said Club; and

ii. how are its Members being affected?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. The Petrotrin Sports Club and its facilities were closed on December 03, 2018. The building and its facilities are still owned by Petrotrin. The board of Petrotrin is currently looking at commercially viable options for the use of the club and its facilities. However, in addition, the Government is examining its options with respect to the utilization in the public interest of Petrotrin's assets that are not essential for oil production and a decision on the way forward would be made shortly.

Sen. Mark: Madam President, can the Minister indicate or elaborate on the

expression, utilization of the assets of this club in the public interest? Can he clarify further for us?

Hon. C. Imbert: Madam President, we in the Government recognize that Petrotrin provided quite a large number of services to surrounding communities and also to persons in the surrounding areas, so we are looking at vesting all of the non-essential assets, the non-oil producing assets into a state enterprise which would then have control of these assets and would then make determinations as to whether these assets can be made available to the public or whether they would be put up for lease to interested parties or whether the previous members of the clubs and so on can get involved. The matter is still in its embryonic stage but we intend to place those assets into another state enterprise which would have the responsibility to manage the non-oil producing assets of the former Petrotrin.

Sen. Mark: Can the hon. Minister indicate what are some of the commercial viable options that are being considered by the Government as they relate to the assets of the Petrotrin Sports Club?

2.00 p.m.

Hon. C. Imbert: As I indicated, Madam President, there are many options, and one of them could be to lease the club and its facilities to former members or other interested parties for their use or a hybrid approach where the public will also have access to the facilities. As I said, this matter is in its embryonic stage.

Sen. Mark: Can the hon. Minister indicate whether the Government has a time frame or a timeline for concluding this particular arrangement as it relates to specifically when would the Government come to a definitive conclusion as to the way forward? Is there a time frame for that

arrangement?

Hon. C. Imbert: Thank you, Madam President. Barring unforeseen circumstances, by the middle of this year 2019.

Pointe-a-Pierre Refinery

(Requests for Proposals)

94. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

With regard to the Government's decision to issue Requests for Proposals (RFPs) for the lease or sale of the Pointe-a-Pierre Refinery, can the Minister identify the experts who will evaluate and finalise the outcome of the RFPs?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. To date, expressions of interest have been received from 70, 7-0, interested parties consisting of a wide spectrum of companies in the energy industry. All of these 70 interested parties are eligible to gain access to the data room once they demonstrate that they have the technical and financial capacity to submit a proper proposal and they sign a nondisclosure agreement.

The data room will be available until the end of April 2019 to allow preliminary submissions from interested parties, at which time a shortlist of qualified bidders will be prepared. The date for the submission of final proposals from qualified bidders is June 15, 2019.

An international investment banker with extensive experience in the industry, namely the Bank of Nova Scotia of Houston Texas, USA has been engaged to provide technical advice in the shortlisting and evaluation of proposals for the sale and/or lease of the Pointe-a-Pierre refinery.

Sen. Mark: Can the Minister make public the names of these 70 interested parties in bidding for the purchase or lease of the Pointe-a-Pierre refinery?

Hon. C. Imbert: Madam President, that forms no part of the question. The question refers to the experts who will evaluate the outcome of the RFP. So I do not have that information with me. I am certain if Sen. Mark poses that question in the normal manner, that the information will be provided.

Sen. Mark: Can the hon. Minister indicate how the Bank of Nova Scotia International was chosen or selected to conduct technical studies into these various proposals that are coming before the Government?

Hon. C. Imbert: Madam President, I do not have the precise details but I want to repeat that this company, this international investment bank that has extensive experience in the industry—but I do not have the details of the procurement process. That too will be answered if a question is posed.

Sen. Mark: Could the Minister indicate whether the former Managing Director of Scotia Bank, Richard Young, was involved in recommending this particular institution for consideration?

Madam President: No, that question is not allowed. You have one more question, Sen. Mark.

Sen. Mark: All right. Can I ask the hon. Minister, where exactly is this data room located?

Hon. C. Imbert: At the former Petrotrin.

Closure of Petrotrin Refinery

(Details of Augustus Long Hospital)

95. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Having regard to the closure of the Petrotrin Refinery, can the Minister inform the Senate:

Whether the Augustus Long Hospital has been leased, sold or decommissioned;

ii. if leased or sold, to whom and at what price; and

iii. if decommissioned, on what date?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. The Augustus Long Hospital was decommissioned effective November 30, 2018. The hospital has not been sold or leased to date. However, a request for proposals is being prepared and would be issued within the next few months for the lease and/or sale of the Augustus Long Hospital.

Sen. Mark: Can the Minister indicate why it has taken so long for a very important institution and health care facility to go out for, via request, proposals? Why has it taken so long, Madam President, having regard to the fact it was decommissioned since November 30, 2018? Can the Minister advise?

Hon. C. Imbert: Madam President, a hospital is not a parlour or a rum shop; it requires considerable thought. It is a complex matter. I do not agree that this is a long time.

Sen. Mark: I am conscious it is not a parlour or a shop—

Madam President: And Sen. Mark, I am conscious that you are asking a question. So could you ask the question, please?

Sen. Mark: Yes, I am getting there, Ma'am. Can I ask the hon. Minister, through you, Madam President, whether he is aware that close to $2 million worth of vital pharmaceutical products and drugs used by patients and

doctors have been lost; lost meaning, Madam President, they have expired and, therefore, would be of no use to anyone? Is the Minister aware of such value in terms of the pharmaceutical products?

Hon. C. Imbert: Madam President, that is fake news.

Sen. Mark: Can the Minister indicate whether the Minister of Planning and Development, in answer to a question in the other place, was providing the country, when the Minister indicated some $1.5 million was lost by expired drugs, or through expired drugs? Was the Minister engaging in the spreading of fake news when that statement was made?

Madam President: Sen. Mark, I would not allow that question. You have one more.

Hon. C. Imbert: You have to be kidding me, man.

Sen. Mark: Madam President, can I go on to the next one?

Madam President: Sure.

Sen. Mark: Madam President, with your leave, I would like to ask the remaining questions in the name of Sen. Obika. I would like to ask those questions, please?

Madam President: Sure. Yes, of course.

Sen. Mark: Madam President, question No. 132.

Madam President: No, not 132.

Sen. Mark: Oh, I beg your pardon. My apologies.

Caribbean Airlines

(Collection of Dividends)

137. Sen. Wade Mark on behalf of Sen. Taharqa Obika asked the hon. Minister of Finance:

Can the Minister advise as to the amount of dividends collected from Caribbean Airlines for each year during the period 2016 to 2018?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): None.

Sen. Mark: Can the Minister indicate whether it was fake news when Caribbean Airlines took out full page advertisements throughout the industry, advertising and boasting that it had realized dividends, or profits I should say, during that period?

Hon. C. Imbert: Madam President, I do not know why Sen. Mark says these things. Caribbean Airlines declared a profit for part of its financial year. You have to wait until the financial year is over and then the auditors have to come in and determine whether any dividends would be due to the State.

Sen. Mark: Can I ask the hon. Minister, seeing that we are talking about 2016, 2017, and 2018, when will the auditors be visiting the compounds of Caribbean Airlines to determine whether dividends would be paid to shareholders, which is the Government of T&T? Can the Minister indicate, Sir?

Hon. C. Imbert: Thank you, Madam President. Let me just repeat this question:

"...the amount of dividends collected from Caribbean Airlines...during the period 2016 to 2018?"

As far as I am aware, 2018 ended in December and the answer to that question: the amount of dividends collected is none. So I have answered the question.

Sen. Mark: The question asked during the period—

Madam President: Well, I do not think, Sen. Mark, that we need to be reading and re-reading the question. The Minister has given a response. You are entitled to ask a question now, but do not re-read the question, please.

Sen. Mark: Can I proceed, Ma'am?

Madam President: Yes.

Sen. Mark: Because I do not want to engage in fake news.

Hon. C. Imbert: You do not want to? You sure?

Sen. Mark: No, you are the architect.

Madam President: Sen. Mark, Sen. Mark, please.

Sen. Mark: Madam President, may I face you?

Madam President: You should.

Sen. Mark: Okay. I cannot—

Madam President: Sen. Mark—

Sen. Mark: Madam President, I am finished.

Madam President: Yes.

Madam President: Sen. Mark—

Sen. Mark: Madam President, may I ask question No. 138 to the Minister of Sport and Youth Affairs?

Couva Aquatic Centre

(Revenue Received)

138. Sen. Wade Mark on behalf of Sen. Taharqa Obika asked the hon. Minister of Sport and Youth Affairs:

Can the Minister advise as to the amount of revenue received from the operations of the Couva Aquatic Centre for each year during the period 2016 to 2018?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. I answer this question on behalf of the Government. Madam President, construction of the Couva Aquatic Centre was completed in 2016, and the Sport Company of Trinidad and Tobago was engaged by the Ministry of Sport and Youth Affairs to operate and manage the facility post-construction. The facility successfully hosted the Caribbean Swimming Championships in 2017.

Madam President, the Sport Company has advised that the total revenue earned from the Couva Aquatic Centre for the period 2016 to 2018 was $167,455.12 detailed as follows: total revenue received in fiscal 2017/2018 was $135,905.62, and total revenue in fiscal years 2018 to 2019, up to December 31, 2018, was $31,549.50. Thank you.

Sen. Mark: Madam President. Can the Minister indicate whether the Government is satisfied with the marketing thrust by the Sports Company of Trinidad and Tobago in promoting the excellent first-class facilities, all provided by a United National Congress [*Desk thumping*] Government is being conducted or is being prosecuted or promoted? Is the Government satisfied?

Sen. The Hon. C. Rambharat: Madam President, having regard to the question, I am not in a position to indicate whether or not the Government is so satisfied.

Sen. Mark: Can the hon. Minister indicate whether any major events aimed at generating further revenues for the people of Trinidad and Tobago will be addressed in the coming period? Can you share with this honourable Senate?

Madam President: Sen. Mark, that question does not arise. Next question.

Sen. Mark: I will go on.

Madam President: Yes.

Sen. Mark: I go on to the real Minister now.

National Agricultural Marketing Development Company

(Vacant Posts)

139. Sen. Wade Mark on behalf of Sen. Taharqa Obika asked the hon. Minister of Agriculture, Lands and Fisheries:

Can the Minister inform the Senate why as of December 2018 several posts for marketing personnel were vacant at the National Agricultural Marketing Development Company?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President, and I thank Sen. Obika and Sen. Mark for the question. Madam President, as of December 2018, certain positions in NAMDEVCO, such as marketing positions, were vacant for a number of reasons, including the expiration of contracts and persons moving on to other jobs elsewhere.

The board of NAMDEVCO subsequently conducted a review of its organizational structure and manpower needs before proceeding to fill the vacancies. At this time, Madam President, the position of Manager Market Facilitation is being advertised and over time, other positions will also be advertised. I thank you.

Sen. Mark: Can the hon. Minister share with us based on the manpower audit and restructuring, can the Minister indicate how many positions have been created in this particular department or section of NAMDEVCO? How many? Only one has been advertised.

Sen. The Hon. C. Rambharat: Madam President, I am not in a position to indicate at this time how many have been created. And in relation to this position, I can say that this is a position that had existed before. So it is not a new position.

Sen. Mark: Would the Minister be in a position to supply to this honourable Senate the organizational structure of NAMDEVCO, particularly in the area as identified, so that the Senate would be better appraised?

Sen. The Hon. C. Rambharat: Certainly, Madam President.

Sen. Mark: Can the Minister indicate to this honourable Senate when he would be able to do same?

Sen. The Hon. C. Rambharat: Madam President, I will do that by the next Sitting, which is April 09, 2019. Thank you.

Sen. Mark: Thank you, Madam President.

Madam President: Next question, Sen. Hosein.

Heritage Petroleum and Paria Fuel Trading

(Net Profit)

167. Sen. Saddam Hosein asked the hon. Minister of Energy and Energy Industries:

Can the Minister provide the net profit for the period December 01, 2018 to February 15, 2019, for the following?

i. Heritage Petroleum Company; and

ii. Paria Fuel Trading Company?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. The answer to part i: the net loss for the period December 01, 2018 to January 31, 2019 for Heritage Petroleum during the period of start-up operations was

US $2.76 million. It should be noted that the loss incurred by the former Petrotrin for a similar two-month period was as much as US $50 million.

The answer to part ii: the net profit for the period December 01, 2018 to January 31, 2019, for the Paria Fuel Trading Company was TT $46.1 million.

Sen. Hosein: Thank you very much, Madam President. Madam President, the question asked—I heard the Minister said net loss when you answered the question. The question asked for the net profit of the Heritage Petroleum Company. I heard that you said net loss.

Hon. C. Imbert: Madam President, I am confused. The question asked: What was the net profit? I said one company made a loss, one company made a profit. The first company made a loss of US $2.76 million. The second one made a profit of US $46.1 million. What more do I say?

Sen. Ramdeen: Thank you, Madam President. Good afternoon, Madam President. Thank you to the hon. Minister for the answer. Madam President, through you to the hon. Minister, could the hon. Minister indicate to the Senate whether when the Heritage Petroleum Company was formed, it was foreseen by the Government, the board, that it would incur a loss at the outset?

Hon. C. Imbert: Any company of that nature that is taking over a massive operation like that would have some teething problems. I would expect, as we move along, the company will move from this very small loss, which is a fraction of what it used to be, into profitability.

Sen. Ramdeen: Thank you, Madam President. Through you, to the hon. Minister: hon. Minister, when do you expect that the Heritage Petroleum Company will begin to earn this profit that you foresee will come sometime

in the future?

Hon. C. Imbert: I would think within the first financial year.

Madam President: Next question, Sen. Hosein.

Groups Formerly Sponsored by Petrotrin

(Continued Assistance to)

169. Sen. Saddam Hosein asked the hon. Minister of Energy and Energy Industries:

Can the Minister indicate whether a decision has been taken to continue to provide assistance to those clubs and/or groups which were formerly sponsored by Petrotrin as part of its corporate social responsibility?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. The active companies that arose out of the restructuring of Petrotrin, namely Heritage Petroleum Company Limited and Paria Fuel Trading Company Limited, are focusing on implementing sustainable, commercial operation. Accordingly, the Government is looking at its option for continuation of an appropriate corporate social programme for the groups, clubs and activities, previously sponsored by Petrotrin, and the way forward would be made public in the near future.

Sen. Hosein: Madam President, can the Minister indicate when this will be done?

Madam President: Well, Sen. Hosein, I think the answer gave a certain—

Sen. Hosein: I will ask another question.

Madam President: Yes.

Sen. Hosein: Madam President, can the Minister indicate how many of

these clubs or groups are affected by the decision, in terms of the closure of Petrotrin in their social cooperate responsibility?

Madam President: No. Sen. Hosein, that question does not arise.

Sen. Ramdeen: Thank you, Madam President. Madam President, through you to the hon. Minister, hon. Minister, when the decision was taken to close the Petrotrin refinery, having regard to the dependency of these groups and clubs on the former Petrotrin for their sustainability, was any contingency plan contemplated or put in place by the Government, having regard to the fact that these groups depended on Petrotrin for their sustainability?

Hon. C. Imbert: Madam President, as I have indicated in answer to another question, the Government has decided to give this responsibility among the responsibility of other things such as the responsibility for the clubs, the recreation grounds, and so on, to another state enterprise. That has always been part of the plan and that is in formation as we speak.

ANSWER TO QUESTIONS

Madam President: Acting Leader of Government Business, there are questions that are for written answer. Are you in a position to provide an update?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I am not in a position now. Could you allow me to provide the update later in the Sitting?

Madam President: Yes.

Sen. The Hon. C. Rambharat: Thank you.

JOINT SELECT COMMITTEES

National Statistical Institute of Trinidad and Tobago Bill, 2018

(Extension of Time)

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Interim Report of the Joint Select Committee established to consider and report on the National Statistical Institute of Trinidad and Tobago Bill, 2018, I beg to move that the committee be granted an extension of time to May 31, 2019, to complete its work and submit a final report. Thank you.

Question put and agreed to.

Income Tax (Amdt.) Bill, 2019

(Referral to)

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the correspondence from the Speaker of the House, I beg to move that the Senate concur with the House of Representatives and that the Income Tax (Amdt.) Bill, 2019, be referred to the Joint Select Committee established for the consideration and report on the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreement Bill, 2018. Thank you.

Question put and agreed to.

Mutual Administrative Assistance in Tax Matters Bill, 2018 and Tax Information Exchange Agreement Bill, 2018

(Extension of Time)

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Interim Report of the Joint Select Committee appointed to consider and report on the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreement Bill, 2018, I beg to move that the

committee be granted an extension of time to May 31, 2019, to complete its work and submit a final report. Thank you.

Question put and agreed to.

EVIDENCE (AMDT.) BILL, 2019

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. [*Desk thumping*] Madam President, I beg to move:

> That a Bill to amend the Evidence Act, Chap. 7:02, be now read a second time.

Madam President, the work before this Parliament today really is of significant moment, significant measure. One of strongest arguments as to the level of sophistication and worth of a society is whether a society is truly and genuinely in a condition where life and liberty of its citizens are properly accounted for by the State being seen and being believed and being felt to be in a position to provide safety for its citizens.

Crime is the number one issue in this country and has been for a very long time. It is the thing that confidence, that is associated with whether crime is being managed or not, that really allows us the freedom and privilege to enjoy our lives. We long for burglar proofing to be removed from our windows. We long for detection to be met with by conviction after prosecution with due process in the courts of law. We long for that gap between detection and conviction to be as short as possible. We hope that that drives a deterrent effect into those who would otherwise consider unlawful purpose.

Now, we as a country have a number of issues in the system to address; the pace of the criminal justice system. But there comes a point in

our consideration as to laws which fit into the criminal justice system, where we have to really analyze whether law transforms society or whether it is society that transforms law. And this Bill today is about that, Madam President.

Time and time again, and Sen. Ramdeen in particular has very often pointed out to the fact that it is the core function of witnesses coming forward in the criminal justice system that really takes us to that whole dance as to whether we have conviction following prosecution which followed identification and detection. And very often we have this argument about putting in money behind the Witness Protection Programme. We talk about whether judges are available. We talk about whether prosecutors are available. We talk about whether defence attorneys are available. But at the end of the day, the Government forms the view that an essential part of adjustment in this system has to be the manner in which evidence relates to significant issues such as witnesses.

So the Evidence Act is before us. We propose to amend it. The Evidence Act, Chap. 7:02, is an Act of Parliament No. 4 of 1848. If we amend this law today it will be the 30th amendment to the law. That law now stands at 171 years old. The common law, as we inherited it, the laws of England on the statutes as we inherited it, has stood in our 1962 Constitution and then our 1976 Constitution as we receive law. That law of evidence has taken a process of time.

We went through the European inquisitorial system. We went through certain procedures that applied there. We then went into the fairness and positions. But what we do know is that our Constitution of the Republic

of Trinidad and Tobago, our 1976 Constitution, at section 5 says there is to be protection of rights and freedoms and in particular 5(f) says:

"(2) Without prejudice to subsection (1)..."

Subsection (2) says:

"but subject to...Chapter and to section 54, Parliament may not—

(f) deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proven guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;"

And (ii) very importantly:

"(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;"

There is, of course, the enshrined privilege right, Golden Rule, that you are innocent until proven guilty, but our Constitution has established rights. And this concept of due process and fairness and public trial sits within the confines of this law.

So we come with this Evidence Bill. We essentially seek to do six things. The six things which we seek to do is contemplated in amendments to the Evidence Act itself. We propose that there are regulations which ought to follow. We have in fact drafted those regulations already. They are not before us now, but I can tell you the regulations in fact went out in stakeholder comment along with the Bill.

2.30 p.m.

We drafted this law, we have been in the position where the Evidence Act was in active consideration, certainly by two successive governments. Under the UNC government in 2013, the Ministry of Justice considered certain important reforms. Regrettably, the work was not crystalized after some of the work was done by the Ministry of Justice and then under this Government we certainly took the approach to amend the Evidence Act and produce new regulations.

We have been out in public consultation squarely for two years but importantly by way of written correspondence, by way of engagement with stakeholders, since September 2018 we have been writing to all stakeholders and asking for comments. We have in fact received commentary coming back from certain of the stakeholder positions. We got commentary coming back from the Trinidad and Tobago Police Service, from the Judiciary. Unfortunately notwithstanding one, two, three, four and five written correspondence requests of the Law Association and several telephone calls, we have had no correspondence or commentary from the Law Association, nor have we had from the Criminal Bar Association and we have also not had any commentary coming from the DPP's office. We wrote many letters, we recorded the position, we invited persons to the table, but we have not had that stakeholder feedback. We engaged, Madam President, the British High Commission. We engaged the criminal justice advisor who had sat in a rotational positon since the last seven years certainly in this country. And we sat down and we drafted laws which we now find ourselves—we now find before us here as a Senate.

I was saying that we are seeking to do six things ultimately in this Bill. Number one, we are seeking to treat with the identification of suspects and in particular in the identification mechanisms that we are treating with in *Division 2*, which is set out in clause 4 in sections 12A to 12B, the new sections that we propose that are sections 12A to 12P. We ask for a formalization of the Standing Orders which the police have been using.

Let me explain that. Currently the method of identification of suspects involves a number of methods. That methodology is in fact something which has been published in the laws of Trinidad and Tobago via Standing Orders of the TTPS. The Standing Orders were first published under the old legislation, under the regulations there, under section 571A. In 2007, there was a republication of Standing Orders pursuant to section 193(1)(a) and those Standing Orders and the particular Standing Order 29 of the TTPS is the method by which we say, you ought to identify people, what procedure is to be followed, what priority is to be adopted, in what circumstances that is to be done. But that is subsidiary legislation.

Today we step forward quite simply and we say, let us take the subsidiary legislation which has stood in Standing Orders; let us marry it with best practice. And the best practice that we have taken is in fact coming out of the United Kingdom experience, "Code D: Revised Code of Practice for Identification of Persons by Police Officers." That comes out of the PACE reforms. It is updated as of February 2017. We take that subsidiary law, we bring it into that primary law for the first time in a prescriptive format, we put it into the Evidence Act and we say that all methods of identification and the priorities of identification are to be treated within

primary law. We do for the legitimate aim that there is too much mischief in the inconsistent application of the Standing Orders.

So, one the things that we do by way of legitimate aim in the first purpose of this Bill in treating with identification, is we say lift out of the subsidiary law, bring it into parent law, so that we balance with precision the rights of the accused versus the processes of the prosecutorial and investigative arms. And we say that is a mischief to be cured by parent legislation.

The second thing that we do is we specify into parent law the electronic recording of interviews of suspects. And I would like to say that we do that in the new section hailed as *Division 3* in sections proposed by this Bill, sections 12Q to 12Q(7) beginning at page 21 of the Bill. And in taking electronic recording of interviews of suspects, we are proposing that Trinidad and Tobago adopt a more certain and transparent process where if you are going to interview a person, you have to record that as a best practice in circumstances where it is available.

I can tell hon. Senators right now that the TTPS has 20 rooms equipped with audiovisual recording capabilities for interviewing persons. They do in fact conduct audio/video recorded interviews. At the Arouca Police Station they are equipped with two, and the Riverside Building with three, alongside their name stated below, and then we have 17 particular divisions: Piarco, Arima, Arouca, Moruga, Maloney, Cumuto, Oropouche, Maracas, Belmont, La Brea, Brasso, Sangre Grande, ACIB; at Riverside, Riverside second suite, Gasparillo, Maraval, Shirvan Road. The 17 locations have, in the spread of positions, 20 audiovisual recordings suites.

Why? One of the significant arguments that step forward, from time to time, is that, "That statement was not mine. That written statement before a Justice of Peace who works for the State, I was beaten into submission to sign that statement"; and there is a recanting of the statement. One has a better chance of seeing whether there was coercion on the part of the investigating officer against the accused if that statement is recorded.

Now the use of audiovisual equipment is not new. The Evidence Act in the regulations that are associated with it provide for the use of suites, et cetera. There is subsidiary legislation, we are proposing as the second purpose of this law that we lift that out of subsidiary legislation, we lift it out of Standing Orders and we put it into the parent law as a mechanism to preserve the best form of evidence in certain circumstances, with strict procedures to treat with the interview and the recording of witness evidence.

The next thing that we do is we provide as, a third objective, the provision of special measures to allow the testimony of vulnerable witnesses without their security or identity becoming compromised. That is to be found in the new division—well it is under *Division 3*, in the new subsections beginning with section 12AA. And this, Madam President, is not something which is unique. We have already in the laws of Trinidad and Tobago, we already have precedent as to the use of special procedures for certain types of circumstances to be treated with, in particular as we talk about offences under the Sexual Offences Act, section 31E.

We deal with the Children Act. We look at sections 19(a) and 19(b). We look then further at the Evidence Act, this one, section 15I(e) to (h). And in these sections we provide for—the existing law provide for circumstances

where there is a sexual matter, where we are dealing with children, where we are dealing with certain aspects of vulnerability, we allow for the utilization of screens, we allow for the separation of the accused from the person who is vulnerable, we allow for the use of video evidence, we allow for them not to come into contact with each other. So the existing law provides for special measures to allow for testimony of vulnerable witnesses.

But what we do in this Bill is we go much further, and I will come to those particulars in a little while. We say to people who are in the concept of the best administration of justice with the balance of the rights of the accused in mind, with the need for a fair trial, with the understanding of the common law and constitutional prescriptions of Trinidad and Tobago, we say leave it up to a judge because there may be circumstances where people are fearful of giving evidence and it is warranting therefore of a special procedure to protect that witness. How often we hear the cry, "I am not giving any evidence because I am fearful of giving evidence"?

The fourth objective in terms of broad analysis, Madam President—Madam President, what time do I end in full time?

Madam President: You end at 10 minutes past three.

Hon. F. Al-Rawi: Much obliged. The length of time for this debate does not permit the depth that is required on a Bill like this, most respectfully, so I am trying to give the broadest understanding, through you, Madam President, not only to Senators but to the listening public.

The fourth area that I was speaking to was the appearance of, or receiving of evidence from persons before the court in criminal proceedings by use of video link. What we are doing in this particular fourth objective,

we are harmonizing something which exists, already in the Civil Proceedings Rules where you can actually have video-link testimony. The criminal law is not specific as to the use of video testimony, but in anticipation of launching the video remand courtyard facility, that is where persons who are incarcerated and not out on bail, and who are remanded in pre-trial detention at our prisons can appear before the court by video link. Why do we do that? It is common sense. Number one, we harmonize the civil law, number two, as a country, to transport prisoners back and forth from the jails, to do remanding, et cetera, we spend approximately $80 million a year in prisoner transport. And putting one remand courtyard facility, video link, at Golden Grove, at maximum security, wherever it may be, allows us to cut taxpayer expenditure in sensible fashion.

Very importantly, the fifth objective is something which I consider to be of landmine nuclear importance, which is certainly something that we are going to have to consider in a three-fifths majority constitutional perspective and that is the ability to have a witness anonymity order. If there is the most important provision in this law, it is that particular fifth objective. Yes, it is something that does intrude upon established and enshrined rights in the Constitution, but it is not something that is unique in that there are umpteen jurisdictions in the world, and I will traverse those shortly, which have the use of anonymous witness evidence.

Anonymous witness evidence, broadened on the concept of vulnerable witnesses, is something which the European Court of Human Rights has treated. It is something which courts in New Zealand, in Australia, in a number of other jurisdictions in the Commonwealth have treated with—the

United Kingdom has certainly treated with it. Northern Island has treated with it. There has been the flirtation to go there and back by way of common law development, but that was resisted by the House of Lords and Privy Council, in particular when you get to the case law in saying "Look, let Parliament treat with that".

This particular provision allows for people who are fearful of giving evidence to provide evidence without being known, where their names are not known, where their faces are not seen, where their voices are modulated in certain prescribed circumstances such as to preserve the right to a fair hearing ultimately with judicial discretion. If ever there was a cry for a clause to treat with this, it has been made in Trinidad and Tobago because everybody knows something, saw something, wants to say something. Usually the evidence comes immediately after somebody is dead where you know of a criminal and you say, "Aye boy everybody know long time dat man is a bandit, or a gang leader, or a murderer." Evidence comes flushed out after the death of the accused, albeit now postmortem but nobody is willing to step forward, because why? Sen. Ramdeen has spoken about it. I have spoken about it. Witness protection and the witness protection programme is a seriously expensive and inefficient exercise globally, but also in Trinidad and Tobago.

The other objective, the sixth objective, is another nuclear provision; the utilization of CCTV footage. The Government is engaged in an active campaign and this is to be found in the new section 12AI, at page 53 of the Bill. The utilization of CCTV footage ties in with the Government's active and aggressive campaign of something called "Eyes everywhere". We all

see on or phones CCTV footage of motor vehicle accidents, of murder, of robbery, of attacks. But our laws do not permit the utilization of evidence from CCTV footage. And if you are putting out a safe city, if you are putting out eyes everywhere, if you are putting out the use of cameras to capture, by way of technology, number plates and other aspects, you have to harmonize the laws to treat with CCTV evidence. And so this law, this Bill before us proposes to treat with some of that.

So, let us get into some of the particular positions. I stick a pin for a moment. I ask you to note that statistically, and I have put this before, the Government has put this before on umpteen occasions, coming from the Judiciary's report, if we look to the data driven analysis and therefore the proportionality in addressing a legitimate aim in legislation, we have indictable matters pending at the court. There are 43,109 as at July 31, 2018. One hundred and forty thousand road traffic matters at the Magistracy. We look to criminal offences pending at the High Court as at July 31, 2018, which was the last area of identification, the last date, 2,006 matters pending. Indictments filed for the year 2017 to 2018, 324; et cetera, et cetera. Number of criminal offences in the Magistrates' Court, 165,154. If we continue to tackle numbers that look like this without thinking outside of the box, then we are going to be exercising the definition of insanity in looking for a different result whilst doing things the same way.

It is very important to say, Madam President, that Trinidad and Tobago is at "ah crossroads". And when we come down to the fact that as a Senate, as a country, as a Government we have had significant preforms to the criminal justice system, I was very pleased to see Sen. Chote appear in

the newspapers recently as somebody participating in a judge alone trial, something which this Senate passed into law. We have seen the first acquittal for a murder in a judge only trial, something we were told could never happen in the country. We have seen the introduction of plea bargaining, access to bail, divisions of court, the Criminal Procedure Rules, a public defenders system being birth as we speak, an increase in prosecutorial capacity, and increase in judicial complement. All of these things tie into the amelioration of the system to treat with that kind of numerical load that I have just reminded us of. But, when we come down to the law of evidence, it is the law of evidence that is most critical to be managed.

So let us go to the Bill in a little deeper form. The Bill, Madam President, is in the six parts that I have divided them into. As we get to clause 1, of course, it is the Evidence (Amdt.) Act, Short Title. Clause 2, sorry, and clause 1 says that the Act comes into effect on such date as the President made by proclamation put it. So it is intended that they will have be some tilling of the soil, and public education, and preparedness into this foray that we are advancing here.

"…the Act shall have effect even though inconsistent with…"

—sections 4 and 5. Yes, we are tripping the rights that I have identified, certainly in respect of section 5. That comes about in the anonymous witness evidence rules that we will come to, and I will come to the constitutionality in a moment.

But when we get clause 3. Clause 3 does a very interesting thing. It includes an interpretation section to the Evidence Act for the first time. And

I would like to say clause 3 in effect is going to repeal, via clause 5, section 14 of the Evidence Act, section 14(1). Why are we putting in an interpretation section? We are putting it in to make sure that the use of the terms "document" and "statement" can survive by way of application to the entire Act. Why? In serious complex fraud matters where you have terabytes of information, hundreds of thousands of documents to be put before the court, the admissibility of computer evidence and the admissibility of documents as computer evidence stands becomes a real matter.

We have seen the stories where the court takes four or five days to read out the charges alone to someone, because of archaic principles that the charges must be read aloud, et cetera. But when we are dealing with the admissibility of documentation in major fraud matters as are at the cusp of the commencement of prosecution in this country, and I would not say much more than that, but there are some very old matters that at the cusp of prosecution. This becomes necessary.

If we get to clause 4, clause 4, is where we go into the other four purposes that I have identified where we are coming through the identification procedures, the electronic recording of interviews, the special measures, the use of video link, the witness anonymity aspects, and then the CCTV. It is all of those. Sorry, forgive me, the five matters enveloped there. So, clause 4 is the lion share of amendments. In clause 4, when we introduce into the Act a new Part 1A, we call it the police and criminal evidence and then we go through the creation of divisions and we put out three divisions.

First there is the general division which is the definitional aspects that I have just referred to for the reasons that I have. We have taken in this the opportunity to harmonize laws which we have introduced elsewhere. We have taken definitions from the Children Act, we have taken definitions from the regulations, for instance, master copy, et cetera, in the existing law. Very importantly, we have broadened the definition of "police officer". And you will see in the definition of "police officer" that we have introduced the fact that a police officer includes a special reserve policeman.

Why? The Commissioner of Police has already publicly stated that in the reform of the prosecutorial arm of the police that specialist investigators—let me underline this—specialist investigators including forensic accountants, and lawyers from other jurisdictions, will be admitted to the Trinidad and Tobago Police Service as policemen, as special reserve policemen. Why? Because the admissibility of evidence is an easier task via a policeman than an expert talking through a policeman who does not understand the subject matter.

So, when you take 36 forensic accountants, as the number now stands, coming into the TTPS to lead evidence as policemen, you are changing Trinidad and Tobago in a fundamental way that has never happened before. And may I underline, Madam President, that is why this Attorney General's office ensured that the Anti-Corruption Investigation Bureau had no place with an Attorney General having a connection to that because in our view we felt that it was improper for a politician to be involved in the police work of Anti-Corruption Investigation Bureau management. And that will make sense soon enough.

Madam President, the identification provisions in *Division 2*, which is the new proposed section 12A go forward, I will put it in summary point. We provide a hierarchal approach to suspects being identified by witnesses. We go through the standard existing procedures as appear in Standing Order 29, and as improved by Code D of the Revised Code of Practice for Identification of Persons which is the PACE legislation up to 2017.

We then go through the need to have a first description, we provide the number of photographs, we give the particulars as to how that is to managed, how you present photograph evidence, when and in what circumstances an investigating and identification officer is to be involved, somebody who is not involved in the process, but supervises the watching and recording of all of these approaches to suspect identification. We go through the types of investigation procedures and very importantly in the new proposed 12E as in echo, we deal with the priority. The priority is identification using video medium. Then next, identification in accordance with an identification parade, identification next in a public place with consent of the suspect, identification in a public place without consent of the suspect, identification by confrontation.

Now, I know that Trinidad does not have a well-developed maturity as it relates between certain matters between prosecutorial aspects and defence aspects. I am aware of that. This methodology for the introduction of a priority and circumstance where you have an investigating officer, an identification officer who is a neutral party, the recording of consent, the recording of lack of consent, the reasons, the process of specifying that you must hand it over to the suspect, that the suspect must be represented, if not

represented that the suspect must have a JP certify the positions. These particulars put out in particular form here now allow us in the specified identification to grow the practice up to where it ought to be. It is entirely unsatisfactory in the domain that it lies right now, standing or sitting.

Madam President, we go into the rights of the consent, the rights of the accused in providing consent and caution. We see that in the new proposed section 12F. We deal with the suspect having a representative in the new 12G. We then deal with the suspect not having a representative, the circumstances that prevail there, the cautions that should happen in 12H, et cetera. And then we go into the "Eye-witness to be informed", and the procedures and cautions there in the new 12I. "Identification using video medium", et cetera. And the one that I know causes great concern is the "Identification parade" and the confrontation approach to identification. You can see that in the new 12K and 12L. And here it is, I know that the practice needs to mature, it needs to be certain, but we suggest and we certainly are advocates of the fact that this particular approach this specified prescriptive approach in parent law is the manner in which we get there.

Madam President, the "Identification by confrontation", which is the one that the police most often run to first, because they do not discipline themselves to go through the other mechanisms that the court really says ought not to be approached first. "Identification by confrontation" is in the new section 12O and that one is the one that I know takes the massaging to get right. But, this law provides the methodology by which there must be certification, and more than just pretending they cannot find witnesses on the outside. They look for somebody, there is no incentive to get somebody that

resembles a witness stepping forward. So when a suspect comes out and the identification is meant to be that you get people that look, assuming that it is me, that people who look like me, or sound, same height, same racial background, similar form of dress, et cetera, where do you find these people? How do you get them to stand on the parade? What is the incentive to get them there? Those are real issues in our society that the police quite often skip over and go directly to confrontation, which is not the most ideal of circumstances.

In *Division 3*, this is beginning in the new section 12Q, we deal with interviews and oral admissions, et cetera, but I would like to say that if you read this Bill it is just as straightforward as you can get. It is very prescriptive, it is very detailed and there is precedent.

I would like to jump in because there are only 10 minutes left of presentation time. I would like to jump into *Division 4* and this is at page 28 of Bill. "Special Measures Evidence by Video Link and Witness Anonymity Orders". Effectively, Madam President, we have proposed new 12AA, 12AB, 12AC, 12AD, AE, AF and when we get to AG with the grant of the witness anonymity order right down to 12H. This particular aspect of it is one that is not only novel, but quite controversial. And I would like to tell hon. Members that the UK House of Lords in 2008 in the case of *R v Davis*; and I am sure my colleagues have read this, those who have access to the laws.

R v Davis gives a phenomenal overview of the insistence by the British House of Lords that they would stay away from the development of the common law to whittling away the practice of the right to face your

accuser in open court. We in common law systems grew up in the English concept, stepping away from the 1600 experiment where we were dealing with special courts and the Star Chamber, et cetera. We stepped away from those processes and it has been a golden aspect of our law that look, you have the right to face your accuser. You want to test the credibility of you accuser; very different from the inquisitorial system on the European Continent. But this case, if ever you had time to read the history of the development of this law, *R v Davis* is perhaps the locus classicus in treating with this. But in the end result, *R v Davis* simply says this is a matter for the Parliament.

3.00 p.m.

And what I can say is that the UK response to this was that *R v Davis*, basically, struck down a murder conviction on the back of evidence which involved persons being anonymous witnesses. The House of Lords struck down the two courts before it and said, "Listen, this was a dangerous thing to be done, let the Parliament treat with it". They went through the traversing of rights, but what they did say resulted in an amendment to the English law, firstly, by way of a sunset provision in the Criminal Evidence (Witness Anonymity) Act of 2008, and then after further consideration, it found itself into Part 3 of the Coroners and Justice Act, 2009, of the UK. So we have had 10 years of UK consideration of this law; 10 years of European Court of Human Rights on this law, and we have also had umpteen years in treating with this law from a number of other jurisdictions, Madam President, and in particular, I refer to New Zealand, I refer to Australia, et cetera, and there is an ample amount of learning to be found in the

Blackstone's fulminations and publications. So this concept of the use of an anonymous witness order has been well traversed for over 10 years.

Now, in the context of the Bill, I think it important to put out that the anonymous witness order which we see popping up, is something which is very much a balancing of rights. The judge, in being invited, in the Trinidad and Tobago context—first of all, we do not allow these procedures only for witnesses. We have said "a party". We have left it broad enough to say that if you look to 12AA:

> "Subject to subsection (2), in any criminal proceedings, the Court may, on an application made by a party to the proceedings or on its own motion, issue a direction that a special measure or a combination of special measures shall be used for the giving of evidence…"

And we treat with the witness vulnerability, because we are treating specifically—and what I mean by this, we are treating with the case of child offenders as well, and how we manage these positions.

But, very importantly, we defined in 12AA, new subsection (3), who is a "vulnerable witness" and it means:

> "…a witness whose ability to give evidence or the quality of…evidence is likely to be affected by reason of—
>
> (a) the age or immaturity of the witness;
>
> (b) the physical disability or mental disorder…
>
> (c) any trauma suffered by the witness;
>
> (d) the fear of intimidation of the witness; or
>
> (e) the witness being a virtual complainant in proceedings for a sexual offence."

We allow the court to go through closed proceedings; we allow the court to screen a witness; we allow the court to use video link so that the witness is not present in court, and can do so remotely by video evidence; we allow for that video evidence to be deemed such that the person is in the witness box, because the Evidence Act in clear terms says that you should be in a witness box to give evidence; and we allow for appearance further to be considered by further application. Here is where we go. We go for the 12AF and we look to new subsection (4):

> "The Court, in determining whether to allow an accused person to give evidence by video link, shall in addition to the matters specified in subsection (2) and (3), take into account…"

And then we set out risk factors:

> "(a) the risk that the personal security of a particular person including the accused person, may be endangered…
>
> (b) the risk of the accused person escaping…
>
> (c) the behaviour of the accused person…
>
> (d) the conduct of the accused person while in custody, including…
>
> (e) safety and welfare…"

These are all the circumstances as to why you would want to ensure that maximum security high-risk prisoners as are in our courts right now, who when they come to Port of Spain or San Fernando, have to shut down the entire city, blocking off streets, that we can treat with them by video link. This is of epic proportion to Trinidad and Tobago's advancement.

But it is the new section 12AG, "Witness Anonymity Orders":

"(1) Where there are reasonable grounds to believe that the identity of a witness should be concealed from an accused person and the public so as to protect the witness, any of his relatives or any other person, the Court may grant a Witness anonymity order.

(2) A party to criminal proceedings may, in relation to a witness, make an application to the Court, for a Witness Anonymity Order."

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

Hon. F. Al-Rawi: Thank you, Madam President. And before a court grants an order as new subsection (3) provides:

"…the Court shall consider whether—

(a) the proposed Order is necessary to—

(i) protect the safety of the witness or another person;

(ii) prevent any serious damage to property; or

(iii) prevent real harm to the public interest;

(b) having regard to all the circumstances, the effect of the proposed Order would be consistent with the accused person receiving a fair trial;"

And then we specifically ask the court to consider the general rights of the accused person in criminal proceedings to note the identity of the witness, to test credibility, to deal with whether evidence may be for another purpose for implicating, et cetera, and fear.

So this particular proposed section 12AG, lifts from all the case law.

It lifts from precedent law in other jurisdictions. It allows Trinidad and Tobago, for the first time, the opportunity to get witnesses to step forward because a witness has a chance of saying, "I will testify if I can be protected". But, very importantly, we balanced the rights of the accused to ensure that the accused has a fair shake. The accused's lawyer, who has a balance to the court and to his client, that accused's lawyer has the right to see who the person is, the judge, the jury in certain circumstances. We are dealing with protection from the accused person.

Now, a very important point, what about if this Witness Anonymity Order is made and I object to it?—I want to appeal it, something that I had a quick discussion before Parliament started on this. So, of course, there is an inherent appellate process route in our courts, but the criminal law has not grown up, such that we have procedural appeals, and the introduction of a procedural appeal route is something that does not exist in other jurisdictions, because it would be akin to allowing a diversion and separation away from the fact that you take all of your massive points on appeal in the round. That is the way the criminal law operates right now.

In fact, I dare say that an accused has a better chance in taking it in the round at the end of the trial in a substantive appeal, because that is the way the law is designed. There may be room for that discussion in another form of architecture, and that is whether it ought to be introduced in that conceptual basis—procedural, appellate routes, as we have under the formula for Civil Proceedings Rules. In the Civil Proceedings Rules, it is there that we bifurcate what a procedural appeal looks like from a substantive appeal. It is not done in the parent law.

So, Madam President, this law certainly has a legitimate aim. This law certainly has a careful intention to find proportionality by going no further than we really ought to. Yes, it does infringe or traverse some section 4 and 5 rights. There has been ample commentary in umpteen cases which I can easily recommend, but time does not permit. The point is, other jurisdictions certainly have this well into operation. In the case of United Kingdom, even though the common law had gone there before by virtue of parliamentary amendments from 2008 go forward, they have dealt with it.

The rest of the Commonwealth has dealt with it, and our laws as it relates to the three-fifths issues in the Children Act, the Evidence Act, and we look to the Sexual Offences Act, we already have the utilization of protection via screens, et cetera. So our law has statutorily gone there already, so we fit within that last limb of Baroness Hale in Suratt or any one of the other cases that talk about constitutionality.

Madam President, I look forward to the contributions of my learned colleagues. I welcome their suggestions. I know that this appears to be thick law. I have tried to give the simple purpose in as digestible a format as one can in 45 minutes, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Gerald Ramdeen: Good afternoon, Madam President, again, and thank you for the opportunity to contribute to what I consider a very, very important and significant debate on a Bill to amend the Evidence Act, Chap. 7:02. Madam President, since this Bill was laid on the Order Paper, the Opposition has consulted with a number of practitioners from the Criminal Bar, a number of stakeholders, who I will demonstrate are essential to the

workings of this piece of legislation if it were to pass with the requisite majority, and I want to start my contribution today, Madam President, by thanking all of those persons who have assisted the Opposition [*Desk thumping*] and who have provided very important, critical and relevant advice with respect to the reach of this particular piece of legislation, and I want to use that as the stepping stone to get into an issue that the Attorney General touched upon, which is the issue of consultation.

The fact that the Attorney General indicated that there was consultation—the Attorney General's Office received correspondence from the Trinidad and Tobago Police Service and the Judiciary—but, to date, there has been no receipt of any submission from the Criminal Bar, the Director of Public Prosecutions or the Law Association and that is disappointing to say the least, Madam President.

I myself as a member of the Law Association, over the last few days made enquiries of the Law Association as to whether and why—what was the position? I tried to get copy of whatever would have been submitted to the Ministry of the Attorney General and Legal Affairs, and I can indicate that the position as indicated by the Attorney General is accurate.

I understand that—and the Attorney General can advise me and I would give way if he wishes—the President of the Law Association has indicated that they wish an extension of time to put a submission before the Attorney General with respect to this particular piece of legislation. That is my understanding as a member of the Law Association.

Hon. Al-Rawi: The record before me, I do not have that particular point—letter dated 13 September, 2018; e-mail 03 October, 2018, from us,

acknowledged on the 3rd of the 10th, 2018; e-mail of 12 October, 2018, e-mail and telephone conversations—all coming from the AG's Office—25th of October, 2018, and other positions. I have received nothing from the Law Association since September last year.

Sen. G. Ramdeen: Much obliged, hon. Attorney General. But, Madam President, this is a piece of legislation that cannot work and will not work unless all of the players have all hands on deck. [*Desk thumping*] And I hear what the Attorney General has said but I too, have my list here and I would like to put those questions on the *Hansard*.

The Judiciary has been consulted. Was the Magistracy consulted with respect to this submission by the Judiciary? And I will get into why that is important. The Justices of the Peace Association, there are 16 references to the work of the Justices of the Peace in this piece of legislation. I will highlight them to you as we go along. Have they been consulted? There is an association called the Justices of the Peace Association, you know. Let us at least give them the respect where they have to perform a critical, critical—safeguarding the interest of the accused under this piece of legislation. Can we at least give them the respect to consult them [*Desk thumping*] to ask them whether they are ready to perform the function that they have to perform under this piece of legislation? I repeat. There are 16 references to them in these amendments that have been produced.

Madam President, this piece of legislation is driven, or has to be or is foreseen to be driven by the Office of Director of Public Prosecutions. The engine room of the prosecutorial process, under our law, by virtue of section 90 of the Constitution, is driven by the Office of the Director of Public

Prosecutions. I do not think, Madam President, any piece of legislation that requires such an important institution to drive the legislation, that we could ever sit here comfortably knowing that we have not had—let me not say "we" but let me say the Government, the Cabinet, has not had the views of the Director of Public Prosecutions in relation to this particular piece of legislation. [*Desk thumping*] It is entirely—I am not laying any blame, Madam President, I am just saying what the position is to be.

You see, Madam President, on more than one occasion in this Senate, I have heard it said, rightfully so—it is an adage that has withstood the test of time—that perfection is the enemy of progress. And I have sat down in preparing for this debate and wondered about this thing, "perfection is the enemy of progress". But not getting it right is the enemy of both perfection and progress [*Desk thumping*] and we cannot get it right unless the person who is in charge of telling us, will this do what we want it to do?

The Attorney General says the most important issue as a country for us to confront is the issue of crime and criminality but, Madam President, that is not something that popped up yesterday. The Government has been in power for the last—this is going into their fourth year, and one would have thought that when you promised the country safety and security in 2015, that at least by 2019, the country would have said they are a little bit safer or a little bit more secure. But the truth about it is, when you talk to the common citizen who has to go to work and send their children to school and return home on a daily basis wherever you are—from Scarborough to Icacos to Sangre Grande to Point Fortin to Guayaguayare—the position is nobody feels safer today and nobody is more secure. [*Desk thumping*]

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

It is not open to the Government to be able to lay that blame anywhere else because, yes you have a Trinidad and Tobago Police Service that has to protect and serve, but the responsibility to protect the citizens of this country lies with the Government of Trinidad and Tobago. [*Desk thumping*] There is no getting away from that. [*Desk thumping*]

Now, Mr. Vice-President, I want to get into a very, very important issue for me. The Attorney General says there are five divisions in this piece of legislation. [*Crosstalk*] Six? Sorry, I apologize. Six? The way it is set out in the legislation, it is five. It is *Division 1*, 2, 3, 4 and 5. There is no division 6, but that is just the way it is set out. I am guided. But this is the position. This piece of legislation, whether it be identification parade, oral confessions, witness anonymity, all of these things: who has to implement this? Who has to implement this? Let us leave the prosecution aside for the time being. It is the Judiciary. And we will be burying our heads deeply in the sand which I am not prepared to do, to not analyze whether we are not putting the cart before the horse where, at this point in time, you bring a piece of legislation that vests, for the first time, very, very serious powers into the hands of the Judiciary. And when I say the Judiciary, I mean collectively the Magistracy, the Masters and the High Court judges.

Can we honestly sit here and put our heads into the sand and not realize that, at this point in time, the Judiciary that has to implement these powers that are being given by this piece of legislation is broken? It is at the darkest point in the history of our country [*Desk thumping*] and let me give you the real examples of that, Mr. Vice-President. For the last two

Mondays—Monday and Tuesday last week and Monday this week—what you have going on, on the steps of the Hall of Justice, is that the workers of the Hall of Justice who have to turn, put their shoulders to the wheel every day, are praying for justice for the first time in this country. [*Desk thumping*]

And we can bring all the legislation we want, Mr. Vice-President—we could bring all the amendments to the Evidence Act, to the Police Service Act, you could bring judge and judge alone, plea bargaining—at the end of the day, all of this that the Government puts before us is not going to work unless we get the Judiciary working again, and that is the motto of the Opposition. We, as an Opposition, readying to take up the reins of power in this country will put the Judiciary as a priority on our agenda. [*Desk thumping*]

And, Mr. Vice-President, this is not the Opposition talking, because I have a message there on my phone—I do not want to read it into the *Hansard* as yet—something I read last night about a statement by the Prime Minister, but I will get to that in a short while. Let me tell you where we have reached. It is so ironic that today I picked up the *Newsday* newspaper and the headline is "Judge vs court executive", Mr. Vice-President.

Mr. Vice-President, you may not have the benefit of it, but for those who occupy the seats in this Chamber that have go to work every day in the courts of this country, we understand that when you speak about the powers that are given to the Judiciary here, these powers that are given under these five divisions of this particular piece of legislation, they cannot work without the court staff, you know. A court does not incorporate itself with a

judge alone, you know. A judge works with the staff and justice cannot be dispensed in this country without those people who come to court every day—give of their lives, leave their families at home—and today those people's lives, their livelihood is at risk because of things that have been done right here. Because in the criminal division Bill which has been passed, I stood up right here and I told the Senate that the powers that were going to be given to the Court Executive Administrator in that piece of legislation, were going to bring the Judiciary down and so said, so done. Unfortunately, that has come to pass.

And today, Mr. Vice-President, in the *Newsday* headline you have a judge of the High Court—not only a judge, a senior judge of the High Court—indicating—I cannot read out all of it, Mr. Vice-President—that the Court Executive Administrator must know her place and respect the judges of the High Court. How could that be? How could we reach to that point? Do we not expect that this piece of legislation, the amendments to the Evidence Act, do we not understand that this can only work if the judges are given the support? We talk about giving support to the TTPS. We talk about giving support to the Director of Public Prosecutions. What about the support to the Judiciary who has to get this done?

Mr. Vice-President, let me read two sentences to tell you where we are.

> "In a strongly worded e-mail, Justice Carol Gobin took offence to the 'tone' used by court executive administrator Master Christie Anne Morris-Alleyne in response to her request for a meeting to discuss changes in the Judiciary."

And this all stems from what we are doing here, you know, because when you go on in the article, Mr. Vice-President, you will see that this is all part of the Government's criminal justice reform that this piece of legislation is supposed to be a critical part of.

So, Mr. Vice-President, before we get off the ground with this piece of legislation, I want to indicate this Opposition will stand with every single worker of the Judiciary whose livelihood and job is a threat right now [*Desk thumping*] and this Opposition will do all in its power to prevent any officer in any part of the State that seeks to exercise powers to the detriment of any citizen of this country. [*Desk thumping*] So, let me put that to one side.

Right now, I indicated that the Director of Public Prosecutions Office is the driver under this piece of legislation. Do you know where we are with the administration of justice, Mr. Vice-President? The two significant movers in the administration of justice in this country: the Attorney General's Office and the Director of Public Prosecutions. Section 76 of the Constitution vests that power in the Attorney General. Section 90 of the Constitution vests that power in the Director of Public Prosecutions. Mr. Vice-President, do you know where we are right now, where we are, where we are talking about moving the criminal justice system along? This is where we are physically. Let us come to reality.

[MADAM PRESIDENT *in the Chair*]

The Director of Public Prosecutions does not have a proper office to run his office from, so he is going to rent a building on Park Street, $500,000 a month. The Attorney General has just been boxed out of Cabildo Chambers and he is coming down to Tower C. So the two most important

drivers in the justice system in Trinidad, they are virtually squatting in Port of Spain, squatting.

Madam President: Sen. Ramdeen, may I ask that you finesse the language a lit bit. Okay?

Sen. G. Ramdeen: Sorry, Madam President, okay. They are wanting for accommodation in Port of Spain, Madam President. And Madam President, that is not a simple thing to deal with, you know, because we have been told in this Parliament that the Director of Public Prosecutions will get his office at Gulf City Mall for more than two years. It is two years we have been saying that—we have been told that, and as we speak today that has not materialized as yet.

The Attorney General said in his presentation, there are 165,000—I wrote it down here—cases in the Magistrates' Court. But you know what is shocking about that, Madam President? Two years ago, on the 27th of July, 2017, we were told that the motor vehicle and road traffic amendment will take 100,000 cases out of the Magistrates' Court. Well, we are still waiting on that 100,000 cases. That was proclaimed—sorry, that was assented to, not yet proclaimed. So in 2017 we were told that. The Chief Justice did his annual opening of the law term, we heard 100,000 would be removed. This year we will hear it again, 100,000 will be removed, and nothing is happening. Nothing has happened with respect to taking those 100,000 cases. So you know what, Madam President? One has to ask themselves: is this piece of legislation—just like how the promised relief that was promised under the motor vehicle and road traffic amendment, when that was promised that the 100,000 cases will come out, you are adding 30,000 cases

every year, you know. How is this going to affect that? How is this going to better the situation at the Magistracy?

Right now, this piece of legislation has to be implemented in a Magistrates' Court in San Fernando, the second city in this country where there is no Magistrates' Court. They are borrowing accommodation at the High Court, and that is going on hunky-dory. Right? Court is like a junior sec, sitting on shift, 9.00 a.m. to 12.00, 12.00 p.m. to 4.00. I mean, do we not think that we should put the horse first and fix the things that are broken now? Give the institutions that need the resources to get this working the resources that they need so that when the legislation is passed, if it is passed, we can be comfortable or comforted by the fact that the institutions that are supposed to be the drivers of this piece of legislation will be ready, willing and, most of all, able to get the job done because, Madam President, all we are doing here, with all the laudable aims that the Attorney General has set out, is just "spinning top in mud", you know. That is all we are doing here, and I say so respectfully, Madam President.

Madam President, the Attorney General in his presentation, on three occasions, made reference to the Witness Protection Programme. I want to remind this country that during the 1990s—between 1995 and 2000—you know, we did not have, like the Attorney General said, we did not have any Witness Anonymity Order, we did not have any amendments to the Evidence Act, we did not have a video link, we did not have CCTV, but you know what we did have, Madam President? We had the most dangerous situation when it came to witnesses between the years 1995 to 2000.

3.30 p.m.

We had the situation where once an accused, certain people accused were before the court, all of a sudden the witnesses would drop like flies and prosecutions would crumble. But you know what we had during 1995 to 2000?—we had a Government that was serious about the fight against crime. We had a UNC Government and a UNC Attorney General that did not need all of this to bring a prosecution of the person that was referred to in this country as the "gangland boss". And when Levi Morris came to give evidence in that matter, he did not do it by video link. He did not come and have a video recording. He did not say, "I would do it only—I am in the fear". The most dangerous group of people were existing at that time in this country and that organization was brought down by a Government that was serious about the fight against crime. [*Desk thumping*]

So, the truth about it is, Madam President, the reality of it is this, you could pass all the legislation you want, but if you are not serious about getting that legislation working, all of this will amount to nothing. And this Opposition in Government has proven by their track record that they were ready, willing, able and competent to be able to put machinery in place to fight the criminal element, did fight the criminal element and got rid of the most dangerous group of people without any legislation like this. [*Desk thumping*]

You know why I say that, Madam President, because we have heard over and over in this Parliament and in the Parliament before that, when the last Government brought legislation in two forms, perhaps two of the most critical pieces of legislation to fight crime, the Constitution (Amdt.) Bill to allow people to hang those people who were convicted of crime in this

country, you know what the then Opposition who boast about supporting 95 per cent of legislation by a People's Partnership Government did? They said, "Go and ask Ramesh how to do dat, we eh supporting dat." Right?

That is what they said to the Government, progressive legislation to categorize murders. They said. "Go and ask Ramesh how to do that." Go and do your work, and if you do your work, you will be able to solve crime in this country. Go and set up a proper witness protection programme. [*Desk thumping*] This issue, you know, we come here and we icing the cake about this thing about witness anonymity, perhaps the most pervasive intrusion into the rights of the accused, and let me get into that now, Madam President. You know, I heard the Attorney General say that in the United Kingdom, the courts, up to the House of Lords said, this is not a matter for the courts, this is a matter for the Parliament. You know why—even though the Attorney General explained that was the position taken in the House of Lords in Davis, you know, I do not think he went further than that to explain that the reason why that was so, according to the House of Lords, was because the Parliament is the voice of the people, and what we are undertaking here is perhaps one of the most serious debates of one of the most serious intrusions into the fundamental cores of the criminal justice system. Because what we are doing here, if it is passed, will allow persons to intrude into the rights, the fundamental rights of that criminal justice process, Madam President.

Madam President, the Attorney General cited two subsections of section 5 of the Constitution and indicated that, yes, these are the sections that require the special majority provisions under section 13 because they

would be breached, let me just add to that. This piece of legislation will, if passed, intrude upon the right under section 4(a):

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

It will intrude on:

> "the right of the individual to equality before the law and the protection of the law;"

And not very often, Madam President, that it is said—not very often it is said that that right 4(b) right is really a right that guarantees the equality of arms under the Constitution, and this Bill, especially *Division 4* and *Division 5* have the potential to intrude on that right to the equality of arms between the accused and the State.

This piece of legislation, Madam President, will intrude on section 5(2)(c), section 5(2)(d), section 5(2)(f), section 52(e) and section 52(h) of the Constitution, and I expected that the Attorney General would, in his piloting of this piece of legislation would have told us, well, if these rights are going to be infringed, as they are presumed to be where a section 13 majority, a three-fifths majority is required, I thought the Attorney General would have gone a little bit further and explained to the Senate exactly how the safeguards will be secured, and I heard him say, it pursues a legitimate aim and it is proportionate. But there is a serious issue with this piece of legislation different from all the others, you know, Madam President, and it is this: Before independence in 1962, we subscribed as a colony to the European Convention on Human Rights. That convention in 1962 would

have been merged into the constitutional rights that would have existed at that point in time, and this not Ramdeen expatiating. Madam President, this was recognized by the Privy Council in *Reyes v The Queen*, a very distinguished judgment that was delivered by Lord Bingham in striking down the death penalty provisions in Belize.

There is an important consequence of that, which is that we, those that study public law and constitutional law recognize that the rights that are enshrined under sections 4 and 5 are recognized as being qualified rights. But in preparing for this particular debate, Madam President, it is very clear that that general provision that these rights that are guaranteed under fundamental human right provisions of our Constitution are qualified does not apply to the right to a fair trial. The right to a fair trial is not a qualified right. [*Desk thumping*] Let me just put on the record that the authority for that proposition, Madam President, is the case of *R v K* (2001) UK, House of Lords, and in the speech of a very distinguished Law Lord, Lord Hope, this is what Lord Hope had to say:

> "The right of an accused under article 6(1)…"—

That is the same mirror image, with some changes that I will get to, of our fundamental rights provision under section 4(a) and (b) that are fleshed out in section 5(2).

> "The right of an accused under article 6(1) of the Convention is to a fair trial. As I observed…"—

That is Lord Hope.

> "As I observed in *Brown v Stott*…this is a fundamental and absolute right…"

It is a fundamental and absolute right, the only two rights that are guaranteed in any human rights document throughout the Commonwealth and throughout the world that are recognized to be absolute rights are the right to a fair trial and the prohibition against torture. [*Desk thumping*]

Therefore, when you come to interfere with those rights, Madam President, the issue of proportionality does not arise at all. It may pursue a legitimate aim, but, you see, that issue in Suratt about whether it is proportionate, it does not arise in this particular case, because it is an absolute right, you have no permission to intrude on that right. In the case of Davis that the hon. Attorney General made reference to is a very, very, very, important case. I want to just be able to read into the *Hansard* this, Madam President, in that case, a case where two murderers were challenging the issue of an anonymous witness giving evidence in their matter. This is what the House of Lords had to say.

> "It is a long-established principle of the English common law that…the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence."

That principle was subject to some long recognized exception and statutory qualifications.

> But there had been until recently no precedent of protective measures of the kind under consideration.

In that case, this is what the House of Lords had to say:

> Moreover the use of protective measures—

—which is exactly what we are dealing with here today:

> —such as those in the instant case was not compatible with the jurisprudence of the *Strasbourg* court. In the instant case the impact of the protective measures on the conduct of the defence meant that it had been hampered in a manner and to an extent which had been unlawful and had rendered the trial unfair. It was not open to the House in its judicial capacity to make such far-reaching inroads into the common law rights of a defendant, as would be involved in endorsing the procedure adopted in this first case.

And the Attorney General is right in saying, any further relaxation of the basic common law rule was for Parliament. There was nothing in *Strasbourg* jurisprudence that required states in the national law to balance anonymity against defendants' rights.

Madam President, it is often said and it was also said in this *R v A* case by Lord Johan Stein that there is a triangulation of rights when it comes to this type of legislation. You have the right of the society, which is represented by the public interest, the right of the complainant—the victim—and the right of the accused. And as a Parliament we must be very careful and we must be very cautious when legislation is brought to a Parliament to intrude on these rights that will allow, Madam President, someone to come before a court and give evidence without their identity being known, without their voice being known, without full and frank disclosure being given, and that person can be the critical witness that lies between a man and his life going to the gallows.

We must understand the seriousness of the task that we have been given to undertake here today, because it is not an easy task that we must

take lightly that what we are being called upon today is to overturn, override and intrude what has been the common law of our country from time immemorial. [*Desk thumping*] You know why it is dangerous, Madam President? Legislation like this is dangerous, and it is more dangerous where a society is desperate for relief from the criminal element, because in those times you are easily persuaded to give up those rights that are guaranteed to you on the basis that relief would be brought to you if this type of legislation is passed. It is easy to stand up and to say, make anonymity orders, make special measure division orders to facilitate the prosecution.

Madam President, do you think that it is right for us to overhaul the Standing Orders of the police service by *Division 2* of this particular piece of legislation, put all of these measures in place that are supposed to guarantee that when identification evidence is brought before the court, it will be untainted and it would be able to secure prosecutions, when we cannot guarantee to ourselves that the people who are supposed to implement this, being the Trinidad and Tobago Police Service, will be free from being corrupt and corrupt the system when that evidence is brought before the court? [*Desk thumping*] Because every single day, Madam President, the two first divisions of this, the second and third divisions of this piece of legislation, the identification—and the other Members of the Opposition would go into great detail on it—the identification evidence and the oral confessions and oral admissions are not the reasons why people are prosecuted in this country, you know, they are the reasons why people are not prosecuted, and prosecutions fail in this country. What have we been told as a Parliament that is being put in place to ensure that this piece of

legislation, if passed, is going to guarantee a process that is untainted? What have we been told with respect to the training of the police officers who have to implement the oral confessions provisions and the identification provisions that are found in *Division 2* and *Division 3*? We have been told nothing.

So when the legislation is passed there is no guarantee that anything in the Trinidad and Tobago Police Service is going to change. Every single day we open the newspaper and you see one corrupt police officer after another police officer before the court, does that not cause us some concern? [*Desk thumping*] Madam President, this piece of legislation, and I say so respectfully, the Attorney General said, the precedent for this in the United Kingdom and throughout the Commonwealth has since been, since 2008, 2009, this has been on the law books in other jurisdictions. Have we been told what is the difference it has made to prosecutions in those jurisdictions where this has been implemented?—not that that is going to be a mirror image of what is going to happen here. But if this does not work—

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

Sen. G. Ramdeen: I am obliged, Madam President. If this does not work in the United Kingdom where the police service there has all of the mechanisms and all of the resources to get it right in implementing this, you expect it to work here in Trinidad and Tobago? Really?

Madam President, I want to say to the Government, it is not because you see it in the United Kingdom—I have heard them say in the debates that one of the—they referred to one of the investments that the last Government made as the Prime Minister went to China and say, "We want one ah dat",

and they bring it here. Well, I can tell you, you know what this Government has done, they looked to the United Kingdom and say, "We wuh some ah dat" and we bring it here in a piece of legislation. Absolutely, absolutely no proper foundation, no institutional foundation, nothing has been put in place, but "it sound good dey so bring it here, we go sell it to the population, pass it". And you know what would be the result of that, Madam President?—when it is passed and does not work, it would be like the Anti-Gang, "Doh blame we, you know, dais de police. We do our part, we pass the law." Do not forget that this piece of legislation is to be driven by the Trinidad and Tobago Police Service, and a week ago the Trinidad and Tobago Police Service "telling us that they doh even have money" to pay their bills. [*Desk thumping*]

So, let us get serious, Madam President. This Opposition has demonstrated by its actions, we are prepared to support legislation that strikes the right balance between the citizen and the State. We are prepared to support legislation that is in the best interest of the people of Trinidad and Tobago, [*Desk thumping*] but we are not prepared to put laws on the law books of this country that will be to the detriment of any citizen, that will erode the fair trial rights of any accused, because it is very easy to prescribe these types of laws. The difficulty with it is that either the Attorney General say, "Doh worry about procedural appeals in criminal matters, the best thing to do is take it at the end." So you know what will happen with that?—a man who must face a capital charge must sit down in the dock, hear the evidence, listen, "doh see", hear somebody who "he doh know" give evidence against him; let the death warrant be read to him, let him go up in

the gallows—and I was before the Court of Appeal this morning, this morning in a matter where the Court of Appeal was telling a man who is sitting in the gallows for the last seven years, "Wait two more months for the notes, nah, because we eh ready to do your appeal yet, the notes eh ready." Seven years in the—

Madam President: Sen. Ramdeen, you know the rules.

Sen. G. Ramdeen: I am obliged, Madam President. I apologize. All I am saying, Madam President, is that is an example of a broken system. It is a system that the voiceless cannot voice the suffering that they are suffering with, and this is a Bill that will put more suffering and more hardship on the poor people who cannot get justice in this country. This is not going to make the situation any easier than that, and as it stands now, I want to close by saying, you will not have the support of the Opposition to engage in that. I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Seepersad.

Sen. Charrise Seepersad: Thank you, Madam President, for the opportunity to contribute to the debate on the Evidence (Amdt.) Bill. Madam President, the proposed amendments are to ensure that the evidence is gathered using modern and technologically driven methods. We have seen too many cases fall apart because of the inadequacy of the methods now used in collecting and presenting evidence. Also, witnesses give statements to the police and when they go back to their homes they are threatened or even bribed. At the trials, witnesses say they cannot remember, they forgot, they lied, they had amnesia, and there are many other reasons—"this did not happen", "I am suffering", or whatever. Therefore we

need to have ways of capturing irrefutable evidence from witnesses as close as possible to the time of the incident.

Madam President, we have heard on numerous occasions of evidence being tampered with, eaten by rats, gone missing, so amnesia and wilful neglect exacerbate the issue, therefore I have no reservation in endorsing the upgrading and modernizing of the evidence gathering and presenting processes as identified in the Bill. However, I do wish to caution that every electronic system can be tampered with or manipulated, either accidentally or intentionally rom both internal and external sources.

Time and time again we hear fake news where video, audio or other electronic material are changed on social media and other places; therefore, it is imperative that the integrity of the devices and systems are such that only usable and irrefutable evidence is collected, secured and presented to the courts. Only in this way will perpetrators of crime face the consequences of their actions with increasing successful convictions. Thank you, Madam President. [*Desk thumping*]

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

Sen. Garvin Simonette: Madam President, I thank you for the opportunity to make a contribution to this very important Bill aimed at amending the Evidence Act, Chap. 7:02.

Madam President, it is important for the listening population to understand, in rather simple manner, what is before this honourable Senate today. And I wish to start with a position put by my learned friend, Sen. Ramdeen, regarding the common law and the role and function of Parliament. The hon. Attorney General of the Government of which I am

quite proudly a Member, has been seeking for some time to improve and amend the legal provisions relative to treating with and dealing with the issue of crime. Fundamental to a respect for the law by all concerned is a recognition that those who commit crime are answerable, that there are mechanisms to bring them to answer and to justice, and that that is done within a reasonable period of time, of course, adhering to all the dictates of the protections of the Constitution to a fair trial, a fair hearing and the right to counsel, et cetera.

Clearly, where you look at the regime of criminal justice and criminal law with regard to the conduct of criminal trials, there is the requirement on the part of the prosecution to adduce evidence to substantiate the charges that the accused is asked to answer. That evidence is produced in many forms. It can be produced orally, it can be produced in documents, but for far too long the status of adducing evidence in criminal trials has remained unaddressed, and the Attorney General shared with the country the length of time that this has been in a state of anachronistic paralysis.

Now, when we intervene as a Parliament, we are not intervening in any contravention of balance between Parliament, the courts, the common law, et cetera. As Sen. Ramdeen ought to know, from elementary tenets of law, the highest court of the land is the Parliament. I repeat, the highest court of our republic is this Parliament, and that is why the House of Lords in Davis deferred to Parliament to intervene in changing what was well-settled, long-standing common law with regard to the status and exposure of vulnerable witnesses, and the old and tested regime of permitting an accused full access to the identity and all that an accuser or witness was saying

against him or her and the opportunity to cross-examine such a witness. And this is precisely what this Parliament is now being asked to do, intervene in the area of creating a regime for bringing into being evidence being led and evidence being adduced in one area, which is the area of witness anonymity that Sen. Ramdeen chose to focus on as being fundamental in depriving the accused of his right or her right to a fair trial.

We are not engaging in any travesty of either the courts or the common law; we are simply doing the job that the people have put us here to do, and we are doing that, if I dare say, with particular distinction, attention to detail and balancing of the interest of the accused against the interest of the victims, and against the wider public interest in seeing that our criminal justice system begins to address the delivery of proper criminal justice.

One of the other issues I would like to dispose of before going into the framework of the Bill, and what I hope to demonstrate to be the balanced proportionality of the Bill, in being very careful to ensure that the procedures in these areas of taking new evidence, carefully permit for the accused to have access to all relevant information along each step of the way. I wish to dispose of, Madam President, the statement made by my learned friend, Sen. Ramdeen, that this Bill fundamentally intrudes upon and trammels sections 4 and 5 of the Constitution. It was a very deft submission Sen. Ramdeen made without going into the particulars of what he was referring to.

Sections 4 and 5 of the Constitution, as those of us who are familiar with the Constitution know, create the enshrined rights and fundamental human rights and freedoms that have been in existence since 1962 and since the reception of such rights flowing from the creation of the internationally

recognized human rights and privileges held there and established following the travesty of the Second World War. Section 4(a) of the Constitution, and I read, says as follows:

> "It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;"

4.00 p.m.

Sen. Ramdeen submitted that that right was trammelled by this Bill. He did not condescend to indicate or to point to which sections of the Bill so contravened that right. Madam President, I would like to suggest quite firmly that no such contravention of section 4(a) exists in this Bill.

Section 4(b) indicates:

> "the right of the individual to equality before the law and the protection of the law;"

My learned friend, Sen. Ramdeen, tried to indicate that by creating witness anonymity provisions that in some way the right to equality before the law and protection of the law were trammelled. That is the deprivation of the right of an accused to face his accuser/witness fully and frontally in a trial to which he is entitled to counsel of his choice.

As will be seen from the witness anonymity provisions which placed that regulation in the hands of the judge, there is a balancing procedure for

the accused counsel to test and to put questions to the witness whose anonymity is shrouded or veiled. It is not that the accused is deprived of any access to the anonymous witness. The identity of the witness, the face of the witness, the voice of the witness, to some extent, is indeed shrouded or shielded from the otherwise full view of the accused, as would ordinarily be the case where the witness is put into the box and the accused or his counsel are free to cross-examine, et cetera.

There is no absolute bar in the provisions, as we would see when we come to the details of the provisions, Madam President, to the accused having access to putting questions to the witness whose full identity is not exposed for certain reasons as set out in the Act, and which the judge must first consider very carefully before making a witness anonymity order. So it is not that this is imposed on an accused by the flick of a switch. There is a process under judicial management which must carefully be reviewed before such an order is made. When the order is made there still is provision for the accused representative to put questions to the witness whose anonymity is being shrouded.

Sen. Ramdeen then indicated that the provisions of the Bill would contravene section 5, and he went into detail, sections 5(2)(c), (d), (f) and (h). And I think it important to look at (c), (d), (f) and (h) of section 5 of the Constitution. Section 5 says, and I read:

> "Except as otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared."

And 5(2) says:

> "Without prejudice to subsection (1), but subject to this Chapter and in section 54, Parliament may not—
>
> (c) deprive a person who has been arrested or detained—
>
> (i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;"

Now, for crying out loud, where in this Bill is that right abrogated that the arrested person is not informed, promptly or with sufficient particularity, of the reason for his arrest or detention? It just simply does not exist, Madam President.

Section 5(2)(d):

> "authorise a Court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;"

Now, it very clearly is stated in the provisions in the Bill that wheresoever an accused person does not consent to certain things, he may elect to do so and that election is recorded in documents that are then made available to the process. So that there is no compulsion, by any court or tribunal, compelling any person to contravene or incriminate himself or herself in this Bill. Sen. Ramdeen has not pointed to any such provision. So that submission is with respect, incorrect, to say the least.

At 5(2)(f), Parliament shall pass no law to:

> "deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such persons the burden of proving particular facts;

(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without cause."

Where does this Bill contravene any of those provisions? [*Crosstalk*] Where did the Bill, I put it, contravene any provision of section 5(f)?

Section 5(h):

"deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

And that perhaps is where we find the requirement to have a special majority for the Bill. And that is in the limitation to the old common law of having full access to the witness who stands as the accuser, or witness who stands in support of giving evidence in support of the facts, leading to the conviction of an accused. That requires, Madam President, a review of what those provisions indicate to assess whether indeed there is a degree of balancing and there is a degree of fairness in the provisions.

If I may go to that provision which is *Division 4*:

"Special Measures, Evidence by Video Link and Witness Anonymity Orders"

Madam President, the first observation is that new section 12AA(1) provides for an application by anyone, any party in the proceedings, for a "special

measure or a combination of special measures", of course which includes a witness anonymity order.

Before the court and the regulation of this new procedure is put squarely in the hands of the judicial officer, being the judge, and before the judge embarks on an exercise to consider this, he must consider, she must consider, or be satisfied that:

> "(a) the witness is a vulnerable witness; and
>
> (b) the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings."

The "vulnerable witness" definition means—and it is given, and the Attorney General shared that with us, I will not go into it again.

> "The Court may, where it considers it appropriate to protect the identity of a witness from the public, or to protect a witness from being intimidated by the presence of other persons in the courtroom, issue a special measure direction that..."—the proceedings be enclosed, be in an enclosed environment as opposed to an open court.

So that that would otherwise contravene, as it were, 5(h) where the criminal trial is normally in, of course, open court.

> Madam President:
>
> "Where the Court considers it appropriate, the Court may issue a special measure..."—order.

In relation to the witness anonymity aspect of it, the Court is required to satisfy itself that the risk that the personal security of a particular person, including the accused, may be endangered if the accused person appears in

open court. The Court also goes on to consider the risk of the accused person escaping or attempting to escape—my apologies.

I do apologize, Madam President. In considering the witness anonymity order, the Court would consider that the order is necessary to protect the safety of the witness or another person, to prevent any serious damage to property or to prevent real harm to the public interest. Where the Court has considered those issues, then the Court has again to balance, that having regard to all the circumstances, the effect of the proposed order would be consistent with the accused person receiving a fair trial.

So the question of whether the witness anonymity order ultimately is against the fairness of the trial of the accused, and the accused entitlement under the Constitution to a fair trial, is a matter that the judge by the provisional requirement of the Bill, to become the Act, will ultimately exercise a weighing exercise to ensure that such an order did not affect the fair trial of the accused. But what it does indeed do, Madam President, is provide a modern regime for permitting otherwise vulnerable witnesses important to the administration of criminal justice, to come forward without the fear that they would disappear or be harassed, or their families disappear or harassed. Interestingly, my learned friend, Sen. Ramdeen, to point to no better flag of achievement than that of former Attorney General, Ramesh Lawrence Maharaj, in the Dole Chadee case in the 1995 to 2000 period of a former UNC Government.

What he has not been able to point to was any similar success in the subsequent PP Government's term, 2010 to 2015, nor could he point to any because none exists. Dare I say, that the success in the Dole Chadee case is

of no application to what has transpired in this country since the early 2000s with regard to the escalation of tampering with prosecution witnesses, the disappearance of prosecution witnesses, and the overall domination of the administration of criminal justice by elements who are convinced and rooted in criminal activity.

Madam President, the other areas of this Bill which seek to bring the administration of criminal justice and the ease of taking evidence into the modern era, is the use, of course, of video link recording. I practise principally in the civil commercial arena, and I can say that I have the distinction of having participated in the first civil video link taking of evidence in a case. It is not an ongoing case, it is a decided case, I will not cite the case, but the learned judge was Justice Boodoosingh, and interestingly we were taking evidence of a ship captain located in Ukraine by video link. It was extremely useful, it was extremely efficient and the Court was able to administer the proceedings without glitch, and that was in the High Court of Justice.

So that I can attest to the savings that would be achieved in establishing the taking of video link evidence from the Remand Yard on the one hand, and on the other hand the ability to take video link evidence from witnesses who may not be in Trinidad and Tobago, or who may not be proximate to the Court hearing the matter under trial.

The taking of oral evidence of admission and the admissibility into evidence of such admissions, regulated as it is by this Bill, is also of interest. Again, the provisions on that create a proportionate approach to fairness, where the statements taken of the admissions are to be handed to the accused

person and to his representative counsel, attorney-at-law, et cetera.

Madam President, the interesting other feature in terms of the modernization of the legislation and its facilitating of technology, is the provision treating with the CCTV camera evidence created in *Division 5*, where very simply but effectively, the provision states:

> "A video recording recorded by means of a closed circuit television camera shall be admissible as evidence."

Now, Madam President, much light, dismissive comments have been made about traffic offences, and the clogging up of the Magistrates' Court by traffic offences. This provision as it relates to traffic offences will in fact be of very, very telling importance. As we are aware, there is always a view taken by one driver, as opposed to another, as to what was done and what had occurred in a vehicular accident. The admission and admissibility of CCTV evidence will put a lot of that time wasting out of the equation of resolving these otherwise simple traffic accidents, and accidents that possibly are not so simple, but where the liability for the accident ought not to become the subject of some protracted procedure and court deliberation, where the establishment of the wrong party can be achieved by reference to a contemporaneous recording of what occurred at the accident.

So that I think that that provision of its own, 12AI of the *Division 5*, would, in the area of road traffic accidents, have an extremely important value. It also is of value in relation to the recording of other criminal activity, and it cannot be dismissed simply by saying, "Oh, we are promoting a society in which Big Brother is watching you." I think that the entire modern world is moving towards the imposition of CCTVs in public

places aimed at increasing the safety of the general community, and providing for the creation of this very type of quality material that would assist in the implementation of criminal prosecutions, where otherwise such prosecutions would be unassisted by modern technology.

Madam President, the taking of the evidence, just going back to one other provision before going to the other special provisions, by video link in relation to evidence taken at the Remand Yard, will, in a very meaningful way, save the taxpayer considerable sums of money in prisoner transportation, which of course such savings can be used to attend to the very issues that Sen. Ramdeen was pointing out as to court facilities in need of upgrade and so on.

The other provisions in the Bill on special provisions regarding assistance to vulnerable or otherwise disabled witness are to be welcomed, and those appear at *Division 5*.

In summary, the provision of, again, technology, to assist those who are disabled, and that is to be welcomed.

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

Sen. G. Simonette: Thank you, Madam President. If I may close by treating with the thrust of Sen. Ramdeen's admonition to this Parliament: Do nothing because the police are not trained. Do nothing because the Judiciary's Court Executive and a learned judge have argued over an issue. Do nothing because the laws in other places that have done this, you have not shown us whether it has worked. Do nothing because you first need to address the improvement to the conditions of the courts staff. Now, Madam President, it is a repeated admonition of Sen. Ramdeen's and of the

Opposition, if I dare say so, and that is a repeated admonition that this country should rightly reject because it does not at all in any way amount to a credible reason for not looking into the appropriate mechanisms for improving our criminal justice system.

Madam President, the do-nothing position is the standard position of the Opposition. Do nothing, say nothing and accordingly at the end of the day they will say that we have done nothing. [*Crosstalk*] So that if we were to listen to that, the country would indeed be at a standstill. We will not listen to it, we reject it and we will continue to act maturely, soberly and properly in the interest of the citizens of Trinidad and Tobago.

Thank you, Madam President. [*Desk thumping*]

Madam President: Hon. Senators, we will now suspend for the break and we will return at 5.00 p.m. When we do, Sen. Hosein will begin his contribution. So we are suspended until 5.00 p.m.

4.28 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed*.

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

Mr. Vice-President: Sen. Hosein. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Mr. Vice-President, for giving me the opportunity to join in this debate, the Evidence (Amdt) Bill, 2019, which is a Bill to amend the Evidence Act, Chap. 7:02. And, Mr. Vice-President, I would just like to begin my contribution with two quotes, and those two quotes come both from the *Trinidad Guardian* from two very prominent persons on different sides of the fence when it comes to criminal justice in this country. And the first quote is from the Director of Public

Prosecutions Mr. Roger Gaspard. And at the 1st of July, 2016, he was quoted as saying:

> "…the criminal justice system is in a crisis. And we are twiddling virtually on the edge of a precipice."

And the second quote is from Senior Counsel Israel Khan on 10 April, 2016, where he says the:

> "Criminal justice system about to collapse"

And, Mr. Vice-President, in 2016 these two esteemed gentlemen were able to foresee what will be taking place in 2019 in our country where the criminal justice system in our country has come to a grinding halt and it is in crisis and it has failed the people and the system has collapsed. [*Desk thumping*]

Sen. Ramdeen: Under the PNM, under the PNM. "Doh forget dat."

Sen. S. Hosein:—And this was not orchestrated by anyone else but the Government, Mr. Vice-President, because for far too long since this administration took the reins of power there have been several cries from all spheres with respect to the lack of resources that are being given to the DPP's office, to the Trinidad and Tobago Police Service and the Judiciary. The Judiciary, I believe, gets less than 1 per cent of the national budget every year, Mr. Vice-President, but let us look at what this Bill intends to do.

Does this Bill intend to speed up the criminal justice system? If I am going to give the Bill the benefit of the doubt, I will say, yes, because there are some provisions in the identification *Division 2* of the Bill that comes directly from Standing Order 29 of the Trinidad and Tobago Police Service. But, Mr. Vice-President, there are certain provisions in this Bill or certain

clauses that we as a responsible Opposition cannot and will not support because it intends to infringe upon the rights of citizens, [*Desk thumping*] on rights, the absolute right, as Sen. Ramdeen would have said, on a right to fair trial for a person who has been accused of a criminal offence.

And let us look at the international law on this issue, Mr. Vice-President. Article 7 of the Universal Declaration of Human Rights states that:

> "All are equal before the law and are entitled without discrimination to equal protection of the law."

And that is similarly enshrined in our Constitution. When you look section 5, subsection (2)(f) of the Constitution which Sen. Simonette read and said that the Bill does not interfere with. It says our Constitution protects every person charged with a criminal offence of the right:

> "…to a fair and public hearing by an independent and impartial tribunal;"

Mr. Vice-President, these constitutional provisions are not just written on pieces of paper published and placed in law books. This places an obligation on the State, Mr. Vice-President, so that the State becomes the trustee of your rights, not the infringer of your rights. The State must respect, the State protect and the State must enforce your rights; that is the rule of law; the State must never wilfully take away your rights and/or infringe them.

At the opening of the law term, Mr. Vice-President, 2017/2018 law term, the former High Commissioner to Canada Gérard Latulippe stated and I quote:

> "Without rule of law there is not democracy. If the laws and constitution of a nation cannot be enforced in a fair, honest and independent manner, the citizens live under the rule of perverted laws."

Mr. Vice-President, we in this Parliament do not intend to make any perverted laws because we want to ensure that while we balance the rights of those who are victims in the court—and we would like all of us who sit here in this Parliament would like to see speedy criminal trials, faster convictions—we must never forget that a person in our country by our very Constitution is presumed to be innocent until proven otherwise. And the evidence on which a person must be convicted on must be safe, it must be cogent and it must be compelling, Mr. Vice-President.

And when you look at a criminal trial in Trinidad and Tobago, because this Bill deals with evidence, before a person is convicted by a jury and now by a judge, the State or the prosecution must prove that that person would have committed that offence "beyond a reasonable doubt". And therefore, the evidence that we have to produce and the evidence that the State is allowed to produce must not fall below that muster of "beyond a reasonable doubt". It is a very high threshold, because from time immemorial the rights of an individual who is accused of committing a criminal offence has always been protected.

And, Mr. Vice-President, the Attorney General did speak about deterrence and he hopes that this Bill will act as a deterrent in terms of the manner in which trials are conducted and the speed of it. And I want to agree with the Attorney General, also, that we would also like that we have

laws in this country that will deter persons, but in order for a person to really be deterred, you must have a proper efficient system in which these laws must be applied in.

Mr. Vice-President, when you look at the current state of the Judiciary—I will go in to give some figures—you would see that clearly the courts are not ready for this, Mr. Vice-President. When we look at the last annual report of the Judiciary for the law term 2018, if you would allow me to go into the figures. When you look at the number of criminal indictments filed for the law term 2014, there were 258. For the law term 2015, 192; 2016, 171; 2017, 324; 2018, 46. Mr. Vice-President, we have seen a decline in the number of indictments filed. Who files indictments in this country?—the Director of Public Prosecutions. We must ask ourselves, why? Why is it so? Why do we have a decline? Imagine we went from 258 in 2014 to 46 indictments being filed in 2018; just imagine that, Mr. Vice-President.

When we look at the number of criminal indictments disposed of; let us go, again, 2014, 167; 2015, 171; 2016, 152; 2017, 138; 2018, 83. Why, Mr. Vice-President? Again, a decline in the number criminal indictments that are being disposed of. Is it that there is a lack of resources at the DPP's office? It is that the Judiciary is being starved for something?

All of these laws that we have passed in this Parliament, this Government comes here and promises us that this will help the criminal justice system, it will speed it up, and this is the evidence, this determines the performance of the laws that you have passed. [*Desk thumping*] This, Mr. Vice-President, is the performance indicator of the Judiciary.

And, again, when I looked at this report I was very startled. When

you look at the reasons for an adjournment, because they said that the attorneys are to be blamed for these lengthy trials, all sorts of other reasons. When you look at what is the highest indicator that causes the most amount of adjournments is because there is another trial in progress. And, Mr. Vice-President, do you want to know why that is so? Because you only have a limited number of judges in the Assizes, you only have a limited amount of prosecutors, you only have a limited amount of Masters, you only have a limited amount of courtrooms; obviously there must be an adjournment because there is no place to conduct trials again.

So why do you not, as a responsible Government, instead of engaging us in passing all of these nice laws, well come and tell us that you built X amount of courtrooms. You asked us for our support to hire judges. Hire more judges, Mr. Vice-President, support the creation of Rules, CAT reporting. Mr. Vice-President, where are those things? Why do we have to—persons who in live Princes Town—do you know, Mr. Vice-President, that persons who live in Princes Town who have to access the Magistrates' Court in this country have to travel to Rio Claro? Persons who go to the Magistrates' Court, are those persons—

Hon. Al-Rawi: Mr. Vice-President, may I respectfully rise on Standing Order 46(1), please?

Mr. Vice-President: Senator, I am going to allow you some leeway as you are creating the context for your argument as you move towards the Bill. You have a few more minutes to do that, so continue; just know that you are creating that context, then move forward towards the Bill.

Sen. S. Hosein: I am grateful, Mr. Vice-President, and yet I will just end

that point—that in terms of the persons who access the Magistrates' Court, are those persons who are poor in society, those persons who cannot even afford to travel, and now you are asking this person that they have to go to Rio Claro to access the Princes Town Magistrates' Court, and that is the performance of this Government. But I will just end on the point in terms of the context that I am building. This is the last statistic I will quote.

Mr. Vice-President, as at July 31, 2018, in the High Court of justice in Trinidad and Tobago, the Criminal Division, there are 2,006 pending matters, and 696 of those matters are 15 years-or-plus old. This Bill, I respectfully suggest would not ease the backlog in Trinidad and Tobago. This Bill will do nothing, Mr. Vice-President, because you will have to clear the backlog before you have cases which were investigated under this amendment to the Evidence Act, which will come next eight, 10, 15 years because this is the pace of our Judiciary currently.

And you know who orchestrated this again, Mr. Vice-President? I will say it is a PNM Government that did that. A PNM Government starved the Judiciary of funding trying to restructure the mode in which the Judiciary operates; that is why every Monday morning you have workers outside of the courtroom protesting trying to save their jobs and their tenure; that is an untenable situation in this country, totally untenable.

But let me go on to the Bill, Mr. Vice-President, because I want to focus on *Division 2* of this Bill. And *Division 2* of this Bill deals with identification. Identification is one of the most critical issues sometimes that face an accused in a trial, and it is also especially visual identification is one of the most dangerous grounds in which a conviction should be founded

upon, because when something happens very quickly to a victim, you will find that they are consumed with fear and they may mistakingly, after the event, still traumatized, not be able to properly identify the persons who has committed the offence; and that is why you will have a lot of cases of mistaken identity. And there are very famous cases right in our jurisdiction and other jurisdictions where persons were convicted as a result of mistaken identification by eyewitnesses.

Well, if we look at the United Kingdom, in the 1970s there were two high-profile miscarriage of justice cases—that is Laszlo Virag and Luke Clement Doherty—which had relied upon eyewitness identification which resulted in the establishment of a committee to investigate the issue, and this is the well-known committee that was chaired by Lord Devlin, the Devlin committee report, and they would have produced several recommendations to combat the conclusive unreliability of eyewitness evidence.

And then when you look at the Court of Appeal in England in the case of Turnbull (1977) Queen's Bench at page 224, you would see that that case would have drawn a lot from the Devlin report in terms of the common law now providing some guidance to judges on the treatment of eyewitness identification.

And the Turnbull guidelines, Mr. Vice-President, hinged substantially on the cautions in which a judge should give to the jury with regard to relying on such evidence, because as I said earlier on, it is very difficult evidence, it is not the best evidence, it is sometimes dangerous to found a conviction solely upon identification, so much so that the judge has to warn the jury of certain issues that may follow with respect to reliance on

identification evidence.

And some of the guidelines that the judge should inform the jury of are that a caution must be given to avoid the risk of injustice. He must also inform them that a witness who is honest may be wrong even if they are convinced they are right, a witness who is convincing may still be wrong, more than one witness may be wrong. A witness who recognizes the accused even when the witness knows the defendant very well, he may be wrong, and there are several cases of that.

The judge should direct the jury to examine the circumstances in which the ID by each witness can be made which will include the length of time the accused is observed by the witness, the distance the witness was from the accused, the state of lighting, whether it was in a dark area, a properly lit area, the length of time that elapsed between the original observation and after the subsequent identification to the police.

You could also look at obstruction of the view from the victim to the accused, Mr. Vice-President, and those are the warnings which the judge has to give to the jury. And you would see some of those safeguards were present in the legislation in the United Kingdom which is PACE, the Police and Criminal Evidence Act.

And while we take from the UK's experience, we must also bear in mind that the United Kingdom, their parliamentary system, their Parliament is sovereign, whereas in Trinidad and Tobago our Constitution is the supreme law, our Constitution is sovereign, and our Parliament must make laws in accordance with the Constitution, and it must meet the constitutional muster of section 13 which we are attempting to do here, in that the laws that

we make must be reasonably justified in a society that has proper respect for rights and freedoms of the individual.

And, Mr. Vice-President, if we are modelling our legislation after the PACE—and I will go on to explain during my analysis of *Division 2* of the Bill which deals with identification—is that PACE included a lot of safeguards in the legislation. And when you look at the current legislation, the current Bill before us, you would realize that some of those safeguards were actually taken away from what was reproduced right here in Trinidad and Tobago. And one has to wonder why, and we may actually engage the Attorney General in asking, "Well, why not include these safeguards in the legislation?"—because at the end of the day you have to protect these individuals, and you have to ensure that the evidence is cogent.

So, let us go, Mr. Vice-President, into the Bill, and when you look at section 12A in the Bill, it deals with the first description of the accused. Offence occurs, the victim goes to the police station makes a report of the incident, he gives a first description of the accused. The first description he has to give will be in an approved form.

Now, Mr. Vice-President, I looked through the Bill, there is no approved form in the Bill. One has to wonder why this was not included, this is a special majority Bill, I would expect that there must be some level of certainty with respect to this Bill because you are asking a Parliament to infringe on the rights of individuals, but yet we are still unsure of what are some of the prescribed forms, we are unsure what the regulations are. The Attorney General said that the regulations have been drafted, sent out to stakeholders; well, why not include everything together? Why are we

coming again, [*Desk thumping*] and I always make the complaint about piecemeal approach, Mr. Vice-President.

Now, when you look, again, you see that the first description has to only be kept in an approved form. Now, why does the legislation not—and this is a safeguard—impose an obligation on the identification officer or the officer in charge at the time who is taking the report to also make an entry into the station diary? Mr. Vice-President, this probably sounds very artificial, but you would understand in the criminal justice system how important a station diary is, because the station diary keeps contemporaneous records of what occurred.

It is very easy in which a form that is not bound can be backdated, the form can be interfered with, Mr. Vice-President, but on a station diary it preserves the time, the date and the person who made the entries in the station to avoid any interference or to avoid any corruption with respect to the records that are being kept. It is the most contemporaneous document, and you would realize that the police Standing Orders also provide that anytime any person comes to a police station, a record must be made in the station diary.

Now, when you look, again, at "unless otherwise specified" which is found at subsection (b). So it says that the record shall be kept:

> "…unless otherwise specified, be made before the eye-witness participates in any identification procedures;"

Then, what does that mean? What circumstances does the Attorney General contemplate "unless otherwise specified", because when you go down to 12A subsection (3), it says that:

"The investigation officer shall confirm that the first description of the suspect given by the eye-witness has been recorded in the approved form before the eye-witness is shown any photographs for the purpose of identification."

So there is a bit of conflict with respect to 12A(1) subsection (b) and 12A subsection (3).

Now, 12A(2)(c) of the Bill deals with some of the Turnbull guidelines in terms of the lighting condition, the distances, weather, how long the person was under observation by the victim. So that subsection (c) I am very comfortable with, and it also gives at paragraph:

"(v) such other particulars that the investigating officer thinks fit."

Now, that shows that there is a level for discretion in which the officer can use, so it is not very prescriptive.

Now, I want to go down to section 12B, and this 12B troubled me a lot, Mr. Vice-President because when you compare section 12B to PACE UK Code D at paragraph 3.3 it states that:

"An eye-witness must not be shown photographs…artist's composite likenesses or similar likenesses or pictures…if"—the identity of the suspect is known to the police and the suspect is available to take part in a:

"(i) video ID;

(ii) an identity parade; or

(iii) a group identification.

When you look at the police Standing Order 29 at number 13, you would see it states that the photographs should not be shown to the victim if the

accused is at the police station because it can prejudice any identification procedure to follow.

Now, when you look section 12B, Mr. Vice-President, it seems as though when it is read that even if the accused is in custody that the photograph can be shown nonetheless. There is no safeguard in terms of not showing the victim the photograph when he, even if the accused is in the custody of the police, Mr. Vice-President, and I believe that safeguard should be inserted as prescribed in the police Standing Order 29, because as I said, it can contaminate the entire identification procedure if the victim is shown photographs of the accused prior to the identification procedure.

And when you look at the police Standing Orders at section 13, Mr. Vice-President, it goes through a list that the photographs may—the instances in which a photograph can be used to assist in the identification of the suspect.

And there was one—and it even states that at paragraph D, the fact that photographs have been used should never be mentioned in evidence in chief, only in answer to cases under cross-examination. And this is because, Mr. Vice-President, if a jury hears that the victim would have seen the photograph of the accused prior to being identified, there is something called the "rogue's gallery effect" whereby the jury can infer that, because the police had a photograph of the accused it means that this person may have been known to the police before and, again, it can prejudice the way in which a jury returns a verdict.

Another important safeguard, Mr. Vice-President, when we are dealing with photographs is that the photograph shown must bear no marks,

no names, no numbers of any kind that may tend to indicate or suggest the identify of any particular photograph. And that is very important, and all of those things are left out. Imagine these things exist in the police Standing Orders, proper safeguards and then you leave them out from primary legislation?—one has to wonder why. Is there some motive behind the expedient passage of this piece of legislation?—I hope not, Mr. Vice-President.

Then when you look at subsection (7) it states that.

"Where a person has not been positively identified by an eye-witness as a suspect, the Commissioner of Police shall cause all photographs of that person to be destroyed."

So positive identification, destroy the photograph, Mr. Vice-President.

When you look at PACE, where photographs are destroyed, a notice must be given to the suspect before the photograph is destroyed, an opportunity to attend the destruction must be given or a certificate issued to the accused to confirm the destruction of that photograph. None of these things exist within the Bill, Mr. Vice-President. And they are proud, the Government is proud to say that we learned from the UK experience; well, clearly the learning was not enough, Mr. Vice-President.

Sen. Ramdeen: "Dem eh look at PACE, dey look at waste."

Sen. S. Hosein: When you look at 12C in terms of the "Conduct of identification procedure", it says that an identification procedure not being held where it is not practical to hold one but states no specifics. There are different arrangements and different methods in which the identification of the accused can be conducted, and I will go on to that when we reach 12E.

But, Mr. Vice-President, it will be very difficult to contemplate a situation in which they cannot conduct the ID parade because they gave so many varieties in terms of video, photographs, ID parades, public place.

So when you go down to 12E, it given an order of priority. And the first, the order of priority is that the identification must be conducted using a "video medium" to start with, then you must go on to an "identification parade", and then after that, "Identification in public place with consent of the suspect", then "Identification in a public place without the consent of the suspect", and then the last resort is, "Identification by confrontation".

Now, Mr. Vice-President, the first method that they want us to use is "video medium", and the problem with this, it is prescribed, the manner in which it is conducted is prescribed lower down in the legislation. When an accused is placed on an ID parade, Mr. Vice-President, there are other individuals similarly dressed, have the same colour, complexion, height, racial background as the accused; so therefore, when the victim is being placed at—when the accused is on the parade, the victim will have to positively identify this person among persons similarly appearing just like the accused.

If a person, Mr. Vice-President, I am going to give a very facetious example. Let us just say we have someone with the complexion of Sen. Vieira on the parade, and then you have somebody with a very darker complexion, obviously that parade would be very unfair to Sen. Vieira if he is the accused. So at that stage, Sen. Vieira has the opportunity to say, "Well, I object to that person being on the parade. I want someone who is my complexion to be placed on the parade."

Now, Mr. Vice-President, when the video identification procedure is going to be conducted, the accused, neither his representative, neither a Justice of the Peace, has an opportunity to object to anyone on the parade. There is no provision in which that person can object to anyone on the parade, and that in itself is very unfair.

Because when you look at the clauses of the Bill and you look at the identification parade, which is done with the victim behind the one mirror glass—

5.30 p.m.

Hon. Senator: One-way mirror.

Sen. S. Hosein: One-way mirror—at that point in time he is allowed to object to whoever is on his parade before the victim enters the room. Now, when you go and do this video identification, while you are taking away this right of the person to object to those persons who are on his parade, that is inherently flawed in this piece of legislation. When you look at the Judges' Rules for Children at Part G of the Judges' Rules, you will see when the children are placed on video identification parade. They are in fact, Mr. Vice-President, given the opportunity to make an objection before the video parade is conducted.

Now, when we go on, Mr. Vice-President, to the other provisions, it states that everything again, rights, consents and caution found at section F, everything is going to be done in approved forms. Well, let us see the forms, Mr. Vice-President. Or, when I looked at the legislation, these forms are made by the Minister in consultation with the Commissioner of Police. Well, I want to take a recommendation from Sen. Mark, that he does in other

pieces of legislation, and ensure that any form that deals with a person's rights, their consents and any caution be made subject to affirmative resolution of this Parliament. Let us see what is being done with respect to the implementation of this legislation. Again, let me go on to another provision in the Bill where it deals with, it gives the person an opportunity of nine hours to present a representative—

[MADAM PRESIDENT *in the Chair*]

Sen. S. Hosein:—as a representative for a parade. Now, I wonder where the Government got this nine hours from. Because when you look at the police standing orders it gives a period of 12 hours. Why is there a reduction in the amount of time in which a person has to go and seek a representative? A representative can actually be a legal representative, a parent, a guardian. And if you want your lawyer to be present nine hours is insufficient. When you look at legal aid you have lawyers who are no longer taking legal aid briefs simply because legal aid is not paying them. So all of these are issues in which we have to contemplate before you pass legislation. This is what you call pie in the sky legislation, Madam President.

Now, I looked at section 12K of the Bill. Section 12K deals specifically with identification parades. And when you read section 12K, at the first glance, you would see that:

> "An identification parade shall be conducted in a police station or other building under the control of, or regularly used by the Police Service in the normal conduct of their duties..."

Hear how they are conducting these ID parades, eh:

> "either in a normal room or one equipped with a screen permitting the

eye-witness to view the suspect without himself being seen."

Now, I have no problem which the second manner in which the parade is going to take place, but in a normal room. A normal room suggests that this room does not have the one-way mirror. Now, you have—welcome back, Madam President.

[MADAM PRESIDENT *in the Chair*]

You have a person who has just been raped, Madam President, and then this person now has to come and identify the rapist. Madam President, you are going to put this person in a normal room, standing with this person, and nine other persons similarly looking like him, again, you will traumatize, re-traumatize this victim. I cannot agree with identification parades taking place without a one-way mirror. I cannot agree with that, especially for victims of sexual offences.

Sen. Ramdeen: And children.

Sen. S. Hosein: And children. There was also a reduction in the parade number under the police standing orders for a group of two persons, the parade was 14, I see there is now a parade of 12. Again, we sought some explanation and clarification from the Attorney General with respect to that. When you look at the police Standing Orders, you would see that there are some provisions in the Bill that an identification procedure, and this deals with the identification without, sorry, identification of public place with the consent of the suspect. At 12M, Madam President, you would see there that that identification procedure can take place without a representative of the accused.

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

Sen. S. Hosein: Thank you very much. Without the accused representative or a JP being present. If you read section 12M, when you look at the police Standing Order 29, Madam President, you would see it says that on no account shall the suspect be placed on an ID parade without his rep being present, or in the absence of a JP. Again, I ask that there must be an insertion with respect to a representative being present where the identification is in a public place with the consent of the suspect.

Now, when you look at section 12N, you would see that there is identification of public place without the consent of the suspect. Now, I just have one very small note on this, and it says that it runs the risk that an eyewitness may be more inclined to make an ID thinking that the person has to be present, as compared to a controlled circumstance, Madam President.

Now, these are my comments with regard to the *Division 2* identification of the Bill. And, you can see from the short analysis that I have done, Madam President, you would see that there are certain safeguards that have been left out. You are trampling upon section 4 and 5 rights, and I believe that as much safeguard shall be placed in order to make this legislation proportional. When you look at the other divisions of the Bill that deals with confessions and admissions, which my friends on this side would deal with, and Sen. Ramdeen has so eloquently dealt with, with respect to the witness anonymity, I go back to the saying that where—by the High Commissioner to Canada, where he says that, where there is no rule of law there is no democracy. And it shows that this Government has been engaged in a series of legislation which has sought to trample and erode fundamental rights, freedoms and privileges of our ordinary citizens in this

country. And you have seen that they have continued to starve the essential services of this country, whereby the police service, I am being informed, Madam President, does not have moneys to pay for food for the dogs.

And, in conclusion, I would just like to thank the Leader of the Opposition for assisting us with the preparation of this debate and the persons also who has assisted us, those practitioners who have taken their time, because they are seriously concerned about the passage of this piece of legislation. [*Desk thumping*] We would support good legislation, Madam President. But, this piece of legislation we cannot support, because we do not believe that it is proportional. We believe that it is unconstitutional. It would not help the justice system as currently as it is. They can pass how many laws, Madam President, it would not ease the backlog unless we start in order to give the essential services the resources. This is an attempt by the Government, again, to engage in a PR exercise, as we have seen the Prime Minister yesterday morning on a very popular morning programme. I know there are several noises being made from the other side, but you would see as the Attorney General has come to this Parliament several times and promised to us that we are going to help, we are going to take out 100,000 cases, Family Court, Children Court, Criminal Division, and none of those things have helped us, Madam President. I am saying that we need more consultation with respect to this Bill, and there are others who may say more about that. But as it currently stands, we are not in a position to support this piece of legislation, and I thank you very much. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Madam President, for the opportunity to speak on this proposed legislation. The first observation which I would

like to make, is that we are asked to enter the debate on the Evidence (Amdt.) Bill of 2019. But having read the substance of the Bill it seems as though we have been asked to debate a criminal procedure Bill, because there is very little here which talks about what will make evidence admissible or inadmissible, and there is very little here about what ought to be considered when such legislation may be admitted or not admitted as the case may be.

So, I think the substance of what is contained here does not fit well with the rest of the Evidence Act, as it stands now, and perhaps this can be cured. I am not saying that it is something that is incurable. I think that with a little work, there may be provisions which could perhaps be put in into parts of this Bill, which may make it acceptable. There are other parts of the Bill, I ought to say, under no circumstances do I find to be acceptable. Having said that, I am pleased to be able to begin with something prepared by a scholar from our TTPS. I have a thesis which had been done by former Deputy Commissioner, Maurice Piggott. It was his thesis when he was doing his masters on the law and discourse on eyewitness evidence in Trinidad and Tobago. It is perhaps one of the few documents of its kind, and I think some significance should be given to it, simply because this was one of the officers who also participated in the preparation of the Standing Orders which we currently use, prepared by the TTPS.

Now, I am going to refer to three pages just very briefly; 35, 37 and 39. Now, this was data driven. What the then Deputy Commissioner had done, is that he had conducted surveys and he had conducted interviews, and done a lot of research with the police, defence attorneys, judges, magistrates,

police officers, other stakeholders, and he had analysed how we view identification evidence. And I start here, because the lay person thinks that seeing is believing. Once you say you see, it means that you ought to be believed. But, those of us who practice within the system, we appreciate that the reason there are so many rules surrounding this kind of evidence, is because it is inherently unreliable.

And this is what then DCP Piggott had to say:

> Empirical research has revealed that eyewitness evidence with all its vagaries is still the strongest jury influence in the determination of guilt or innocence. The research has also revealed that eyewitness evidence is the major cause of most wrongful convictions. That position is strongly supported in the precedent setting cases conducted in Trinidad in 2008.

And this is from somebody who ought to know. At page 37 he goes on to explain:

> The composition of modern societies is dynamic as it responds to change for economic and other reasons. Consequently, the issue of cross-race identification in criminal matters is now one of growing importance to police officers here in Trinidad and Tobago.

And at page 39, he says, interestingly:

> All police responses said that eyewitness statements should undergo further investigation to prove the veracity of the information provided.

Now, I opened with that, and I will connect it with the point I wish to make. In our courts you cannot do what is called a dock identification. That generally is disallowed. So, there is a great deal of emphasis placed on the

identification procedure used, the subsopose offence identification procedure used to ensure that the person, the eyewitness has had everything done to point out, or not point out, as the case may be, someone in a controlled environment. Now, when I look at the proposed legislation before us, I immediately have some concerns, because you know what I find happens too much, Madam President. It gives us—I do not know if it is a colonial hang up or what, but it gives us a great deal of comfort to say that we are following what the English are doing. I wish in this case we had followed what the English had been doing, because what they did in their Police and Criminal Evidence Act, is they had provided for protections for their citizens. When that legislation was initially enacted in 1984, when I was still a student, it came with voluminous codes dealing with different aspects of police investigation, identification, confessions and so on. And these codes have changed and morphed over the years, and one of the authorities at the time, and he still remains the authority, he was the only academic of repute who wrote a text in 1984 on the Police and Criminal Evidence Act, and it was called Michael *Zander on PACE*—he is now Prof. Michael Zander QC. And I remember him well, because I had the misery of having to study that first book.

This has now been expanded. And looking at it you see that the English have continued to amend their legislation to ensure that there continues to be as far as possible, equality of arms between the parties, and they have tried within their definition of what is a fair trial, to comply with the controls, to ensure that if you have an incursion into the rights of someone then you ought to have a protection. Now, I think it is important,

the point made by Sen. Hosein is a very important one, that is to say we must remember that we operate under a constitutional democracy and they operate under a parliamentary democracy, and I think jurisprudentially that this is extremely important to the way in which we legislate. And it is not just academic. If you think it is academic then it means that we are just here to pass words and call them law without any kind of thought behind it. Now, when I say that I do not see the protections included in this part that deals with the identification process, I would just give a few examples: If we look at 12A(2)(c)(v), which talks about the record which the officer has to make when he is taking down the first description and so on, in the station diary.

And the last one says:

"such other particulars that the investigating officer thinks fit."

Now, the investigating officer may not think it fit to put in in his record that the assailants wore bandanas. But, I think we can cure that by saying:

"such other particulars that may be relevant."

So that will open it up, and that will allow the officer to understand that he has a duty and a responsibility to put in things which are relevant to the identification process.

Now, subsection (3) which talks about the investigating officer confirming the first description and so. I think this must be a mistake, because in PACE, when you look at PACE, this whole thing about showing photographs and so on, it is where the identity of the suspect is not known to the police, so you show photographs and you show those in a controlled way to the witness so that the witness may be able to say, "Okay, well this

possibly may be the person", or the witness may be able to look at some E-FITs to see whether this sketch looks like the person who may have been an assailant. So, I think that has to be an error, because there really is no need for that there. Perhaps if we had done as the English did, we could have cut it up, and we could have had different sections dealing with different circumstances in which identification processes are made, and that may have made this Bill a little more palatable.

Now, I was quite happy to see that what we had in terms of Standing Orders was now going to be embodied in legislation, because I think that is a good thing. I think when you put rules governing police procedures like these, identification, confessions and so on, you make police officers understand that they must follow the rules, and if they do not follow the rules then there will be repercussions, but there is no mention of repercussions in this piece of legislation, and I think this is because the approach to it has been that of setting out procedure as opposed to reasons for admission.

Now, when we look at the Standing Orders we see that some of the protections that we had in there are gone, and I cannot understand why because we are now required, or we are invited to give our support to a piece of legislation which requires a three-fifths majority. What is the reason, for example, for removing the need for the officer conducting the parade to be an inspector or above, and confined to that? I know it is later on in the—referred to later on in the legislation, but it seems to have been broadened somewhat to say that if that person cannot be found somebody else can fit in. Well, what is the point of the rule then? Is that we have so few inspectors or

persons above the rank of inspector that we cannot have parades conducted? Surely that is not the case, and that has not been the experience of us in this country.

Now, this one was a little amusing, because there is a section which deals with the order of priority you must look at when you are considering an identification process. Now, we do not have the long-time thing of a witness having to walk up to a person on a parade and point him out or touch him and that kind of thing. We have moved on. We have one-way mirrors, and all our identification processes are conducted in that way, except where you have confrontations and so on. The reason the English had the video being made, and the video identification process made is because according to Prof. Michael Zander, it is because they were having difficulty getting their parades together quickly enough. So it was easier for them, because they are more technologically advanced than we are. It was easier for them to arrange for a short video to be made with the input of the suspect, and have that used with his consent as the identification process instead. So that was part of their law, because they had a problem.

Now, I do not know that we have a similar problem here, we certainly have not been told so by the hon. Attorney General in the introduction of this piece of legislation, or is it a big problem? I do not know. Does it exist? I do not know. And I am afraid I cannot support a piece of legislation when there is not enough information about it. [*Desk thumping*] So, the video recordings, the protections of the video recordings are not all included in this legislation which we have borrowed, because under the English system the accused or the suspect and/or his attorney, play crucial roles in

the selection of the photographs, giving consent to the photographs being used, giving consent to the video which is put together to be used, and even though the suspect is not present when the video is viewed, his attorney-at-law, a representative is entitled to be present. None of that is here, and I cannot understand why. I do not see why the citizens of this country should have less protection of their rights than in any other place.

Now, if I may move on, because this is quite a bit to talk about. *Division 3, Division 3* deals with interviews and oral admissions. So, very excitedly and having read so many cases since 1984 about section 76 of PACE, I looked to find a similar section in our legislation, to say what is a statement and when it would become admissible, because this after all is an amendment to the Evidence Act. Well, there is nothing there. What we have is a procedure for the recording of interviews and the recording of oral admissions. Much of this is already set up by common law, and while it is nice to have it in the law, in the legislation, I do not see why we could not have had this section which deals with the requirements for admissibility and repercussions if you do not satisfy that requirements before you go into the procedure for the taking of statements, whether oral or written. I think that is simply common sense. So, all of that is missing. I mean there is quite a lot of it, nice stuff, you write down the name, the number, and rank of the officers present, and so on, and notes should be made in the police station diary of the interview and so on. Fine, that already exists. But please, if we are being asked to agree to an amendment to the Evidence Act, let us have something more than what we have here.

The process with respect to how you video record an interview is

absolutely crucial. I have seen it in operation, and indeed done on one occasion by some visiting English officers, and I think it is absolutely crucial, and it would take away from the unreliability of this kind of evidence, and the challenges to this kind of evidence, because it would be extremely difficult once you have these video recordings done for an accused person to turn around and say, "Well I did not give it voluntarily, you know, or I was beaten, or I did not receive my meals", or whatever it is, because the video recording will confirm, or will be able to confirm whether such a thing happened. What is the fallout from that? There will be less contests to the admission of this statements, and it may follow on to more guilty pleas where the persons are guilty, and the faster disposition of these matters.

Unfortunately, and in fact the Royal Commission looking at this aspect of the law at the time had said that they found such resistance from police officers to videotaping these confession statements, and the reason was obvious, because police officers did not want people to see what was going on. In addition to that, it made them lazy because if you get a confession out of somebody and push it through the court system then you did not have to go and look for any other evidence.

6.00 p.m.

So I think this part of it is quite valuable, it must be kept in whatever version, eventually, is brought for consideration by the Senate because it will have a powerful impact on the criminal justice system.

Now, with respect to *Division 4*, I ought to say that what I considered when I did my reading was the text: *Criminal Justice, Police Powers &*

Human Rights. It was written by Keir Starmer, who is now Keir Starmer QC, former Director of Public Prosecutions—[*Interruption*]—Sir Keir Starmer, I beg your pardon, Sir Keir, Michelle Strange and Quincy Whitaker who I believe is also a QC now, with Anthony Jennings QC and Tim Owen QC.

So I thought what was useful about this text was that it looked at the English law in the context of the need for these kinds of orders and it also took us through how these cases were tested before the European courts. Now, it seems as though the idea of having witness anonymity orders came from wanting to protect children in sexual offences cases, which is, I suppose in certain circumstances are not a bad thing but if there are other means of protection, certainly, why not employ those?

Another consideration was the whole Northern Ireland situation and the terrorist activities which England faced in Northern Ireland. So people were afraid to come and testify and they had to go underground if they testified and so on, change their names, change the place they lived, change their family names and this kind of thing. So it is in those extreme circumstances that they legislated for witness anonymity orders. Now, I have not heard one reference to a situation in our beloved republic where there was potentially a miscarriage of justice because we did not have a witness anonymity order. So what are we doing? What is this legislation intended to provide? What are we curing? What are we helping? What mischief are we addressing? [*Desk thumping*]

With respect to witness testifying by video link that is fine, it is already happening and there are controls to that; that is the way to go. It is

easier than having witnesses flying, you can till cross-examine and this kind of thing and also for vulnerable witnesses it allows the witness to not be able to see the accused person in the dock, so it takes away from the trauma. So fine, evidence by video link, not a bad idea in certain circumstances, but I absolutely cannot see any justification except for wanting to say that we have it for witness anonymity orders. It is Sir Geoffrey Robertson QC, when this legislation was passed in the UK, he called it the "perjurer's charter" because, he wrote in *The Guardian—The Guardian* of the United Kingdom—saying that this was the easiest way for someone to go and say anything and the person who is in the dock does not know your name, does not know your voice, it means the person cannot even ask for disclosure, because if you do not know who is there, what are you going to ask to be disclosed to you.

In fact, it puts the burden on the accused person, in my respectful view, to somehow go and try to dig up information to see if he can fire the right question in the direction of the prosecutor to ask for disclosure. And that goes contrary to the principles of law which we rely on to show that there is a fair trial. One of those principles is that the prosecution, in order to show, or in order to—at some stage defend the fact that you have had a fair trial—the prosecution must show that it provided disclosure to the defence so that there could be equality of arms.

Now, what you are doing here is you are putting a burden on the accused person to say that I think that this person may be Mr. X and I think this person may have some grouse against me for whatever the reason and I think that I ought to be disclosed certain documents or certain material.

Now, that is not how the criminal process works, you cannot make a request of the prosecution on the basis of "I think". Even in the UK, if you read the reports for 2018, there were horrible miscarriages of justice because of insufficient disclosure. We face that even more grievously here, so we are walking into a situation where there will be clear potential injustice if you are seeking to have someone testify under the shade of a witness anonymity order.

Now, Madam President, what I have tried to do is I have not looked at all of the sections and I have not commented on all of the sections, because if I were to do that I would only have gone through about three or four pages and in any event much of that can be done at committee stage if we get there.

So, what I am respectfully saying is that in my respectful view I would like to be able to support this legislation because we waited so long for the PACE requirements. But I think that as it stands I cannot, because it is incomplete, it is a first run. I think it has to be revamped, protections have to be put in, I think you cannot talk about regulations and not have them here for us. When PACE was enacted they had their codes with all the annexes and whatnot. [*Desk thumping*] Why do we deserve less in this Parliament, in this country? So when those things are included and we have a clear idea of what evidence is now going to be admissible and why and what procedures ought to be followed, then certainly I would be in a better position to say whether I can support such an amended version of the proposed legislation.

Thank you, Madam President. [*Desk thumping*]

Sen. Ndale Young: Madam President, I thank you for the opportunity to

contribute on this Bill entitled, an Act to amend the Evidence Act, Chap. 7:02. Now, Madam President, today while sitting in this House and contemplating on my contribution, I sat down and I thought about what was before us. Obviously not from a legal standpoint, because I have no legal training, but just from a layman's standpoint, what are we looking at, and what does this mean to the regular man outside?

Now, in that contemplation I happened to take a gander in the gallery in this august House and I realized there is somewhat of a prejudice here, and I hope I do not tread on any Standing Order. But I may be one of the few people here from the East-West Corridor. Most people here are from the—[*Crosstalk*] if we look at the contributions of the people, a lot of people are from different parts, but most from, not from the East-West Corridor. So I am claiming the East-West Corridor, man. [*Crosstalk*] And I understand that—[*Crosstalk*]—I said most, I said most, I said most, and the reason why I say that is, I—[*Continuous crosstalk*]

Sen. Ameen: Go on, go on.

Sen. N. Young: I am waiting. Good. So, the reason why I say that, Madam President, is because I live at Barataria; I have lived there all the days of my life. I have gone to Success Laventille Composite and I am proud of that fact. I went to school in Mount Hope, lived in Trincity for a while and went back to Barataria. In all my life, up and down the corridor, one of the things that always gripped, was always at the forefront, is a matter of crime. And one of the things that you hear on the block and on the street is, but if we have video evidence, "if we seeing a picture of somebody, how come they cah ketch the people"? Because on your phone as soon as

something takes place, in a matter of 10 or 15 minutes, there is a video of that person present, on the phone. I could see the person, you can see the person, everybody can identify the person.

Now, we understand that there is the matter of taking into consideration someone's rights and I do not intend to tread on anyone's rights. But let me just say this, and offer this as a contribution. In 1998, somewhere in the summer of 1998, as Michael Jordan played his last game in the NBA, I was robbed at my house, gunpoint, three men entered into my house, they kicked my father, beat him, they robbed us of all that was in our house and left. I saw—I do not know for what reason they left me alone, but I saw the gentleman plain as day. Sometime thereafter I was shown a picture of the gentleman and I never forgot the officer, the officer's name was Gumbs, from Morvant CID. And officer Gumbs said, "Do you know this person, have you seen this person before"?" I said, "That is the man who kicked my father". He said, "Good, we going to the station".

We get to the station and we walk down a dirty stairs and walk into a room that almost looks like a classroom, and as I get in there, he said, "Stand here!" And, "bring them in". Everybody is walking, no glass, like I see on the movies, no nothing, "me standing up in front ah this man here". And because he would have seen me and I would have seen him and he knows that I know him, he is fixed on me for the duration of that time. And I am telling you, I stood there looking at the gentleman that I know kicked my father, I know robbed me and took "meh one TV wey we had; after Michael Jordan win, I cyah see nutten after dat". And I could not sum up, at 18 years old, could not sum up the gumption to say it was him, simply because of two

fears. One, the man was standing in front of me and seeing me, I saw him in the picture, I identified him.

Let me go even further, and this speaks to section 12B and section 12J. I even have a neighbour who owns a gas station, McIntyre Gas Station, and he had video evidence. We saw the man. "I see de man in the video, dais de man." So I am here by Morvant Station, I cannot identify the gentleman and I walked out. I said, "No I doh see him", and I walked out. In walking out there, my sisters, they were star witnesses and so on, but nobody got a better view of this gentleman because they were sitting in a bedroom with poor lighting and the prosecutor was able to say, "Well, was it ah hundred watt bulb, a forty watt bulb, what kind of bulb it was"? Therefore you could not say you see him. But in the front of my yard we had almost floodlights, I saw the gentleman. In that moment I was unable to identify him, at 18 years old. And what that did is that in the whole summation of the case, although sometime thereafter some of them passed away and they went to Grenada, they are all not with us anymore; the three men. In that case I was unable to do my part for my family and I felt like I had let them down. That hit me. And when I saw this and I heard this today, I think that this intervention is 20 years too late in my book. [*Desk thumping*]

But let me go a little bit further, in the contribution of my learned colleagues, especially those of us who are legally endowed, I often hear a contribution of the word, "disappear". And it irks me in some regard, because I am also inclined to the clergy, to hear people speak about souls as "disappeared" like if they gone into thin air, because the value of that soul is

simply to the case. But let me tell you something. In the submission of Sen. Ramdeen, he spoke about a landmark case and a landmark AG that delivered and I think it was nine men? Nine men went to the gallows, but 10 men lost their lives. Because there was one man who had to give evidence and he was in police custody and the minute he left police custody, of his own accord, was shot dead. I know this because I was looking at a documentary. And on the point of that, one man losing his life, the case almost fell apart. But they used the same language, that the witness disappeared, but that was a soul, that was somebody. It was somebody's brother and somebody's husband or somebody's something. And if we do not take into consideration these souls, you see I say I am from East-West Corridor, I frequent Caledonia and Morvant and the Beetham. And though where you all may live it might be that we have to take care of these people, where I live, the statement is, "inform if yuh fi dead". Pardon the Patois.

So if you had known to be giving evidence—Crime Stoppers does work because you can give anonymous evidence. But if you had known to be giving evidence and you are too poor to live in some other part and these days there is not much places you could go, "crapaud smoke yuh pipe". So the truth about it is that we can sit here in these nice cushy chairs and say, you know, with the rights—and I am saying I respect the rights of having each person that is innocent until proven guilty process, but it must be balanced against the rights of those souls that disappeared. [*Desk thumping*] Because they did not disappear, they were gunned down and they died, because they have no value to the lawyer, because they have no value to the case. They disappeared in terms of, in the fabric of the society, they just

disappeared. To the people who are presenting to say, well, but this is what happened and they just disappeared, so therefore the case—the life of the case is more important than the life of the person.

But let me tell you this, I believe that the Government, whoever it may be, and I am talking about all-encompassing, the Parliament, that we are put here by God. We pray every time, we say God. And according to my scriptures, "we bear not the sword in vain". We are to be a terror to those that do evil and we are to be a light to those who do good. [*Desk thumping*] And in that premise or that paradigm we take into consideration all rights. I am not "trodding" on any, but we must remember those who have died. Because the truth is, while Sen. Ramdeen claims the success of the AG, he was very successful and the nine men went to the gallows. But the one witness also died and did not get to see these nine men come to justice. There was another witness that was protected, that is fine. But that tenth man died and we owe it to him, we owe it to every other witness that is from Laventille—[*Crosstalk*] hold on, hold on, I am saying to you—Sen. Ramdeen I want to repeat, I live Barataria/Morvant—

Hon. Senator: Talk to the President.

Sen. N. Young: Sorry. Madam President, through you, not every person was going and kill the people. There are some people who was fed up, and men like yourself spoke and say, you have stand up for this nation and they stand up. When they were killed, he did not even get a funeral, this pine box when you put it down in the earth, because you stand up to the side to speak on behalf of somebody. So I simply say, I appreciate what the AG is attempting to do on behalf of the laymen. One, to bring evidence to be able

to identify people by, via picture and video and where applicable, I think we can also get some benefit in the society to have the anonymity pass as well. And with that contribution, Ma'am, I thank you. [*Desk thumping*]

Sen. Karunaa Bisramsingh: [*Desk thumping*] Thank you for recognizing me, Madam President. Firstly, I would like to thank the Leader of the Opposition for giving me this opportunity here today and I am very grateful for the warm welcome that I have received here today in this honourable House. It is my privilege to contribute to the debate today on this Bill as this Bill affects the criminal justice system and I am here today as a member of the criminal bar.

In the past, many Bills affecting the criminal justice system have been debated without consultation with the Law Association, the Criminal Bar and even the DPP's Office, so I am very grateful to have an input here today. I have practised almost exclusively in the criminal courts of Trinidad and Tobago and this has given me a working knowledge of the problems that plague our criminal justice system. So I am here today to apply that knowledge.

Now, *Division 3* of this Bill deals with interviews and oral admissions of suspects. In essence, section 12Q(1) of this Bill imposes a duty on the investigating officer who no doubt would be the police officer to record the interview of the suspect who has been charged. Now, section 12Q(2) goes on to state that this:

> "…interview…shall be recorded by video…unless it is not reasonably practicable to do so."

Now, the legislation does not state what are the instances of not being

reasonably practicable to so do, but of course we can only imagine it means where the police stations are not equipped with the proper recording instruments, or the recording instruments simply were not working or even that the police station did not have the proper interview room.

So where it is not reasonably practicable to record the interview by video, section 12Q(3) goes on to state that:

> "...the interview shall be recorded by audio recording"—if that is reasonably practicable to do.

So again, we have the interviewing officer being able to determine whether it is reasonably practicable to interview by audio recording.

So although the wording in the Bill is, "shall be recorded by video recording" and "shall be recorded by audio recording", it does not give the effect of something mandatory or something that must be done, because by putting in "unless it is not reasonably practicable" to so do it gives the police officer a discretion; a discretion in recording by either video or by audio. Because in court all the interviewing officer has to do is basically just come to court with the written interview and say, Milord, Milady, well it was not reasonably practicable to have it recorded by video or audio and that is it, "the talk done".

So this term, "reasonably practicable", it gives the police an opportunity to make excuses, excuses not to use the video or audio recording. And then, what will we have? We are back to square one because if it is not reasonably practicable to use video or audio recording of the interview, the interview shall then be recorded in writing and that is currently the position as is right now—the interviews are to be recorded in

writing.

So the entirety of section 12Q, although in theory it is different to the current position with respect to the interviews, although in writing we have different words, we bringing in audio, we bringing in video, the practicality of it, it makes no difference. We are here just wasting ink and paper. For section 12Q to work in practice we need to make the video recording mandatory and we do not do that by adopting the words, as proposed here in the Bill, by saying that the interviewing officer shall record by video unless it is reasonably practicable to so do. The way this has to be done is to say that the interview shall be recorded by video recording. Full stop. No ifs, no buts, no unless. And that is the way we will get video recording mandatory. And why should we make video recording of interviews mandatory as opposed to the audio recording mandatory?

Now, there are many instances in court where an accused person would come and say they were threatened by the police officer to say X, Y and Z. They were intimidated to say X, Y and Z. Now, would it not be better for us to have a visual of what is going on at the start of the interview and throughout that entire interview? We would not be able to hear if a gun is pointed to the accused while he is giving that interview. Similarly too, sometimes during the interviews a police officer will ask a suspect to demonstrate an action. Now, it has been my experience in court that when I am disclosed with interview notes of a suspect, in the written transcripts it would have, Question: "When the deceased came up to you what did you do?" And the answer—all they have at the answer is, "The accused make some movement with his hand". Reading the transcripts, reading the written

record of the interview I have no idea what is that movement that the accused did. So if it is that these interviews are video recorded we would be able to see and understand exactly what is going on.

Also too, sometimes during interviews a suspect is asked to examine a particular object or a particular item. How are we going to see how the accused reacts to what he does when he is examining this object if it is not video recorded. So all interviews of suspects must be recorded by video recording. And the objective of that is not only for the citizens who are charged with an offence for there to be accurate recording of what it is that person said, but it is also a safeguard for the police, because too many times in court it is alleged that the police "beat meh", the police "threaten meh", they "force me" to say this, they "tell meh if I say this I will get to go home"; that is the state of affairs currently. So this video recording of interviews is to safeguard the police officers against any allegations of misconduct.

Now, we cannot just deal with the theory in isolation from the reality. If we want video recording to be made mandatory of the interviews we must put the measures in place to have that done. We must train the police officers to carry out proper video recording of interviews; we must ensure that all the police stations throughout Trinidad and Tobago have the necessary equipment to give effect to the video recording; we must ensure that all the police stations have the proper interview rooms to conduct this video recording. And you know what this reminds me of?—this reminds me of the Trinidad and Tobago Police Standing Orders. The Standing Orders are what govern the police officers in the execution of their duties. Now,

Standing Order 16 talks about the pocket diaries of police officers and the requirement of the police officer to record everything with respect to an investigation in their pocket diary.

Now, when we criminal lawyers are in court, we like to ask the police officer who is in the witness box, did you record that particular information in your pocket diary? And you know what is their famous go-to answer?—"Well, I was never issued with a pocket diary". So where are we going from here? It is a requirement of them to do things a particular way, but if they are not issued, if they are not given the proper support, the proper infrastructure, how can we carry out what is to be carried out? [*Desk thumping*] Likewise, we do not want to make legislation to have visual recording mandatory and that there is no follow through. We need to ensure that the police stations and the police service is well equipped to carry out what it is needed to be done; else we are just here "spinning top in mud".

Further, we need to apply consequences to the police officers for failure to record interviews by video. We let too much things just fall by the wayside. In court when a police officer does not record an utterance of an accused person in a pocket diary or a station diary, you know what happens?—nothing. It is just, well do better next time and that is just it.

6.30 p.m.

So, what is going to happen when a police officer does not record the interview by video recording? Our criminal courts do not punish improper policing or investigation. The most that the courts will do is just make a comment. So this Bill should seek to promote and improve how the police do investigations. This Bill should provide for the interview not being

admissible into evidence if it is not recorded by video recording unless the suspect consents to it so being. In that way, we are giving effect to what we have in paper. We are giving a consequence; we are giving a ramification for failure to do such. So the police is not just—they are not going to treat this as just a next thing written on paper with no consequences, no follow through.

Now, let us move to section 12T which deals with an objection by the interviewee to video or audio recording. Well, I have a serious objection to this section. In essence, what this section says is that where an interviewee objects to having the interview recorded by video or audio, the interviewing officer shall record the objection on the recording media, and when the objection has been recorded, or the interviewee refuses to have the objection recorded, the interviewing officer should state that he is turning off the recorded equipment, and turn it off and then continue to make a written record of the interview.

So, basically, we are saying all of that just to say that once the interviewee objects to having the interview recorded by video or audio, the officer will just revert to a written interview. So then, again, what we would have in practice is the police officers coming to court with these written interviews and just telling the court, "Well, the person objected to having their interview video recorded or audio recorded so that is why we do not have it recorded", and even further, that the accused person refused to make that objection recorded. So we do not even have the person objecting to it recorded and we are just made to accept the word of the police officer. This cannot be. Again, the very purpose to having the interviews recorded either

by video or by audio, is to safeguard the police officers against allegations of misconduct. So how are we safeguarding them from accused persons saying that they were beaten and they were threatened into saying what they did, if these interviews are not recorded?

A camera should never be turned off. Why are you letting the suspect dictate how the police should work? You should not give the suspect an option of having the interview video recorded, because this is to protect them as well. Now, I could understand where you would want to reach a middle position or you would want to give an accused person options when it is something that infringes on their rights or privileges. But having an interview recorded by video is to their benefit. It helps them. So it makes zero sense to have section 12T included in this Bill. It adds nothing to the current position with respect to having a written record of interviews. This section should be struck out entirely.

With respect to section 12W which deals with the breaking of the seal of the master copy of the recording, I propose just a few amendments. At subsection (6) of this Bill, it is stated that where the seal of the master copy is broken and a copy made of the master copy which is then resealed, the officer has to record the procedure in the approved form. Now, this should be amended to include that this procedure should be recorded in the station diary of the relevant police station. Now the importance of this lies with the fact that a station diary is a permanent record at the station which cannot easily be tampered with. Once you record something there, it is very hard to go and backdate it, to erase it, to add something to it. So this safeguard of having it recorded in the station diary should be included as well.

Additionally, subsection (7) goes on to say that:

"Where the interviewee or his representative is not present when the seal…is broken—"it"—shall be broken in the presence of a Justice of the Peace who shall"—then—"reseal the master copy..."

Now, what I suggest here is as an additional safeguard for the police officers, arrangements should be made to have this procedure visually recorded, and this safeguard is contained in PACE at 3.28 of Code E which speaks about this same manner, this same process of breaking the seal and resealing it.

Now, when we go on to look at 12X of the Bill which speaks of oral admissions of a suspect, it requires the investigating officer to make a note in his pocket diary, and the station diary, of any oral utterance. It further states that the note would be read to the person who will then be asked to sign it, and if he refuses to sign it, a written record will be made of that. Now, all of that is nothing really new to the current practice with respect to oral utterances. And, with respect to oral utterances, we take guidance from the case of *Frankie Boodram v the State*, Criminal Appeal No. 17 of 2003, where the Court of Appeal gave guidelines to the police officers when dealing with an oral confession of an accused person. And, essentially, the guideline which was given there is basically the same thing here, that a note must be made in a pocket diary and station diary and the accused person shall be asked to sign it.

Now, these guidelines were given because oral confessions, by their very nature, are very easy to fabricate and very hard to disprove. An example of this is the Central Park Five case. In 1989, a jogger in Central

Park was assaulted and raped, and others were assaulted, robbed and attacked as well. Five juvenile boys, four being African-American and one Hispanic were tried for these offences and they were arrested, charged and tried based solely on confessions which these boys said were coerced and false. Before the trial, the DNA which was found was tested but it did not match any of the five boys. Nevertheless, they were all convicted by juries in separate trials and they spent between six to 13 years in prison. In 2002, a serial rapist and convicted murderer, while he was in prison, confessed to those crimes and the DNA evidence confirmed his guilt. So those five boys were wrongly convicted based solely on an alleged oral confession.

This Bill here, it does not provide anything more than what is the current position in practice with respect to oral admissions. Almost every day in court we are faced with situations where police officers are relying on an oral confession of an accused to establish their guilt. And this utterance that they are relying on, it is usually never recorded in a pocket diary. And in the instances where they are recorded in the station diary, they are hardly ever signed by the suspect.

And what happens when these requirements are not done or followed by the police officer? Nothing. So it cannot be that this Bill is just restating, or making law of what the current practice is here. This Bill needs to do better. This Bill needs to go further and give a consequence for non-compliance of the section. [*Desk thumping*] It does not make sense we are here drafting and debating this Bill and nobody is complying with it because there are no ramifications, no consequences, for non-compliance.

So what this Bill needs is a section that says that the failure to record

the oral admission in the pocket diary and station diary, together with the failure of inviting an accused person to sign it, will result in the oral admission being non-admissible in court unless with the consent of the accused. And by doing this, we are ensuring that the police officers are doing their jobs properly, and it is very necessary for this part, the oral confessions part.

Now, section 12Y goes on to talk about:

"A video or audio recording of the whole or part of a witness statement shall be admissible as evidence."

So this section envisages that the recording is done at the police station. Now, this recording will be admitted as evidence rather than a statement of the police. Now, at the police station there are no safeguards. This audio or the visual recording can be done instead of oral testimony but direct oral testimony is the best type of testimony in a court, because at the police station, if you have the video or audio recording, there is no oath being administered to the person. We do not see the surrounding. We do not see the atmosphere. We do not see what is going on at the background. The formalities at a police station are not the same that exist in a court. So section 12Y should be amended.

Madam President, as a criminal practitioner, I would support any Bill that improves the criminal justice system and I submit that this Bill does not do that. Thank you. [*Desk thumping*]

Madam President: Hon. Senators, permit me to congratulate Sen. Bisramsingh on her maiden contribution. [*Desk thumping*] May I also crave your indulgence? It was remiss of me to not congratulate Sen. Young on his

maiden contribution. [*Desk thumping*] Sen. Heath. [*Desk thumping*]

Sen. John Heath: Madam President, thank you for the opportunity to contribute to this Bill entitled an Act to amend the Evidence Act, Chap. 7:02.

First, let me start by saying that I find it commendable having read, certainly, the earlier parts of the Bill, that the Bill seeks to incorporate into substantive legislation that which exists already in the common law, our local case law and that which exists in the Police Standing Orders. That, to me, is of no small importance, because for far too long, from my own experience, police officers have been extended certain amounts of latitude by simply not knowing their Standing Orders. I think where it is in primary legislation their failings will become more apparent when they do not know the law. So for that reason, where there is an attempt to incorporate into the Bill these pieces of common law, local case law, and the Standing Orders, that is to be encouraged.

There are, however—what we need to be cognizant of is that when there is an attempt to incorporate, for instance, the existing Standing Orders—and learned Senior Counsel, Sen. Chote, would have alluded to it—it would be important that we do not take away from the existing safeguards that already exist. Because, what would then happen, is there would be a conflict between the substantive legislation and the Standing Orders and it will be to the detriment of accused persons. It can be no intention for that to take place. I will show in a short while how the Bill does not replicate all the safeguards. I certainly would not go over it. I will just show a few examples. But that is something that certainly needs to be looked at and the

Bill, in that regard, needs to be tweaked. Just to give the first example, if we go to 12B of the Bill, it says:

> "Prior to the conduct of an identification procedure, an investigating officer may use photographs to assist in establishing the identity of a suspect."

If a police officer were to read that, he would take it literally and go to the photographs before going to the identification procedure. But when you go to the Standing Orders, particularly Standing Order 29, it says a lot more. It says:

> Photographs are not to be used if a suspect is in custody and it is the intention to place him on a parade. And in no circumstances are photographs to be used without a follow-up procedure—a follow-up identification procedure.

It would be important, therefore, to replicate what is in the Standing Order into the proposed Bill. On that same point of photographs, Standing Order 29 goes on to say:

> Where there are two or more witnesses who may be able to identify the suspect, one witness at a time should be shown the photograph. If one of them identifies the suspect, the photos should not be shown to the other witness.

And it goes on to say a lot of other things which are simply absent from the proposed Bill. I see in the Bill there is also—they seek to put in what is known as the Turnbull directions. I also find that commendable. Madam President, I am at 12A(2)(c) and it refers to what we commonly refer to as Turnbull directions, when a case rests solely, or substantially in any way, on

identification. I would make two suggestions. Firstly, I would include, as a factor, that the witness state whether or not anything obstructed his or her view, and also with respect to (iv) where it states:

> "The time during which the eye witness was able to observe the suspect;"

I would change that to "the length of time the eye-witness was able to" or "to the duration", meaning the length of time and not the time, if it may be ambiguous.

I observe that the Bill seeks to prioritize the mode of identification procedure to be adopted and while I have no difficulty with such a prioritization, it should not be that the identification parade is relegated. In the Standing Orders, the identification parade is the first port of call and I think it should remain that way. If an identification parade is carried out in the manner in which it is envisioned, it remains the safest method against an accused being wrongly picked out. What has happened, in my experience, is that by the time we get to court, or the time I am retained and I enquire of my client: "Did you have an identification parade conducted"? I am told, "No. They just brought the witness into a room with me and they said I was the person". I understand that to be a confrontation. Now, the confrontation is usually the last port of call. But what has happened is, because there are some practical challenges with an identification parade, Madam President, it is my personal view that police officers are just going to the easiest method, which is the confrontation, and therefore bypassing the safeguards which come with an identification parade. And so, in cross-examination of these police officers who are usually inspectors, they cannot say what efforts they

made; they cannot say where the efforts were recorded with respect to trying to assemble an identification parade, which leads me to believe that these efforts were never made and they simply went to confrontation.

So when I see in the Bill there is the use of video media—and the hon. Attorney General has said there has been some input from the TTPS—I suppose they would have suggested a relegation of the identification parade to suit their own designs. But we must address our practical difficulties and the identification parade is simply this: to get persons to form an identification parade you have to give them an incentive, and we have long gone past the stage where a flask of rum from the police canteen will do. It will only attract a certain type of person who has a proclivity for a drink. So it is either we revise the incentives for persons to come and find it useful for their time to form a parade, because it is important. So we must not undermine the importance of the identification parade and we must not relegate it in the priority. It should remain on top.

I see at 12G(1), they say that a reasonable opportunity to have a representative present, and they have put that at nine hours. I find that equally commendable, but that must also be with the concomitant right for an accused person to contact their representative. Because if you have a right but you do not have the opportunity to access the means of that right, well, that is an empty right. So that is something that should also be placed in there, even though we know that there is a right to a phone call. But that right to that first phone call might be to tell someone that you are at a station and not necessarily to tell someone you want them to be a representative. And I think that is something that ought to be inserted.

With respect to the video medium as an alternative, I find it should come lower down, but I also see that there is no provision for representation of the accused person who is not present. I know Sen. Hosein would have alluded to that as well. That should also be placed in there, with respect to representation of the accused person.

I personally find it commendable that with respect to interviews and oral admissions, that police officers will now have it as a force of law. The thought of that is a welcome addition to the law because, again, what has happened far too often is that police officers who have ignored their Standing Orders and who do not protect themselves in the way envisioned by the pocket diary, which is their number one safeguard against fabrication and concoction, to put a contemporaneous note as to the event that has taken place with any accused person, including any utterance which is attributed to an accused person. Perhaps if it is force of law, we will see use of these diaries more frequently and these notes being made in the station diary, as well as the pocket diary, and accused persons being asked to sign.

Madam President, with respect to the mode of recording an interview, I want to say that the use of the video recording is best practice. It should be encouraged. It helps the justice system in ways in which all the stakeholders can be happy, because when the video recording, which is admissible and produced as evidence so that an accused person cannot make an allegation or an allegation which is likely to be believed in any way, that the police officers coerced him or beat him, he would look to see the best deal he could get by pleading guilty and getting that third discount. It helps the justice system because these matters get in and out of the court a lot faster; the

evidence which the police are able to produce is more cogent, and so that to test the waters by going to a trial is less desirable. If we encourage this best practice, I think we would go a long way in seeing matters come through the system a lot faster. And so that is to be encouraged in a real way.

With respect to 12Y—and I am here at 12Y(2):

> "A video or audio recording may be made of the examination-in-chief, cross-examination or re-examination of a witness and the whole or part of such recording shall be admissible as the evidence of the testimony of the witness."

Madam President, I confess not to understand in what context this particular provision exists. It seemed to me to suggest that, like in the United States where deposition evidence can be taken at different chambers of attorneys, it would make sense there, but in the context of how it appears in the Bill, I cannot envision where examination-in-chief, cross-examination and re-examination can take place anywhere but in a court of law. So that I do not understand that, and it follows the following provisions falling from that equally—the hon. AG will have to explain that because I do not understand the context in which it fits into the Bill.

Madam President, I am certainly trying not to go over territory which has been covered, so I am skipping those parts which I know have been addressed. But let me come straight to what is *Division 4*, the "Special Measures, Evidence by Video Link and Witness Anonymity Orders". Now, I certainly understand the thrust of what is being proposed by the Bill. I certainly can, perhaps, envision circumstances where these anonymity orders may be useful. But in any event, these must be the exception rather than the

norm. I see, with respect to vulnerable witnesses, may include:

"any trauma suffered by the witness."

In the criminal justice system persons who are victims of crime can fit easily into that. I see the witness being a virtual complainant in proceedings for a sexual offence. The idea is that this cannot be the normal procedure, because the very fact that a witness is anonymous tramples on the fair trial rights of the accused.

It speaks to a sort of forbidden reasoning that your accuser in a criminal process would never be known to you. This Bill proposes to dispel the forbidden reasoning.

7.00 p.m.

Now, Madam President, let me say over the course, I would say within the last 10 years, there have been significant gains made by way of Bills which have been passed which have benefited the prosecution of matters. So where in the past, hearsay statements could not get in, we are met with an avalanche—when I say we, the practitioners at the Criminal Bar, we are met with an avalanche of applications to reduce hearsay statements because witnesses are fearful and we have to fend them off each and every time. So it is not that—and these are witnesses, mind you, that they do not turn up, their statements go in as evidence in chief and it is not subjected to cross-examination.

We have endured the introduction of the bad character evidence which again touched on the forbidden reason that because a man has been convicted for a particular crime does not mean that he did this one, which is what the bad character applications now seek to do and have done. So this

one would be another in a series of legislation which do not in any way benefit an accused person, but simply because it does not benefit the accused person does not itself mean that it is not good for society as a whole.

But having said that, we must take into context and certainly from my lens, the society that we live in, I have always stated that there is a certain lack of maturity with respect to our criminal litigation between the prosecution and defence. There is a certain level of mistrust and when you add to the mix the police service, there is an equal level of mistrust among us. It is against that backdrop that we need to be very careful if it is we want to be introducing anonymity orders. Special measures such as video link for witnesses who may be fearful, I find least objectionable. I have a particular difficulty with the screen in a court setting when the only person who cannot see the witness is the accused person, that might operate in a prejudicial way towards that accused person and that is why I would prefer, if faced with the choice, to have the person give evidence by way of video link. It must be in any legislation a last resort, an anonymity order from a court.

But independent of that, respectfully, the Bill, in my view, lacks certain safeguards which I will ask the hon. Attorney General to consider. So just by way of example if I may just state a few, there is no provision for hearing an objection by an accused person through his representative. It is the court to consider and then make the appropriate order. The justice system works best when the stakeholders work together. So if a judge has to make a determination on an anonymity order, that judge is best served with the assistance of the prosecution and defence counsel making submissions if they so wish to do. The Bill does not seek to address if the accused person

wishes to make an objection that he has a right of audience.

I looked at the parallel legislation in Scotland which is the Criminal Justice and Licensing (Scotland) Act 2010 and that provision with relation to an accused person being given the opportunity says that:

> "The court must give every party to the proceedings the opportunity to be heard on an application under this section."

Section 271U speaks to the "Discharge and variation of order" so that in the event that an order is made and new information comes to light, either party can make an application to either discharge or vary the order, and if I may read what that section says. This is 271U:

> "(1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.
>
> (2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271R and 271S that applied to the making of the order.
>
> (3) The court may do so—
>
> (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
>
> (b) on its own initiative."

Subsection (4) says:

> "The court must give every party to the proceedings the opportunity to be heard—
>
> (a) before determining an application made to it under

subsection (3)(a), and

(b) before discharging or varying the order on its own initiative."

Staying with the relevant legislation in Scotland, there is also a right of appeal and this is an appeal with respect to the order. Because there is no provision in any legislation for a procedural appeal in the Criminal Court, essentially what you will have to do is to wait, the order is made, you go to trial and if you are found guilty, you take it as a point at the Court of Appeal when it comes up how many years after that. There is, however, a right of appeal and I would ask that this be considered, such is the gravity of these orders. And in Scotland at section 271V, it says this:

"The prosecutor or the accused may appeal to the High Court against—

(a) the making of a witness an anonymity order under section 271N,…"

And it goes on to address if the order is not made, there may also be an appeal. I think that the insertion of a right of appeal of such an order would seek to temper or allay certain fears that persons may have about these orders being made in the first place. So that if you have this opportunity to appeal, it may go a long way in seeing the Bill through its various stages.

I know the hon. Attorney General had referred to the Davis case, I just want to give a citation from Fortas J. in US Supreme Court in *Smith v. Illinois* cited in the Davis case and it really is just to show, when you take away the major tool in a criminal trial which is cross-examination, which is what would happen if an attorney simply does not know who is giving the

evidence, the effect that it would have on the trial and this is what he had to say:

> "…when the credibility of a witness is in issue, the very starting point in 'exposing falsehood and bringing out the truth' through cross-examination must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself."

And that is just the fact of who you are and where you live. There is a lot more with respect to an anonymity order. There are simple things that not even the prosecution would know. They would not know, for instance, the reprehensible conduct of this particular witness beyond whether or not he has convictions which the prosecution can disclose. They would not know what motive lies beneath this witness or they may not know the malice he has with respect to an accused person. That is information that an accused person may have.

Madam President, suffice it to say, a lot is being asked with respect to the Bill, a lot is commendable in the Bill in what it seeks to introduce as force of law. I am of the view that a lot of what is troubling to me, it can be cured but there are certain things that have to be done first. I thank you. [*Desk thumping*]

Sen. Augustus Thomas: Madam President, I rise in support of the Evidence (Amdt.) Bill, 2019. It seeks to amend the Evidence Act, Chap. 7:02, to provide for the use of different identification procedures, interviews

and oral submissions, special measures, the taking of evidence by video link and witness anonymity orders.

Madam President, my friend and colleague on the Independent Bench, Mr. Heath, has said a lot, 90 per cent of which I agree with. Some of which I would have said here tonight but I will not bother to bore them because they would be hearing the same repetition. But, Madam President, the concepts of all are equal before the law and the right to a fair trial and the question of the state infringing on the rights of persons, are all concepts that are common and regular in the discourse of law, and among practitioners in the criminal justice system and in the civil procedures system, as they are also common among the normal everyday citizen who has an educational background and care about their livelihood in Trinidad and Tobago.

The common man in the streets who lives a decent life is more concerned about the number of prosecutions that are secured by the State in the criminal jurisdiction. Milady, as a practitioner myself, I am happy to see in this Bill, innovations that will allow the criminal justice system to function in a more efficient way and to produce what most of us yearn for: a fair trial among both parties who find themselves before the court.

My experience in the criminal practice system has not always been nice and I recall one night around 10 o'clock, someone called my phone and asked me if I can present myself at a particular police station in Trinidad and when I got there, I spoke to a client and he told me what his problems were. On the evening, I went to the corporal and I indicated to him, I said "When you are all having your identification parade, I would like to be present. Is there a set time when you have it?" He said "Three o'clock tomorrow they

will be having the parade." So I find myself at the station, spoke with my client again, then spoke to the Inspector and he said "We having difficulties in putting the parade together so that we not sure but we should have it by six o'clock". So I indicated to him, you can have my number and once the parade is to take place, you could give me a call and I will find myself here within the space of 10 minutes. I received no call so I went back at 10 o'clock the night.

When I got there, the corporal at the sentry desk indicated to me that the parade went at seven o'clock. Madam President, if for no reason whatsoever but for that reason, I will support 100 per cent the question of videotaping of these proceedings. There are many occasions that you go to the court and these identifications are supposed to be done on forms, written. When you ask for disclosure, "sometime you get, sometime yuh get four". The parade is supposed to be nine persons, you get three. They will bring the rest for you and you start the matter without having seen any. Milady, if videotaping would bring some degree of surety, a certainty to the justice system, I will support that and support the Government in its quest for any such thing.

And it is not only there, it is not only there. Madam President, I share similar concerns with every attorney and every Member of this Senate who believes that their section 4 and 5 rights under the Constitution will be affected by the fact of what is contained in this Bill and the whole question of anonymity orders and so on. I have engaged myself into practice in this jurisdiction, particularly in sexual offences matters that really and truly involves young people and when I say young people, children, and it irks me

sometimes when I see children in a box giving evidence. It is one of the most stressful thing for any child. [*Interruption*] In the witness box.

I have been involved in trial and by and large, Madam President, all that we are harping about here, it is practice, in practice you know. These things are practice and practice. I have been involved in trial where we actually hide the defence or the defendant or the accused so that we can allow children to give evidence without having to go through the trauma of watching the accused face and we are asked by judicial officers to let us agree that they do not show them these people because they would not be able to give the evidence and so on.

And, Madam President, really, if for some reason, we as leaders in this society are concerned about making just laws, laws that are reasonably justified, what else will justify not having into law these elements of this Evidence Act if not to protect our young ones? A fair trial, Madam President, does not go one way. A defence attorney may say that he has his defendant to protect but the accused also has their dignity and their pride to protect and they have all right to do so in confidence that they know what is in the legislation so that they could at least afford themselves some degree of comfort to know that they are reasonably represented by the law.

And, Madam President, I have not gone through all the facets of this document because of time and the time it came to me but I want to say that the Government, in its quest to ensure that fairness exists at every level of this society, is trying its very best to ensure that legislation that comes to this House is representative of the entire society, and I ask hon. Members of this House, and I agree with some of us that there are some concerns in the Act

but I also agree that the Act presents itself with more advantages than disadvantages and we should find some way in our hearts and minds to ensure that this piece of legislation becomes law.

With these few words, Madam President, I take my seat. [*Desk thumping*]

ANSWER TO QUESTION

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I grave your indulgence to revert to a matter on the Order Paper which was deferred earlier, it is under Item Number 9 and it is Question No. 188 which is due for written response today. I ask for a deferral for two weeks.

Madam President: Question No. 188 is deferred for two weeks.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, in accordance with Standing Order 14(5), I beg to move that this Senate be adjourned to Tuesday, April 9th at 10.00 a.m. and on that day, Madam President, we would consider the Non-Profit Organisations Bill, 2019. Thank you.

Madam President: Hon. Senators, before I put the question on the Adjournment, leave has been granted for two matters to be raised. Sen. Mark.

Caricom Heads of Government

(St. Ann's Declaration on CSME)

Sen. Wade Mark: Thank you very much, Madam President. A meeting was called, a special meeting of the Caricom Heads of Government took

place in Trinidad and Tobago sometime during the period December the 3rd to the 4th, 2018, and at the end of that meeting, a declaration called the St Ann's Declaration was issued. There were a number of commitments identified and issued by the Heads of Government. And Madam President, whilst we are all committed to the Caribbean Single Market and Economy, as the alternate Government, we find it strange that the Government of Trinidad and Tobago headed by the Prime Minister, could have append or have appended his signature to declarations and commitments without any consultation with the population of this nation.

I would not want to bore you with all the commitments that the Government led by the hon. Dr. Keith Christopher Rowley who is campaigning right now in Diego Martin West.

Sen. Baptiste-Primus: Nothing wrong with that.

Sen. W. Mark: I have no problem with that. "If yuh have to call a snap election leh we know in September." [*Desk thumping and crosstalk*] So, Madam President, whilst he is campaigning in Diego Martin West, we have a situation where the Government has committed itself to a number of matters. For example, Madam President, the Jamaican people established a team led by the former Prime Minister Bruce Golding, and they prepared a document, a book on the way forward and they gave Caricom a five-year period to put its act together or else Jamaica gone. "Dem gone." But at least, Jamaica went to the Parliament with their position and both the Opposition and the Government agreed. [*Crosstalk*] They agreed. There is a consensus in Jamaica on the Bruce Golding report. So what has happened, Madam President, is this. This report out of Jamaica gave us and Caricom

five years to put its house in order, to get CSME together. Our Government signed a document saying that we are going to implement CSME and all its commitments within three years. So in this declaration, which was signed by the Prime Minister on behalf of Trinidad and Tobago, we have agreed to the full—and I want to quote:

> "We agreed that those Member States so willing would move towards full free movement within the next three (3) years;"

And the Government of Trinidad and Tobago signed off in agreement. Madam President, they also agreed, among other things, without our involvement and participation and agreement as a nation that they will now include a new category of workers for free movement: agricultural workers, beauty service practitioners, that is beauticians, barbers and security guards, and that would be added to the category called skilled nationals.

7.30 p.m.

So you are going out there, signing away Trinidad and Tobago, where we have a lot of challenges here to allow people like agricultural workers, security workers, barbers and beauticians to come into Trinidad and Tobago and work freely. Not only that, Madam President—

Sen. Gopee-Scoon: You are getting to dislike Caricom—

Sen. W. Mark: No, we are supporting Caricom, but you must get the agreement of the people in order to implement that. [*Desk thumping*]

You cannot do that just so. You may say so, you may say so. But, Madam President, they go further. So you are bringing people into the country, they will have the right to access education, access our health care services. I have no problem with that because we said we are committed to

the CSME, but there is no consultation.

In addition to that, Madam President, this Government, led by Dr. Keith Christopher Rowley, who is campaigning in Diego Martin West for the next general election in September—

Madam President: Sen. Mark.

Sen. W. Mark: Sorry, Madam President. So Madam President, you know what they also agreed to, Madam President? They also agreed, Madam President, to what is called Contingent Rights Protocol. Hear what the Prime Minister said in a statement, and I have it in front of me. Commitments given, free movement of persons, in the declaration, this is what we committed to:

> "- move towards full free movement within the next three (3) years (by 2021)..."

Once ratified, the Government will come to this Parliament and comprehensively review the relevant legislative and administrative framework governing entry and stay of Caricom nationals.

They go on further, Madam President, to say this is another commitment with regard to the free movement of skilled community nationals. As I said, it includes the categories I mentioned earlier, agricultural workers and so on. They also agreed:

> "…to reiterate that a skills certificate issued by one Member State would be recognised by all Member States;"

So you sign one in Trinidad, you can go to all 15 countries. You sign one in Jamaica, you can go to all 15 countries. That is what they have agreed to, and then they have to also deal with the—

Madam President: Sen. Mark, you have one more minute.

Sen. W. Mark: Yeah. So, Madam President, we are calling on the Government to indicate to this country, when are they going to consult with the people on these matters before bringing legislation to this Parliament for approval for these initiatives and commitment? Because, Madam President, we need to have consultation, or is the Government signing off, Madam President, these matters and then they are hoping to win the elections or they want us to implement these measures? So, Madam President, we want to get a clear undertaking from the Government today. When are we going to have consultations on these matters in the interest of our country? [*Desk thumping*]

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses): Madam President, Trinidad and Tobago has been the vanguard in bringing to the fore within Caricom, a renewed focus on Caricom Single Market and Economy (CSME) markets. The Prime Minister of Trinidad and Tobago, at a special Heads of Government meeting which was held in Trinidad and Tobago towards the end of last year, at the beginning of December 2018, treated with this important issue of the CSME.

Our national self-interest, given the significant levels of exports by Trinidad and Tobago manufacturers to the Caricom markets, as well as our vested interest in a successful integration movement, compels us here in Trinidad and Tobago to participate within Caricom in a responsible manner.

Heads of Government agreed to an increase in the number of categories of persons from Caricom countries eligible to move and work in other Member States of Caricom. Efforts are currently being directed here

in Trinidad and Tobago to ensure that good faith prevails and our commitment to increase the number of categories can be realized.

We are committed to ensure that the increased standing and leverage of our country Trinidad and Tobago as part of a successful Caricom can be attained. Thank you very much. [*Desk thumping*]

Sen. Wade Mark: Madam President, may I raise another matter of interest to the population?

Sen. Haynes: "Raise de same one. He eh answer it."

Sen. W. Mark: Well, he will never answer anything.

Madam President: No, no, Sen. Mark.

Sen. W. Mark: Sorry, sorry, Madam President.

Sen. Baptiste-Primus: Withdraw.

Sen. W. Mark: Withdraw what?

Clico and Sagicor Sale of Insurance Portfolio

(Details of Discussion)

Sen. Wade Mark: Anyway, let me address Madam President. Madam President, let me indicate, on this issue, a very important matter of great concern to the population. We were told, Madam President, by the distinguished Minister of Finance some time ago, that the Government is about to take a decision to sell out the Clico portfolio insurance, or I should say the insurance portfolio of Clico. And we were told, Madam President, that there were several bidders for this insurance portfolio. Two of them were successful, Sagicor Financial Corporation and Maritime company services or insurance company services limited.

The Minister who purportedly is looking after the public's interest,

triggered section 44F(5) of the Central Bank Act in order to ensure that the interest of the population is not jeopardized. What was alarming and disturbing is when the Minister informed the population that the preferred bidder, which is Sagicor Financial Corporation, bid $300 million lower than the other competitor or bidder, that is Maritime services or insurance company limited.

And the question here, Madam President, is this: Sagicor, we understand, was supposed to be purchased by a Canadian group called Alignvest for US $536 million. That is now on hold. Sagicor is registered in Barbados. Sagicor is incorporated in Bermuda. So the question that has to be asked is, the Minister is now making a case, and this is what I saw in a newspaper report on March 30, 2019, *Saturday Express*, in which the Minister is alleging in this article—and given the impression, from what I am reading—that the Central Bank has already taken a decision to sell the Clico Insurance portfolio to Sagicor. But the Minister purportedly is supposed to be representing our interest and is yet to take a decision, because a foreign investor licence has to be issued for them to gain control of our insurance industry.

The Minister must take into account, Madam President, that if you sell the Clico portfolio to Sagicor, Sagicor will now have a concentration of ownership and a very influential part of the insurance industry in Trinidad and Tobago. And I get the impression, from when I read this article, the Minister is making a case for Sagicor. Because in this article the Minister, and I quote, the Minister is saying that the company that made the lower bid is a strong, substantial company and the risk of that company failing is low

in the future.

But the Minister is also telling the country, Madam President, that this same Sagicor bid $300 million lower than the Maritime Financial Group. And the question that has to be asked in the public interest, Madam President, who is really looking after the interest of the people of this country? Because you have a Minister of Finance batting, literally defending, one bidder that has already been given the green light by the Central Bank of Trinidad and Tobago, according to what I have read in this article. That is what I have read.

And the Minister must tell us this evening, what is the role of the Minister of Finance in defending the public's interest in this matter? Because I saw in this, I have done research here, Madam President, on the shareholders of Sagicor. And I am seeing the "young" people having a big directorship there. Richard P. Young is a director. He is a director. So I am wondering, Madam President, and the Minister must explain, because Angus Young is in NCB and we have a Minister in the Government. So we want to know who is looking. That is what I am trying to do. I am trying to connect the dots. I am trying to connect the dots, and I am trying to determine the role of the Minister in this whole exercise. [*Crosstalk*] I can call anybody's name. I can defend myself.

Madam President: Sen. Mark.

Sen. W. Mark: Sorry, sorry, Ma'am. Madam President, let me turn to you, please. So, Madam President, what we are saying is that the Government has taken a decision to sell out, to sell out, to sell out the Clico portfolio to their friends in Sagicor. That is what they have decided to do. And we want

the Government to tell this country today, how is the public interest going to be protected and defended if you have two bids, one is $300 million lower than the other? So Sagicor is bidding for the Clico portfolio but it is $300 million under Maritime Financial Group.

And I would like to know, Madam President, whether the Minister intends to get Sagicor to up its current offer to the same as that house—

Madam President: Sen. Mark.

Hon. Imbert: A point of order.

Madam President: Sen. Mark.

Hon. Imbert: Sorry.

Madam President: Read your Motion, the Motion that you have filed, but you are also now imputing improper motives. I am going to ask you to dial back in your remaining minute.

Sen. W. Mark: So, Madam President, this is a very serious matter and we intend to carry it to the campaign trail for the election in September, because we believe that the Government is not sincere in its operation and its commitment to the people of this country, and we call on the Government of Trinidad and Tobago to tell us this evening in this Parliament, what is the Government's position on the sale of the Clico portfolio? Are they going to sell it to Sagicor? Are they going to sell it to Maritime Financial Group? Or are they going to stop this whole transaction and restart it all over again to ensure that the people of this country get the best arrangement in the sale of this particular asset of our people? That is the question that I put to the Government and we will tell the people what you are doing outside there. I thank you very much, Madam President.

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Madam President, in terms of the inaccuracies, untruths, falsehoods, fake news, I am sorry. It is too much, because I did not tell this honourable House or the other place any of the things that Sen. Mark has accused me of telling. None of the things that he says are in that article, are in the article. It is absolutely ridiculous and what is worse is: What is the Motion? I do not think at one point in time in that 10 minutes he addressed the matter on the Motion for the Adjournment, Madam President. The matter on the Motion which I came to answer, is the need for the Government, through the Central Bank, to ensure that the interest of customers, policyholders are protected in the ongoing discussions between Clico and Sagicor on the sale of the insurance portfolio of Clico. That is what I came to answer, Madam President; not that tirade that we got about Minister's parents and Minister's brothers, who have absolutely no connection to this whatsoever, none whatsoever, and all of this foolishness about Maritime. This is not in the Motion. This is not on the matter, Madam President. So I will answer what I came to answer. Suffice it to say, every single thing the Senator said is false, suffice it to say.

At no point in time did I as Minister of Finance or any other Member of the Government indicate even an iota, a smidgen of a decision or a policy to sell out the traditional portfolio of Clico to Sagicor. At no point in time have I as Minister of Finance said that or anything even remotely close to that, and that is why I say everything Sen. Mark said was absolutely false.

Let me put on the record what I said. I said that the Central Bank, which has taken control of Colonial Life, under the relevant legislation, has made a proposal to me as Minister of Finance for my review and approval

with respect to the sale of the traditional portfolio of Colonial Life. That is all that has happened. The Central Bank has made a proposal to me as Minister of Finance for my review and approval with respect to the sale of the traditional portfolio of Colonial Life. And I said, that as Minister of Finance, I am not a rubber stamp, I have to be extremely careful, I have to protect the public interest and I have to weigh up the pros and cons of that proposal that has been made to me by the Central Bank. This is not the Government's proposal. It is not the Government that is selling out anything. The portfolio will be disposed of, if it is disposed of, by the Central Bank of Trinidad and Tobago, not by the Government, not by the Government at all.

And let me just deal with the matter I came to debate, because a lot has happened since 2008/2009, when we had the Clico crisis, Madam President. And what happened then is that Clico, CL Financial and British American failed because of the culture and the behaviour that was endemic in the CLF Group at the time, the attitude of the persons who controlled Clico at the time, towards matching assets with liability and their very poor asset risk control and the weaknesses at the time that applied to insurance companies.

Madam Speaker, when we had the failure of Clico, Madam President, sorry, when we had the failure of Clico, the Insurance Act only required insurance companies to have paid a capital of $3 million. We have since come to this House and the other place and we have debated a new Insurance Act—and passed it, it will be proclaimed very shortly—where insurance companies now have to put up capital to the extent of 150 per cent

of their liabilities. So let us say for example, the Clico portfolio is worth $500 million or $700 million, just pick a number, the company that controls those policies will have to have matching capital of a billion dollars, Madam President. So we have moved from a situation where an insurance company was only required to have paid up capital of 3 million, now to 150 per cent of the total extent of the liabilities to policyholders.

The rigour and the robust nature of regulation has also been vastly improved over the last 10 years, Madam President, and I am satisfied, based on everything the Central Bank has told me, that their primary interest is to ensure that something like the failure of Colonial Life never happens again and they are exercising due diligence and extreme care with respect to their proposal to me, as Minister of Finance, with respect to the disposal of the traditional portfolio of Colonial Life.

However, I have to be very careful, Madam President. I have to protect the public interest. I have to make sure taxpayers get maximum value, in terms of the disposal of the Clico assets, because the taxpayers funded the bailout of Colonial Life and CL Financial. So we have to return to taxpayers, the money that they have received. And I must say that this Government has been very successful. Up till the middle of 2018, this Government had recovered $14 billion in Clico assets, something they could not do. [*Desk thumping*] They pussyfooted for five years, played around, danced around.

Madam President: Could you please use better language than that, please?

Hon. C. Imbert: I apologize, Madam President. They played around for five years because they had friends inside of there. They played around for

five years and they did nothing to monetize the assets of CL Financial and Colonial Life. This Government was able to recover out of that $14 billion, $8 billion in blue chip assets, which we have put into to the National Investment Fund, which is now yielding dividends to taxpayers of this country. [*Desk thumping*] So we have always exercised prudence. We are proactive. We are performers. "The time for ole talk done", Madam President. This Minister of Finance, this Minister of Finance is going to be very careful, protect the public interest. And I am satisfied that the Central Bank is also being very, very careful in its recommendations to me. I thank you, Madam President. [*Desk thumping*]

Madam President: Hon. Senators, may I just, before I put the question to adjourn, congratulate Sen. Thomas who made his maiden contribution today. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.53 p.m.