

SENATE

Wednesday, December 18, 2019

The Senate met at 10.00 a.m.

PRAYERS



[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. the Hon. Franklin Khan who is ill. I am awaiting the instrument of appointment and therefore, I will ask that we return to this item on the Order Paper when I receive it.

JOINT SELECT COMMITTEE

(APPOINTMENT OF)

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

“December 16, 2019

Dear President of the Senate,

Membership of Joint Select Committee

At a sitting held on Monday December 16, 2019 the House of Representatives agreed to the following resolution:

‘Resolved: That, the following six (6) Members be appointed to serve on the Joint Select

Committee appointed to consider and report on the Cannabis Control Bill, 2019:

Mr. Faris Al-Rawi MP

Mr. Stuart Young, MP

Mr. Fitzgerald Hinds, MP

Mr. Terrence Deyalsingh, MP

Mr. Rushton Paray, MP

Dr. Tim Gopeesingh, MP.’

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

Thank you.

Respectfully,

Hon. Bridgid Mary Annisette-George, MP

Speaker’’

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)

(AMDT.) (NO. 3) BILL, 2019

Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made: That the next stage be taken later in the proceedings. [*Hon. F. Al-Rawi*]

Question put and agreed to.

PAPER LAID

Delegation Report of the 140th Assembly of the Inter-Parliamentary Union, Doha, Qatar, April 6-10, 2019. [*The Vice-President (Sen. Nigel De Freitas)*]

SPECIAL SELECT COMMITTEE REPORT

Evidence (Amdt.) Bill, 2019

(Presentation)

The Minister of Agriculture, Land and Fisheries: (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

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Second Interim Report of the Special Select Committee on the Evidence (Amdt.) Bill, 2019.

JOINT SELECT COMMITTEE REPORT

Constitution (Amdt.) (Tobago Self-Government) Bill, 2018

(Presentation)

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

Interim Report of the Joint Select Committee appointed to consider and report on the Constitution (Amdt.) (Tobago Self-Government) Bill, 2018, Fifth Session, Eleventh Parliament.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries: (Sen. The Hon. Clarence Rambharat): Madam President, there are seven questions on notice. The Government will answer all seven questions today. Thank you.

Procurement Department Dismissals

(Details of Outsourced Consultant)

11. Sen. Wade Mark asked the hon. Minister of Housing and Urban Development:

In light of the sudden dismissal of six persons employed by the Ministry's Procurement Department and the decision to outsource the Ministry's procurement functions to a Consultant, can the Minister provide the following:

- (i) the name of the selected Consultant; and
- (ii) the terms of engagement of said Consultant?

The Minister of Housing and Urban Development (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Once again, Sen. Mark's information is

incorrect. The Ministry's procurement functions were not outsourced to any consultant. Presently, the HDC has a manager, procurement, who is acting, who ensures the efficient functioning of the unit, and that strategic operational activities of the department are monitored and achieved. And as such, Madam President, based on this answer, part (ii), therefore, is not relevant.

Sen. Mark: Could I ask the hon. Minister if he can share with this Senate what were the reasons for the dismissal of the six persons?

Madam President: Well, Sen. Mark, based on the response given, I do not think that question arises.

Sen. Mark: Can I?

Madam President: Yes. Yes, of course. Sen. Mark, next question

Caribbean Airlines Flight

(April 2019 - Details of)

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

Having regard to reports that in April 2019, a Caribbean Airlines flight departed Trinidad for Tobago with several unoccupied seats, despite there being children and elderly persons on standby, can the Minister advise:

- (i) what were the reasons that led to said occurrence;
- (ii) what is the airline's policy with regard to allowing flights at less than full capacity to depart; and
- (iii) how will the airline avoid a recurrence of the situation?

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, in the case of the circumstances of April 14, 2019, the flight was the last flight out of Port of Spain and had a large no-show factor. As a result, Caribbean Airlines opened the flight for its standby passengers as in accordance with their

normal process. As the passengers attempted to purchase tickets at the tickets sales counter, a confrontation occurred with airline staff. This confrontation created an unsafe situation which warranted the intervention of Airports Authority security. Due to the unsuccessful efforts of the Airports Authority security to control the standby passengers, the Airports Authority security along with the airline's airport representative agreed that the sale of tickets would be stopped.

In addition to this, the airline crew's duty time, which is the period of time a flight crew can legally operate a flight as outlined in the Caribbean Airlines guidelines for cabin crew and flight crew, was approaching its limitation and would have caused the flight to be cancelled altogether if the airline continued to sell tickets and check in passengers for this flight. On April 14, 2019, the cabin and flight crew had nine hours from the time they started their duty, with an end time of 2.30 a.m. on April 15, 2019. The crew completed their rotation at 1.56 a.m. on April 15, 2019, 34 minutes before their duty limits.

Caribbean Airlines policy is to facilitate all passengers up to full flight capacity. However, in situations where security and safety may be compromised, the airline's airport manager can exercise their discretion to dispatch flights with less than full capacity. The company maintains its policy and procedure for safe operations of the airline and encourages its passengers to abide by them. The airline cannot be held responsible for the unruly behaviour of passengers. Thank you, Madam President.

Sen. Mark: Madam President, could I ask the hon. Minister what led to the confrontation at the material point in time?

Sen. The Hon. A. West: Madam President, as I indicated in my initial response, the standby passengers in attempting to secure seats on the airline and purchase tickets to fly to Tobago, became unruly and the Airports Authority security had to

intervene.

Sen. Ameen: Thank you. A follow-up question. Through you, Madam President, to the Minister: Has Caribbean Airlines considered revising their system for procuring standby tickets based on this incident and the recent rushes that we have had at the airports?

Sen. The Hon. A. West: I am not aware that Caribbean Airlines has come to the conclusion there is anything wrong with, or that their system is different from the normal approach taken by airlines in respect of standby passengers, Madam President.

Sen. Mark: Could the Minister say or inform this Senate, whether any action was taken to facilitate the passengers who were unable to get on to that flight on that evening? Could you indicate to this Senate what steps did Caribbean Airlines take to facilitate them in one way or the other, accommodation inclusive?

Sen. The Hon. A. West: Madam President, I am unable to respond to that question.

Sen. Mark: Could you advise this Senate when you will be able to respond to this question?

Sen. The Hon. A. West: Madam President, if the Member poses a question we could provide a response.

Sentencing Commission

(Provision of Resources)

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

In light of statements by the Chairman of the Sentencing Commission about the non-receipt of State resources to facilitate the operations of the Commission, can the Minister indicate when will said resources be provided?

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Madam President, for fiscal 2020, the Sentencing Commission has been allocated a sum of \$2,148,000 under Head 23 - Ministry of the Attorney General and Legal Affairs, to meet expenditure as follows: Personnel Expenditure, \$895,000; Goods and Services, \$1,103,000; Minor Equipment Purchases, \$150,000. The Ministry of Finance will release funds for the Sentencing Commission as soon as it is in receipt of a request from the Ministry of the Attorney General and Legal Affairs for this Head of Expenditure. Madam President, my understanding is that the Commission is seeking to secure accommodation and to get itself ready to provide its services, and to date, has not requested a release from the Ministry of Finance.

Sen. Mark: Could the hon. Minister indicate where the Commission holds meetings at this time? Seeing that they are searching for accommodation, where does the Commission meet at this time?

Sen. The Hon. A. West: Madam President, the AG would be the more appropriate person to whom to direct that. The Ministry of Finance does not have that information.

Sen. Mark: Could the hon. Minister indicate what steps have been taken by the Government to speed up the acquisition, rental or otherwise as it relates to accommodation for the Sentencing Commission?

Madam President: Sen. Mark, I will not allow that question because—in light of the question posed and the answer given. So it is not material to the question posed. So do you have another question?

Sen. Mark: Could I ask, Madam President, of the 2million allocated thus far, could the Minister indicate how much of that sum has been released to the Sentencing Commission thus far?

Sen. The Hon. A. West: As I indicated previously, Madam President, of the sum allocated to the Commission, the Ministry of Finance has received no request for releases to date.

**North Central Regional Health Authority
(Status of Molecular Biology Laboratory)**

24. Sen. Wade Mark asked the hon. Minister of Health:

In light of reports that the North Central Regional Health Authority ordered and is yet to receive equipment known as a Molecular Biology Laboratory valued at \$40 m for the Eric Williams Medical Sciences Complex, can the Minister advise as to the status of delivery of said equipment?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Once again Sen. Mark's question is based on a false premise. The Molecular Biology Laboratory for the Eric Williams Medical Sciences Complex was delivered and was commissioned during the period June and August 2019 with the supporting testing and training of staff. I thank you, Madam President.

**Transfer Pricing Legislation
(Details of)**

50. Sen. Amrita Deonarine asked the hon. Minister of Finance:

Given statements made by the Minister in the Senate on October 24, 2017 regarding the Government's intention to introduce transfer pricing legislation in 2018, can the Minister advise as to:

- (i) what are the activities to be completed prior to the establishment of transfer pricing legislation; and
- (ii) does the Government intend to introduce said legislation in the Fifth Session, Eleventh Parliament?

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, the process of introducing transfer pricing legislation includes an assessment of the current taxation framework; consultations with key stakeholders, including taxpayers, legislators, policy makers, management staff, IT personnel, auditors, lawyers, judges, Government Ministries and civil society. Development of transfer pricing policy with the input of transfer pricing experts to guide the drafting of primary and subsidiary legislation and regulations, and training and capacity building, and the establishment of a transfer pricing specialist team or unit for the administration of the legislation upon proclamation. The Ministry of Finance is in the process of finalizing the implementation of an appropriate transfer pricing framework, and once completed will aim to introduce such legislation in the Fifth Session, Eleventh Parliament. Thank you, Madam President.

Sen. Mark: Could I ask the hon. Minister, is the Government going to produce a policy paper on this very important question of transfer pricing? Is there a policy paper that will be generated by the Government on this particular matter?

Sen. The Hon. A. West: Madam President, the Government has an internal policy. I am not aware of whether or not there is an intention to circulate that prior to the laying of the draft Bill.

Sen. Mark: Could I ask the hon. Minister, is there a particular time frame you anticipate seeing that you have a very short period next year for the laying of this Bill for deliberation in the Parliament, that is the transfer pricing legislation? Is there any time frame?

Sen. The Hon. A. West: Madam President, I can be no more specific than I was with my original response at this time.

Sen. Mark: Could I ask the Minister whether the Government has abandoned this

particular thrust to introduce legislation in this Parliament? Having regard to the fact that four years ago that position was enunciated, is it fair to conclude that the Government has abandoned that plan to introduce legislation on transfer pricing?

Madam President: I think it is fair for me to say that that question is not allowed. Any other question, Sen. Mark?

Sen. Mark: No.

Madam President: Okay. Next question, Sen. Richards.

Influenza Virus

(Details of)

57. Sen. Paul Richards asked the hon. Minister of Health:

With respect to reports of the influenza virus, can the Minister indicate the following:

- (i) the number of confirmed deaths over the last six months (April 30 to October 31, 2019);
- (ii) whether there has been an increase in the number of persons who have contracted the virus over the last year, as compared to a similar period in the previous year; and
- (ii) are our public health institutions adequately stocked with influenza medication?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Part (i) of the question deals with deaths due to influenza. The answer is as follows: For the year 2013, no data is available as regarding deaths due to influenza which is a tragedy. For 2014, again no data available, another tragedy. 2015, no data available; tragedy, upon tragedy, upon tragedy. We started collecting data in 2016 under this Administration, no deaths; 2017, none; 2018, seven; 2019, as at December 7th, 32. There were six reported deaths for the period

six-month period as asked, between April 30 to October 31, 2019.

Part (ii), the number of reported suspected influenza cases as of December 17, 2019, is 3,232, which is 28.8 per cent lower than the 4,544 cases for 2018.

Part (iii), yes our public health institutions are adequately stocked with influenza medication as 100,000 doses of vaccine were received in November 2019. As of December 09, 2019, 52,900 doses were distributed and 33,101 doses were administered at various public health institutions. I thank you, Madam President.

Madam President: Sen. Mark.

[Sen. Richards and Sen. Mark stand]

Madam President: Sen. Richards.

Sen. Richards: Thank you, thank you, Madam President. Thank you, Minister for the answer. Would you be able to, and just for public information, reiterate to the public the vulnerable groups so that they know they should access the vaccines, please?

Hon. T. Deyalsingh: With pleasure. Pregnant women, the elderly over 65 with diabetes, et cetera, children between the ages of six months and five years. And, Madam President, it is regrettable that Trinidad and Tobago has now tarnished its reputation in the international health environment by a very unfortunate statement, and I have the *Hansard* of Wednesday 11th, where Dr. Tim Gopeesingh, speaking on behalf of the UNC said:

“And as from the role of a gynaecologist, I am still to determine whether I should recommend a pregnant patient for the vaccine, because there is raging controversy for children and that, and children are getting a lot of complications from the vaccine.”

Madam President, this statement by the UNC and MP Tim Gopeesingh has

tarnished the international reputation of Trinidad and Tobago. Because I got calls from Vancouver, Washington, the CDC, London, not why the UNC or Dr. Gopeesingh, you know, but why Trinidad and Tobago, this country has fallen prey to the anti-vaccine movement. And I want to condemn this statement and ask the UNC and Dr. Tim Gopeesingh to produce the evidence of this raging controversy.

[*Crosstalk*]

Sen. Gopee-Scoon: No, no, no.

Madam President: Minister—

Sen. Mark: “Tim Gopeesingh eh here”.

Madam President: Senator.

Sen. Gopee-Scoon: You asked a question.

Madam President: Sen. Mark, please. Minister, thank you. Sen. Richards, any further questions?

Sen. Richards: Yes, thank you, Madam President. Minister, I do not know if you would have the information but— [*Crosstalk*]

Madam President: Sen. Mark.

Sen. Mark: Sorry, Ma’am.

Sen. Richards: Would you be able to say this flu season’s virus is any more virulent than any other season that we have seen before?

Hon. T. Deyalsingh: There is—okay, we have to understand that the vaccine for any flu season which starts to run from October or November of any year, is formulated from January of that year. So what the scientists do, they try to predict what the flu virus would look like ten months down the line. If they get it wrong, you are going to have a problem because the vaccine would not be effective. Flu vaccine effectiveness over the years, based on what I have just said, ranges from a low of 10 per cent to a high of 90 per cent and it varies from year to year.

So it may not be that the flu virus this year is more virulent, it could be that the estimation of what the virus looked like, made back in January of this year for delivery of the vaccines in October/November of this year, based on what they guess. Because when you go on to the CDC website, you actually see the word “guesswork”, guesswork, because you are predicting what the flu virus would look like 10 months into the future and that is the problem with the influenza virus.

Having said that, there is still this strong anti-vaccine movement which discourages vulnerable groups like pregnant women. The *Hansard* I just read out should be condemned. The UNC should be asked to produce the evidence of this raging controversy—

Hon. Al-Rawi: Why they used it in government.

Hon. T. Deyalsingh: Right. There was no raging controversy when they were not collecting data, but there is a raging controversy—[*Crosstalk*]—produce the evidence of this raging controversy, because there is none. And that one statement last week Wednesday pushed back Trinidad and Tobago years, because I now have to work overtime to convince the population that what was said in the Parliament last week is totally false, baseless and was a reckless statement. Thank you, Madam President.

Sen. Richards: Thank you, Minister. And with the information you just gave, would you have feedback from the patients who have accessed the vaccine about its efficacy, given the guesswork that you would have indicated sometimes goes into the prediction of what the virus may look like in terms their feedback, because my understanding is that people are having second and third rounds of this and it is not as effective as they would have liked.

Hon. T. Deyalsingh: I want to thank the Member for that question. The influenza vaccine—and I will say it again, and again, and again and I thank you—does not

protect you from the common cold. You would take the influenza vaccine to prevent—to vaccinate you against the influenza virus, which is distinct from the virus that causes the common cold. So you would get the common cold as I did, even if you get the vaccine. So we have to understand that and it is a message we have to repeat year, after year, after year.

The other thing you have to understand, when you get the vaccine it takes two weeks for the antibodies in the body to develop to protect you. So you could get the vaccination and within that two-week period you can still get the influenza for which you are supposed to be protected.

So your question is spot on and I welcome the opportunity through this medium to talk to the public that the influenza vaccine, one, does not protect you against the common cold which is not fatal, it protects you against the influenza virus which is fatal.

And two, the immunity takes about two weeks after the administration of the vaccine for the immunity to build up. In that two-week period you can still be subject to getting the influenza virus. Thank you very much, Sen. Richards.

Sen. Mark: Could I ask the hon. Minister, given the fact that the Government has ordered 100,000 of these vaccines and there are hundreds of thousands of adults in the population. Could the Minister indicate whether it is the intention of the Government to step up on the ordering of more vaccines so that adults in the population who contract this particular virus can have access, easy access to the said vaccine, Madam President?

Hon. T. Deyalsingh: This is an excellent question. WHO protocol for influenza is that you do not vaccinate your entire population; nowhere in the world does that happen. You vaccinate vulnerable populations, that is, the elderly over 65, especially if you have metabolic diseases like diabetes, obesity, and hypertension;

that is one vulnerable group. Vulnerable group no. 2, pregnant women; vulnerable no. 3, children between the ages of six months to five years; vulnerable group no. 4, health care workers; and vulnerable group no. 5, those who are on immunosuppression drugs or those with respiratory conditions like asthma.

You do not—nowhere in the world, and we follow WHO guidelines. In the case of Trinidad and Tobago you do not vaccinate 1.3 million people. Because the average adult between the ages of let us say—and teenagers and adults, 20s, 30s and 40s, the influenza virus does not seriously, adversely affect them. It is the vulnerable groups whose immune systems are compromised by diabetes, by obesity, by hypertension, and a vulnerable group whose immune system is not fully developed, children. Vulnerable group, pregnancy, because in pregnancy your immune system is compromised. Health care workers regardless of age, because they are on the frontline and they are being exposed every single day, and asthmatics and those with respiratory disease. Because the first organ of the body to be colonized by the influenza virus is your lungs.

So those with lung impairment, asthma, COPD, recurrent bronchitis, they need to be vaccinated. Nowhere in the world do you vaccinate your entire population. So the 100,000 doses is enough and to directly answer your question, yes, we have in fact ordered an extra 60,000. Of that 60,000, a batch of 14,000 will be here early in the new year. Thank you very much again, Madam President.

Sen. Dr. Dillon-Remy: Minister, is there enough of the Tamiflu available?

Hon. T. Deyalsingh: Lovely question again, excellent question. Yes. The Government of Trinidad and Tobago and all governments keep a strategic stock pile of a drug like Tamiflu. Tamiflu for the population is a drug that is used to target the H1N1 virus, especially the “N” part of it. So, yes, we have a strategic stockpile of Tamiflu. So between the vaccines and Tamiflu, but the crucial thing is

that as you know, Doctor, for Tamiflu to work the patient must come early in the influenza cycle to be treated within the first 48 hours, as you know, as a medical doctor. After the first 48 hours the efficacy of Tamiflu declines precipitously and what we are noticing is that people are waiting too long, too long to go to their physicians, their health centres.

Fifty per cent of the deaths have occurred in that population, the elderly population that waited too long to seek medical attention. So yes, there is enough stock of Tamiflu and two, I urge the population, if you get the flu or influenza or any type of runny nose and so on, get treated so your clinician could make a distinction as to whether you have the common cold or influenza which needs two different lines of treatment. Thank you, again, Madam President.

Madam President: Sen. Mark, you wanted to ask something?

Sen. Mark: Yes, I just would like to ask the hon. Minister, in light of the vulnerable groupings that he mentioned: Can you explain why a number of adults over 25 into 45, have expired, have died as a result of the influenza virus, if, for instance, the adult population is not so exposed as the vulnerable groups?

10.30 a.m.

The Minister of Health (The Hon. Terrence Deyalsingh): Madam President, I have no—and this is where the discussion on this gets politically unproductive. Show me the evidence, show me the evidence of what you are saying. There is a distinction between the influenza virus which is fatal, and the common cold, which if you do not treat it, could also cause problems. Show me the evidence and I will answer your question. But unfortunately, there is a lot of misunderstanding and mischief which is creating undue panic. Show me the evidence and I will respond. The same way I am asking show me the evidence where Dr. Gopeesingh said “there is a raging controversy about the use of vaccines in the pregnant population

and the pediatric population.” Show me the evidence, and I want to refer people to a Facebook page by Dr. Sherene Kalloo, where she links that to her article last year, proposing, advocating, encouraging, women, pregnant women to get the influenza vaccine, another eminent gynecologist/obstetrician. But another one in the Parliament tarnishes the reputation of Trinidad and Tobago. Thank you, Madam President.

Madam President: Next question, Sen. Deonarine.

Statutory Borrowing Limits

(Details of)

58. Sen. Amrita Deonarine asked the hon. Minister of Finance:

Having regard to the statutory borrowing limits established under the Development Loans Act, Chap. 71:04, the External Loans Act, Chap. 71:05 and the Guarantee of Loans (Companies) Act, Chap. 71:82, can the Minister indicate, in each case, in TT dollar value as at October 31, 2019 the following:

- (i) the country’s available balances;
- (ii) the outstanding debt; and
- (iii) the total interest paid on loans?

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, the country’s available balances as at October 23, 2019 in TT dollars are as follows: Under the Development Loans Act, Chap. 71:04, \$3.2 billion; under the External Loans Act, Chap. 71:05, \$13.1 billion; under the Treasury Bills Act, Chap. 71:40, \$12.4 billion; Under the Treasury Notes Act, Chap. 71:39, \$12.9 billion; under the Guarantee of Loans Companies Act, Chap. 71:82, \$24.8 billion. The value of the Central Bank’s outstanding debt as at October 31, 2019 was

\$103.5 billion. The total interest paid on loans by the Central Government in fiscal 2019, was TT \$3.5 billion, in the month of October 2019, the interest paid by the Central Government, totalled TT \$316.7 million. Thank you, Madam President.

Madam President: Sen. Deonarine.

Sen. Deonarine: Thank you Madam President. Can the hon. Minister indicate through you, Madam President, whether debt sustainability analysis are being conducted at the Ministry of Finance to ensure that the debt to GDP ratio does not exceed the 65 per cent ceiling established by the Minister of Finance during the Budget 2020?

Sen. The Hon. A. West: Madam President, the Minister of Finance and his staff keep a keen eye on the balance to ensure that it does not cross that threshold.

Madam President: Sen. Deonarine.

Sen. Deonarine: Thank you, Madam President. Could the hon. Minister in the Ministry of Finance, through you Madam President, indicate or enlighten us on some aspects of the debt reduction strategy that it is using to contain the debt under these various Acts?

Madam President: No, that question does not arise.

SPECIAL SELECT COMMITTEE

(Extension of Time)

Evidence (Amdt.) Bill, 2019

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Second Interim Report of the Special Select Committee on the Evidence (Amdt.) Bill 2019, I beg to move that the committee be granted an extension to February 29, 2020, to complete its work and submit a final report, I thank you.

Question put and agreed to.

JOINT SELECT COMMITTEE**(Extension of Time)****Constitution (Amdt.) (Tobago Self-Government) Bill, 2018**

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 Constitution (Amdt.) (Tobago Self-Government) Bill, 2018, in the Fifth Session, Eleventh Parliament. I beg to move that the committee be granted an extension to May 27, 2020, to complete its work and submit its final report. I thank you.

Question put and agreed to.

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)**(AMDT.) (NO. 3) BILL, 2019**

Order for second reading read.

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

That a Bill to amend the Administration of Justice (Indictable Proceedings) Act 2011, Act No. 20 of 2011, be now read a second time.

Madam President, I wish to express first of all, my sincere gratitude to the hon. Members of this House for allowing themselves to be convened under command of the Order Paper on such short notice, albeit that we had given intention of this some time ago, and I wish to thank the Clerk of the Senate for circulating the marked-up amendments to the Act, as proposed to be amended by this Bill, as well as the Bill.

The first question which jumps out at us is why so quickly? Why this Bill? We then move into what is this about? What do we hope to achieve? And then we ought to move into the prospects of reform for the benefit of our citizens of

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Trinidad and Tobago. We make laws under the Constitution for the peace, order and good governance of our society, so says section 53 of the Constitution. Preliminary enquiries which are the system of pre-trial testing of matters against an accused have been in existence for a very long time.

Madam President, we inherited these laws of Preliminary enquiries. They stand as part of the laws of Trinidad and Tobago, pursuant to Act of Parliament, born in 1917, we are now nearly 103 years away from that. Chap. 12:01 of the Laws of the Republic of Trinidad and Tobago embodies the law called the Indictable Offences (Preliminary Enquiry) Act. It is Act No. 12 of 1917. That piece of law allows effectively the continuation of preliminary enquiries as we inherited it. Born in 1555 in the Marion Statutes, 1836 in the Prisoners Councils Act, 1848 in the Indictable Offences Act, reincarnated in the 1917 Act as Chap. 12:01. We brought into existence and we carry it forward effectively a law which allows two things to be done.

Firstly, we make an accused aware of the case that he has to meet, as well as, we give him quite simply an opportunity to probe and counter it. This system of preliminary enquiries is effectively for those who are not schooled in the law. It is really quite simple. It is intended to allow the magistrate before whom an accused is brought on a serious charge called an indictable offence, as opposed to a summary offence, which is viewed in law to be something which is less serious. I think that that is now quite debatable because the consequences applied to summary offences under financial institutions for instance, are very serious. Up to \$500,000, \$1 million et cetera. But a magistrate has the power to hear and determine summary matters.

When an indictable offence is brought forward, an accused is brought before

the magistrate and the system of preliminary enquiry starts. That system effectively allows the case to be presented, it allows an opportunity for the accused, before the accused brings evidence if he or she so elects, to put forward a no-case submission to say that “Look, this thing just does not meet the muster.” That is set out in section 23(1) and (2) of Chap. 12:01, which says that if you do not meet a prima facie case that you can have a discharge. It allows the Director of Public Prosecutions under the Constitution and under the law—the preliminary enquiry law—to have a second bite at the cherry. The DPP may effectively say “Look, I don’t agree that there ought to have been a discharge”. In exercise of the constitutional power in section 90 of the Constitution, the DPP can come and issue a voluntary indictment, can in fact proceed towards the court and take you to the route of the assizes which is before the High Court. That set out in section 23(8) of the existing law.

But this law of preliminary enquiries has witnessed Trinidad and Tobago statistically, as a matter of fact, watching a system effectively labour causing justice to be a large question mark. We have preliminary enquiries, roughly 26,000 of them every year, 26,000 of them every year. We have preliminary enquiries that are as old as 20 years in the system, 20 years in the system, 20 years of asking a Magistrates’ Court to consider whether someone ought to be put on trial at the High Court. In this situation there is a basket of offences, murder, rape, grievous assault, we have complex fraud. We have a number of indictable matters ranging in seriousness and severity from financial crimes, to severe blood crimes, where the accused, the victim, the witness, the judge, the prosecutor are all invited to participate in a ritual of attending at court for a matter to be adjourned nor not proceed for up to 20 years. We have a system where people are incarcerated in

remand condition, where they may have been allowed the privilege of bail but cannot access it, or where they are denied bail entirely, because it is a non-bailable offence, and they sit in remand conditions for up to 20 years.

Statistically, we have demonstrated that it costs the taxpayers of this country approximately anywhere between \$15,000 and \$20,000 per month, per prisoner, in remand condition. And if you do the math and you take one prisoner across 20 years at \$25,000, Madam President, the injustice to the taxpayer is equal to the injustice to the accused, who wants his name cleared, to the victim who has grown up, someone for instance as a child, raped as a child then entering the court as we see in our newspapers, as a grown adult with children of his or her own. This is our situation, this is our country. We ask people for an opportunity to improve the criminal justice system. Why, we say that justice delayed is justice denied. We ask the Trinidad and Tobago population and the world at large to say “let us make sure that if you do the crime you do the time”. Let us make sure that if you are an accused who is innocently charged that you have a quick trial, unless you labour under that yoke of an allegation of being a brutal member of your society when in fact, you are innocent.

There are competing rights in the dance. Our country has for many years sought to alleviate the inadequacies, ameliorate the inadequacies in the criminal justice system in preliminary enquiries. We introduced paper committals, we introduced a number of measures, but in effect, and put quite simply, the prospect of cross examining witnesses in a preliminary enquiry effectively has put our system into difficulty. That is one aspect. It is true, we did not have enough rules-based organization, it is true that there were not enough judicial officers. It is true that there were just too many cases in the system. And what we did is not to hang

our hat on merely abolishing preliminary enquiries, but instead we did an all-of-system approach. We increased legislatively the number of judges from 36 to 64 in the High Court; in the Court of Appeal from 12 to 15.

10.45 a.m.

We introduced the Criminal Division itself, in 2018, Act No. 12 of 2018. We brought the motor vehicles and road traffic amendments to remove before the magistrate who considers, the Magistracy considers 146,000 cases per year; 104,000 of those are motor vehicle and road traffic offenses. We said, “Let us take those into the merit system.” I am pleased to tell you, all things being equal, on January 22, 2020, that system will go live; 104,000 cases are removed.

We brought forward the decriminalization of cannabis, 8,500 cases per year. I am pleased to tell you that I am taking a Note to Cabinet on Thursday to ask for the proclamation of that law and the Cabinet will consider that; 8,500 cases fall out of that matrix. One hundred and forty-six, minus 104, minus 8,500, minus 26,000 cases, if we abolish preliminary enquiries, means that we leave 43 magistrates under rules-based environment with an increase in capacity, with technology in the courts to consider roughly 8,500 cases. That is what you call birthing common sense. Now, obviously the argument will prevail. Well, all that you really doing is with the 26,000 cases per year is you are shifting them to the High Court. But the simple point is, you are— whilst you are putting them to the High Court, which is why we increased the number of judges, putting the rules of court and by next year we would have birthed, in total, 100 court rooms for criminal matters. Let me repeat that. One hundred courtrooms for criminal matters, taking the number of Masters to hear case management from two to 26 by the end of next year— by the end of this year into the early part of next year. Whilst we do that, we are at least

removing 10 to 20 years of pre-trial work.

So let us get to the Bill. We have the preliminary enquiries abolition proposed by the parent Act. The parent Act came into existence, it is Act No. 12— sorry, it is Act which is birthed in 2011, that law was assented to December 16, 2011. That Administration of Justice (Preliminary Enquiries) Act is the law that we, as a Parliament, then the UNC Government, the PNM would support, birthed that law. It was assented to. It was not proclaimed for quite some time because there was a direct undertaking given by Mr. Volney, who served as Minister of Justice, that there would be no proclamation of that law until there were Criminal Procedure Rules, until there were Masters of the court and more courtrooms. We know quite simply that section 34 was proclaimed. We then went into a frenzy as a country to cause the repeal of section 34 and that law simply lay there.

We saw in 2014— Sen. Vieira and I were both in the Parliament then, the Tenth Republican Parliament, we saw the birth of the committal proceedings route. Abandoning the St. Lucia model, which is the 2011 law, which is our law, we went to the Antiguan model. In the 2011 model, we proposed that Masters of court would effectively consider initial hearings for case management, sufficiency hearings, decide if you are going to have an indictable matter, send that to the High Court, if it is to be tried summarily, take it to the Magistrates' Court. In the Antiguan model in 2014, we went for the Masters being replaced by the magistrates. That law was assented to. That law was then abandoned. Enter the PNM Government, we felt it quite simple to simply take the DDP under his constitutional power to decide if it is indictable or summary. Why? He has the constitutional authority under section 90. This Parliament did not feel that that was best done. We passed it in the House, but we recognized reservations in the Senate.

As a result of that, as Attorney General, I went back to the drawing board, did widespread consultation and I wish to thank Mrs. Pamela Elder SC, in particular, for the commentary that she offered, including the Law Association, including the DDP's Office, including the Judiciary, wide range of stakeholders. We took what we had birthed in the Bill passed in the House of Representatives, we came and we added that into the first batch of amendments we did for the administration of justice 2011 law. In that first batch of amendments, we birthed that law, the amendments, we assented to that on February 13, 2019. In fact, that first round of amendments was Act No. 3 of 2019. That became Act No. 3. It is not proclaimed yet, this law is not proclaimed yet. All that has been proclaimed, thanks to the UNC's round of proclamation, is the short title of the Bill, the interpretation section and section 34. Section 34 was repealed.

We brought these amendments, taking what we had brought as needed amendments, thanks to the wide-scale consultations, brought it into the Bill No. 1. Bill No. 2 came about because we asked the sector: the Judiciary, the DPP, the Law Association, a number of players. We said, "Look, we want to proclaim this law. We have the Criminal Procedure Rules, we have Masters, we are working on courts, we birthed several of them. Let us see if there are any bugs inside of here." We did a round of consultations and we were met with amendments which were necessary. We had not thought-out the process flow properly enough. The process flow included, look, if you have got a summary charge and an indictable charge as one person, how do you treat both? How do you split? What happens if you have multiple accused? What happens if documents are in electronic form? We went through a round of consultations, we tidied that up, we came with Bill No. 2. Bill No. 2 was assented to in June 2019 and we birthed Act No.11 of 2019. Enter this

Administration of Justice (Indictable
Proceedings) (Amdt.) (No. 3) Bill, 2019
Hon. F. Al-Rawi (cont'd)

Bill. Madam President, what time is full time for me?

Madam President: You finish at 11.21.

Hon. F. Al-Rawi: Thank you, Madam President.

Enter Bill No.3, the Bill before us today. Madam President, in the course of operationalization— because I would like to tell you, every law that we have passed will be operationalized by the early part of next year. The vast majority of the laws that we have passed are already in operation. Trial by judge only, plea bargaining, Children Division, Criminal Division, anti-terrorism, income tax amendments, motor vehicle and road traffic will come in on January 22, 2020, the vast majority of laws that we have passed are operationalized. Because we went about it this way. It is not good enough to pass law alone. You need plans and machinery, you need people and you need processes in addition to the law.

Effectively and put quite simply, we have hired hundreds of people into the court system, managed the DPP's growth, new offices, new procedures, computerization, information technology applied together with the law. In coming to consider the proclamation of this law, we sat with the Judiciary, Judges of Appeal, Judges of the High Court, Masters of the High Court, Registrars, the IT team in the Judiciary and the Magistracy as well. We went through a dedicated exercise over several months of process-mapping the flow of cases; case examples, material positions. After that we went to the office of the Director of Public Prosecutions and I wish to pay a public compliment to the DPP himself, Mr. Roger Gaspard SC, who sat with me, as Attorney General and our team and with his Queen's Counsel, Mr. Edward Jenkins, went through the Bill in the same process flow. We sat on many occasions, we went through this law clause by clause, comment by comment, Judiciary's perspective, et cetera.

In October, we wrote to the Law Association, we wrote to the Criminal Bar Association. I saw the notices go out, if I can recall correctly, we have not received commentary from the lawyers effectively, but it is not to say we did not ask, and also remind, and also call, and also plead, but you can only take a horse to water.

Coming before this Parliament now, having had the full process flow go forward, we have come forward with a few amendments and a few innovations. We recognized in the House of Representatives that there was a need for a certain layer of protection to be added further to one of the novelties and progressive points that we brought forward and I would come to that in a moment. But, effectively, we have come forward in this Bill with 24 clauses, including the short title, including the interpretation. In this, we effectively seek to, first of all, at clause (3), we look to extend the definition of “arrest warrant”. Why? The law as drafted, as amended twice, contemplated that you would only find yourself before court under the provisions of that Act. That is not true. You can be arrested under the Proceeds of Crime Act, Anti-Gang Act, a number of pieces of law. So we had to amend the definition of arrest warrant to include any other written law.

We then went on, Madam President, very important amendment, to extend the definition of “documentary exhibits”. Why? Particularly, in complex fraud matters, the issue of documentary exhibits comes about. Right now we are looking at certain matters that are eminent, we are looking at millions of documents. Let me repeat this. Millions of documents in complex fraud matters. If we go about this the old-hand way of tendering and marking every single document with the initials and the letters, can you imagine tendering and marking four million documents? It is insane. It will effectively erode justice. We looked to the United Kingdom, we looked to other jurisdictions, we saw the admissibility of evidence,

particularly for complex fraud matters and we allowed that by having the digital device, by allowing the use of technology and very importantly, and it is in the Bill, having the Masters certify the list of documents so that there is precision in the use of documents. Obviously, it is still open to defence and prosecution counsel to—in the admissibility cycle—to also then take their arguments to wait and relevance and then look to see whether, in fact, the evidence ought to be not considered by the court or disregarded or, in fact, struck out.

We have, Madam President, the need to have a definition for the “Minister”. We put the Minister as the Minister for Criminal Justice. Why? As per my undertaking to Parliament, this Senate, in looking at Section 24 of this law. Section 24 of this law says, if the DPP does not indict you within one year after the sufficiency hearing, you can apply for a discharge on the ground of delay. We specifically gave the undertaking that we would amend the Sixth Schedule. The Sixth Schedule is the Schedule of matters that says you cannot be discharged on the ground of delay pursuant to section 24 for the matters listed. There was no reference to complex fraud matters, to offenses involving money laundering, terrorism, gang-related activities, cybercrime, misbehaviour in public office, and offences trafficking in persons. And therefore, in October of this year, on the 4th of October this year, as Attorney General, I amended the Sixth Schedule that is now part of the law. So there is no ground of discharge pursuant to section 24 for alleged delay, albeit that that is something that is arguable, it is important to say you what you would not have an easy discharge for. That is, of course, routed right back to the section 34 arguments and why it ought not to have been proclaimed. We cause the definition of “summons”, it is really just a merely drafting definition cleanup.

In clause 4, we seek to treat with the application of the Act. Law is generally prospective in nature. We allow for matters prior to the proclamation of this Act to be brought under or converted to the new system in two ways and under certain circumstances. The prosecutor can elect, that is option one; the defence attorney can elect, that is option number two. Conditions, you cannot choose the charges you must go with all. You cannot choose the defendants, you must go with all. We have removed the need for agreement between defence and prosecution because they will agree to disagree. That is quite simply the method in which you go.

We anchor our constitutionality in the Hilroy Humphreys' case, which is a case in the Privy Counsel, which effectively says there is no right to a preliminary enquiry, it is just a method of trial and there is due process there, so you do not have any constitutional infringement by effectively abolishing preliminary enquiries. That has been settled for many, many, many years right now.

11.00 a.m.

We have in clause 5 done some surgery. We have added in "an aircraft" because that was inadvertently omitted. It is in Chap. 12:01, the existing law, it should have been returned. Clause 5 also provides for a constable executing a search warrant to be accompanied by other persons. Why? You are going to need experts on the scene. The police walk with the experts. They do that as a matter of fact. We want to make it abundantly clear, particularly, when you are looking at information technology access issues, you are looking at DNA samples being taken by experts, et cetera. We have borrowed from section 16 of the PACE Act, that is the Police and Criminal Evidence Act 1984 of the United Kingdom.

Madam President, in clause 5(1A), we allow something which is a novelty, and which we amended in the House. We allow for a Master, not a magistrate, a

Master to issue search warrants that authorize search of multiple premises or any premises occupied or controlled by a person. Section 8(3) of PACE, the English law which I just referred you to, has this provision, many other Commonwealth jurisdictions have this provision.

In Trinidad and Tobago, there can be a frustration of the law which was long since abandoned by the United Kingdom—abandoned in 1984 as a matter of fact—where our police have been relying upon hot pursuit—that is the fact that reasonable suspicion they may enter premises, et cetera, or worse yet, having to go back to the magistrate every time. It is important in the conduct of an exercise that you have the ability for the police officer who is authorized under warrant to have the ability to access premises, which at the point of obtaining the warrant, may not be known to be, in fact, owned by someone—you arrived at the premises, and then you realize well it is no, it is in fact warehouse X owned by this person or warehouse Y owned by that person.

In the House, the submission came that we ought to not use what the United Kingdom had, which is allowing for unlimited number of times for searching. Accordingly, we deleted those provisions from the Bill which you would have seen in the earlier version which we passed around, and very importantly, we added in some very structured and important amendments to the conditionalities for the grant of the warrant. We are proposing—and it is in this Bill as it comes from the House—that the Master may issue that search warrant in the circumstances set out through paragraphs (a) to (d).

It is not practicable to communicate with any person entitled to grant entry to the premises, but it is not practicable to communicate with any person entitled to grant the access. Entry to the premises will not be granted unless a warrant is

produced or the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry into the premises.

Very important, the issuant of search warrants, which is the existing law. The existing law, Chap.12:01 says a magistrate can issue a search warrant. There are no conditionalities for the search warrant. In the existing law, there are no conditionalities for the search warrant. In the existing law, there is no time frame for the existing warrant. What we have done here now is to include in the law, for the first time, in particular in this multiple searches position, that the Master, not a magistrate, a Master sitting in the High Court, can actually put terms and conditions into the warrant. The police as a rule of thumb have warrants issued, but they generally go back for fresh warrants after one month, but there is nothing in the law that says that. We are allowing this feature for the first time to be introduced by this Bill, and this is a material improvement to the law, in my respectful view, Madam President.

Madam President, we are allowing for further safeguards in the new subsection in clause 5(2A) in that we are actually providing for the mandatory proof that you are a policeman, the production of your identification, the fact that you must give a search warrant, a copy of the search warrant to the person whom you are searching. Why? Too many cases come before the court where people allege—a search warrant was flashed, a copy was never given to me, I did not see it, I was labouring under malicious prosecution—and in these circumstances we propose a material improvement to the law, let why you are there be known specifically. Give the people a copy of the search warrant. There must be no if and/or but about that scenario.

Madam President, clause 5(6) is a very important provision. Clause 5(6) allows for photographs, digital recordings, other images seized, to be admissible as sufficient evidence. Why? Right now the process is, under the law that exists right now, and you will see it in fact, if a container of alcohol is seized, you bring the container to the court. If a boat or a pirogue is seized, sometimes you see it outside the court. The magistrate must convene the court at the location to identify the thing seized. Bags full of marijuana must be brought forward, guns must be brought forward. We allow for the photographic evidence to be used. Obviously, there is certification of experts to say a thing is a thing.

The admissibility of the evidence, the marking and tendering of the exhibits, the use of IT of digital recordings and photographs is in every other jurisdiction and we, of course, bring it to ours. Madam President, it obviously allows for early restoration. There is no reason why a third party whose item is seized—somebody stole a car from John Brown, the car is evidence in the matter. The police then say to you now, “We have to hold on to this evidence because the trial is in 10 years’ time.” Why? Why do you have to go through the process—there is a process of restoration, but we ought to make it easier. Let us take the photograph. It is long past the time, where you ought to see graveyards of equipment being sought out there and a thriving cannibalistic trade of selling parts on the stolen car market, Madam President. That is just wrong and we ought to move away from that.

Clause 6 allows—it repeals section 6(1) of the Act. It enables a Master to summon, whether a complaint is on oath or the oath is there. It allows for the arrest warrant to be issued where the complaint is on oath. We had done the surgery to the language there. It was not properly or clearly stated and, therefore, we have sought to improve the language there.

Clause 6(1B), we are allowing a complaint. A complaint would be required to be in the new Form 4 and we have inserted that into Schedule 1. Effectively, we are trying to case manage. We are trying to standardize the approach to avoid the various iterations that complicate whether you have done it right or wrong.

Madam President, clause 6, of course, allows us to go into a move away from the concept of arraignment and instead take the reference to trial. This is where the DPP is allowed to file an indictment in respect of a co-accused, where the accused has been indicted and the co-accused is arrested. We had provided that that must be done before arraignment. We are now going to trial, because the Judiciary pointed out to us, and the DPP agreed, that there could be a significant time period between arraignment and trial and they preferred the concept of trial.

Madam President, clause 7 deals with proof of service. The law as currently crafted means the policeman has to come to court. In the High Court, you can prove service by an affidavit of service. So we have gone with the affidavit of service basis, borrowing from the civil law concept. Of course, it is open to the court to summon the policeman who serve to the court, but there is no need to occupy police time on a mere formality of service when it can, in fact, be dealt with under oath before the court, Madam President.

Madam President, clause 8(8) provides that where a person is charged with an indictable offence, he should be brought, not arrested, because it is in fact the charge that we are in fact looking for. Of course, the current law of habeas corpus, et cetera, still prevails—you have your rights before the court—and that is something which I think we ought to not have too much difficulty with.

In the new subsection (7A), we are requiring—there is no provision currently for an initiation document before the court where a person is arrested and

charged upon committing an offence where neither a summons nor a warrant was used. That is an anomaly, and we needed to solve it by the proposed amendments here.

Madam Speaker—Madam President, forgive me. I sit in both places, no offence intended. Madam President, in clause 9, we are deleting the reference to session. The Judiciary tells us, quite simply, it is just not used. Under the case management cycle, the Registrar will have the ability in the case management and in the scheduling aspects to just simply give the date. It is synonymous with the Criminal Proceedings Rules.

Madam President, clause 10. Clause 10 empowers the Registrar to have place in this law. Why? We had included the Magistracy Registrar. It is axiomatic that we ought to include the Registrar of the Supreme Court. That harmonizes us with Act No. 12 of 2018—that is the Criminal Division and Road Traffic Division that we have created, where we just simply allow the Registrar this position. I want to remind that the Clerk of the Peace had a power before under the existing law. Before we amended the law, the Clerk of the Peace was not even a lawyer. We are now equipped in our Magistracy where lawyers function as Registrars of the Magistracy. That is a first in time, never existed before, all in situ, all in operation.

Clause 11, Madam President, here is where we allow for the time to be adjusted. We had provided in the statute in the Act as we amended, not yet proclaimed, that there were fixed time frames for movement. In looking to operationalize this law in the month of January—let me repeat this. In looking to abolish preliminary enquiries in the month of January 2020, the need for the Master to consider the adjustment of timelines in keeping with rules, in keeping

with the common sense of the provision for both prosecution and defence came about. It was a recommendation from the Judiciary and also from the DPP to say, look, if you are going to start this, we need to make sure we can get the thing working, let us work our way into success. Let me stick a pin.

For those who are either too young or who are not practitioners, the Civil Proceedings Rules were met with riot. There was bitter complaint all over Trinidad and Tobago. In fact, there were some very strong advocates against it. There was mayhem. The Civil Proceedings Rules changed practise in Trinidad and Tobago. [*Desk thumping*] We reduced the backlog from 17 years to one [*Desk thumping*] by paper-based management, application of rules. What was lacking in common sense is why nobody did it for the criminal side. It just made no sense that no one saw it fit to amend the processes, the people and provide the plant and machinery, and that is why I constantly echo my refrain, plant and machinery, people processes and law and we are already seeing—it is not perfect. We are improving. We went through the tragedies of the decision of Mr. Justice of Appeal Jamadar, and I mean this intellectually, because the Privy Council reversed that decision in the Trincan case where we had implied sanctions dealing. We went through all of those things, but the civil proceedings have improved to such a state where we really ought to get our criminal division up and running in this fashion. Justice ought not to be delayed.

Madam President, let us look to clause 11(6). We are permitting the filing of electronic documents. Let us stick a pin here. Madam President, thanks to Chief Justice Archie who ventured to Nigeria, who obtained software for free from the Government over Nigeria, who then had the Government of Spain improved the software for free, gifting all of the technology to the Government of Trinidad

and Tobago, we have introduced TT.jim—J-I-M. That is a replacement of TTGEMS, G-E-M-S. That has allowed the Magistracy to be computerized for the first time. There will be FTR, that is recording technology, in the courtrooms. In this new courthouse, because this is what Parliament's Tower D building is going to be, and in the Hall of Justice we will have the audio and visual recording of trials, just like Parliament Channel, just like the Privy Council, and on the TT.jim platform we allow for electronic filing.

At the Office of the Attorney General, we have taken as facilitator of the DPP's division, the Judiciary division and now borrowing into the TTPS, we have taken that technology and applied it to all three. So the DPP's Office, the TTPS and also soon the public defenders as we open that up in the cusp of the new year, all of these would be working on the same electronic platform, which makes the filing of documents easy, the service of documents easy. Plant and machinery, people processes and law working in tandem.

Madam President, clause 12 amends section 12 of the Act. There was an anomaly where we had removed the—we had disappplied the maximum aspects on a summary trial for kidnapping. We believe that that is a fetter of the Judiciary's discretion. We have stepped aside from that. We are borrowing from the Barry Francis and umpteen other decisions, any which way you want to slice it or dice it, we will leave that to the Judiciary, Madam President.

Clause 13, I think Sen. Hosein and Sen. Chote will be very happy with this one. Albeit it on the first iterations of the law, we were encouraged by all of the stakeholders at the Judiciary and at the DPP's Office to just simply go with 23(2) of the existing law, sufficient evidence. The DPP asked us to go back to the utilization of prima facie. Even though in 2014 and 2011 laws passed by the last

Government, we had iterations on the one hand using prima facie and on the other hand just using sufficient evidence—even though other jurisdictions use sufficient evidence, even section 23(2) of the existing law says sufficient evidence—the DPP asked us to re-include the standard of proof as prima facie evidence. Why? It is higher than the standard of proof on balance of probabilities. It is always intended that prima facie would be there. Out of an abundance of caution, the recommendations came to go back to prima facie standard, so you will see it throughout the Bill. Throughout the Bill, we have added in that you must have a prima facie case and that is now settled law as to what prima facie means, and there are people by far more qualified to speak to that such as Sen. Chote, in the course of this debate than I am.

Madam President, we go in clause 13—

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

Hon. F. Al-Rawi: Much obliged. We go in clause 13 to empower a Master to determine when a sufficiency hearing would not be held in open court. We have done that to harmonize judicial discretion, alongside with our special select committee on evidence. We wish to birth witness anonymity. We wish to birth protection of witnesses. Whether we will have that as a matter of reality depends upon something which I ought not to speak to in detail yet, but we are waiting on that to come forward. We want to harmonize the protection of witnesses by allowing the court to consider when it is appropriate to be in open court or not in open court.

Clause 14 amends section 20 of the Act. We are allowing for the incorporation of section 22(4) apace, that is the English law. We are including new subsections (5) and (6) to facilitate production and marking of electronic

copies of exhibits, tendering of photographs, et cetera, as I referred to a little bit earlier. That just simply improves the complex fraud cases management. We, of course, also rely upon the case of *R v Uxbridge Justices* 1987/1985 Criminal Appeals reported at page 367. In other words, and translated into non-lawyer speak, there is ample precedent for this inexistence in Commonwealth and we propose that we use digital evidence and marking, et cetera, allowing for the ease of trial management. Madam President, that is included in the safeguard in subclause (7) where we ask the Master to keep the list of exhibits and for that to be certified.

Madam President, you will see in the further subsection there, we have gone back to prima facie standard throughout the Bill. Clause 15 amends section 21 of the Act, and I know Sen. Thompson-Ahye would be interested in this one. We have taken the age down from 14 to 10 years so that we harmonize it with section 98(1) of the Children Act. So we are keeping the law in pari materia. We are just making sure that this law says exactly what the Children Act says with respect to the use of safeguards and submissions on sworn statements as it relates to children.

Clause 16, again, repeats the prima facie standard. Clause 16, we are allowing for a redrafting simply for the sake of clarity where the DPP makes the salvo to bring the person back before the court where the DPP considers, as the existing law in section 23 of Chap. 12:01 contemplates where the DPP has that power.

Clause 17 amends section 25 of the Act. Again, we are reiterating the prima facie case standard. Clause 18 amends section 26B of the Act. Madam President, we are allowing for additional relevant evidence as opposed to additional evidence of a material nature to be given as fresh evidence.

Clause 19 amends section 26C of the Act. We are replacing “the Magistrate” throughout with “Court”. Why? Under the Criminal Division, the Criminal Division allows the merger of jurisdictions. Magistrate, Master and judge may act in all of these circumstances, so it was inappropriate to just refer to a magistrate when a judge or a Master could have done the same job under the Criminal Division.

Madam President, we are allowing in clause 20 for the concept of original documents. Throughout the world, original documents are produced where the judge tells you bring it, otherwise the copies of the documents are adduced and this is just for better case management. There are safeguards in law that exists. We are going for, in clause 21, where witness evidence is not in dispute as opposed to formal in nature.

Madam President, the last one I have a few seconds to deal with is the abolition of section 14B of the Evidence Act. In the year 2000, the English experience abolition their equivalent of section 69 apace, reverting to the common law. We have been advised that particularly in the example of complex fraud that computer evidence, if we rely upon the provisions of section 14B, can be very complicated. This came in a direct written submission made to the world at large by the DPP in the special select committee when it was on the public airing programme. We agree with that provision and we think that it ought to be included. Madam President, this is good law and proportionate. I look forward to the submissions and I beg to move. [*Desk thumping*]

Question proposed.

ARRANGEMENT OF BUSINESS

Madam President: Before I call on Sen. Hosein to speak, with your permission, I

would just like to revert to the earlier item on the Order Paper. I am now in receipt of the instrument.

SENATOR'S APPOINTMENT

Madam President:

“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 the Honourable Franklin Khan is incapable of performing his duties as a Senator by reason of illness:

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 sections 44(1)(b) and 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, AUGUSTUS THOMAS to be a member of the Senate temporarily, with effect from 18th December, 2019 and continuing during the absence of Senator the Honourable Franklin Khan 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 18th day of December, 2019”

OATH OF ALLEGIANCE

UNREVISED

Sen. Augustus Thomas took and subscribed the Oath of Allegiance as required by law.

**ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)
(AMENDMENT) (NO. 3) BILL, 2019**

Sen. Saddam Hosein: Thank you very much, Madam President, and welcome back. Madam President, thank you for the opportunity to allow me to join this debate on an “Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011)”, and this being Bill (No. 3), which is the third rounds of amendments with respect to this particular Act. Madam President, this is the third time we have come here for the year to amend this particular piece of legislation.

After this particular procedure has been in existence in this country for over 100 years, in 2011 a bold step was taken by the previous Government in an attempt to reform—I know the Attorney General will say it is abolishing preliminary enquiries, but it is really a reform of the preliminary enquiries rather than an abolition, because you still have that filtering or that stage in which the matters go before a Master before they end up before a judge and a jury or a judge alone. And this parent Act, Madam President, the 2011 Act, was passed and assented on the 16th of December, 2011. So two days ago, we had the eighth year anniversary of this particular law, and all of us in this Parliament, I am sure, will welcome such an initiative so that we can get the criminal justice system working so that we can start speeding up the trials, so that we could bring those who are apprehended and those who are guilty before the courts, so that they can have a trial, so that we can have quick convictions and sentences, Madam President, because no one in Trinidad and Tobago can say that they are satisfied with the condition in which our criminal justice system finds itself in. [*Desk thumping*]

And, Madam President, on the first set of amendments that came in November 2018—that Bill was laid in the other place in 2018—and it took three months for that Bill to get through the Parliament and it was subsequently assented to on the 13th of February, 2019. Act No. 2 that amended this Bill was laid on the 22nd of March, 2019, and was then assented to on the 21st of June, 2019. Again, it took approximately three months for it to be passed. Now we come with this third amendment, Madam President, and we are hurrying through this particular amendment.

The Attorney General indicated that he has a January deadline or a target that he wants to meet. But, Madam President, you would see that due to the mismanagement of the Government's legislative agenda, we find ourselves here time after time in this Parliament just rushing through particular pieces of legislation. [*Desk thumping*]

Sen. Gopee-Scoon: You do not want to work?

Sen. Mark: You—

Sen. Gopee-Scoon: You stay out. [*Crosstalk*]

Sen. Mark: You stay out.

Sen. Ameen: You will have your time, Minister.

Madam President: Minister of Trade and Industry, please desist from any comments across the floor, Sen. Mark likewise, Sen. Ameen likewise. Okay? Sen. Hosein please continue. [*Desk thumping*]

Sen. S. Hosein: Thank you very much, Madam President. [*Desk thumping*] And, Madam President, time and time again, if it is not a deadline, it is because they have to pass a particular amendment to some law. Madam President, I understand what is happening in the Parliament, that the Parliament is going to move, but I

question, Madam President, what is the urgency of this particular legislation? Last week Saturday we were here for some other emergency, Madam President, where all they could have found was a barber who earned \$1 million so far, and you have hundreds of people every day lining up in the banks and suffering with the distress that this Government has put on them.

Madam President: Sen. Hosein? Sen. Hosein, may I caution you very early in our contribution to be relevant to this matter. Okay?

Sen. S. Hosein: Thank you very much, Madam President. And, Madam President, the point is that time and time we just keep rushing through legislation and, ultimately, the people of this country continue to suffer. [*Desk thumping*] But this Government will continue to push legislation and hurry us in this Parliament, but the people will push them out of office very soon, Madam President. [*Desk thumping*]

And the Attorney General said that January 2020, things will happen, talk again. It is plenty talk, you know, Madam President. Talk that you will have tens of thousands of cases dropping off the court, tens of thousands of cases freeing up the court so that the court will be free to now deal with only criminal matters of this nature. But I have a few questions I want to ask the hon. Attorney General, Madam President, through you. Since the new criminal Masters in this entire sufficiency hearing are going to drive this process, can the hon. Attorney General advise this Parliament where are they going to sit?—because it cannot be by January we are going to get the 100 courtrooms that is promised?

11.30 a.m.

Madam President, have they sourced any additional courtrooms? Have they outfitted these courtrooms with the necessary infrastructure? Madam President,

there is currently a fight for space at the Hall of Justice and the San Fernando Supreme Court. We all know what is happening in that Supreme Court in San Fernando, you have a High Court hearing civil matters, you have a High Court hearing criminal matters, you have the Magistrates' Court in the same building, you have all of the administrative officers in that same building and then you are coming to this Parliament to tell the people that January you are coming to abolish preliminary enquiries when you have not constructed a single new courtroom in this country. [*Desk thumping*] Can you tell us, did the Judiciary hire any additional staff and trained them in time to meet this target of January, 2020? Did you increase the complement of the legal aid because defence counsels and their availability for criminal trials in this country is an issue? Did you increase the attorneys at the Legal Aid and Advisory Authority in order to now take this new influx of matters?

What about the staffing at the DPP's office, how many new prosecutors were hired, Madam President, in order to meet this January 2020, deadline? Can you tell us how many police officers who are going to be prosecutors using this particular piece of law, how many of them were hired and trained to go to court? [*Desk thumping*] The Attorney General spoke of the DPP's office getting new accommodation, the last time I drove down Richmond Street was this week, I saw that the DPP's office was still at Richmond Street. When you look at San Fernando the DPP's office is still in Independence Avenue. Where are the offices that you promise for the Director of Public Prosecutions? [*Desk thumping*] They are in very cramped, uncomfortable conditions and now you are going to increase their workload and their burden, and this law will not work unless you do the work and get the necessary infrastructure and resources done, Madam President. [*Desk*

thumping]

So my question is, is it that you are really meeting this January deadline for some other purpose, Madam President? And that is a question that I will continue to ask and I know my colleagues will also ask. Now, when you look at what is the happening in the Judiciary, when you look at what is happening in the Magistrates' Court especially, I looked at the last annual report, which would have been the 2017/2018 report, and this is what happens in the Magistrates' Court in this country, in criminal matters that were filed in the 14 magisterial districts you had 118 capital matters filed and the non-capital matters you had 23,815 matters. That shows the amount of matters; now, some of those non-capital matters will be disaggregated into indictable proceedings and also summary proceedings. Now, the Judiciary did not disaggregate those matters, neither did they give us the amount of preliminary enquiries that are currently before the court. We have no official statistics from the Judiciary with respect to that. But, Madam President, we will appreciate that there are thousands of cases currently before the court, hundreds of cases that are partly heard that are currently before the court and we have to deal with Madam President. Madam President, we have lent this Government support when they required the support but, Madam President, there are very offensive clauses in this particular Bill that we are not prepared to support unless those clauses are amended. [*Desk thumping*].

And the Attorney General was right when he piloted this particular Bill, he said that there will be a bottleneck because you are just moving the matters up the chain, Madam President, you are taking them out from the Magistrates' Court and you are going to send them in the assizes. Can the Attorney General advise us, how many new judges have been hired to now deal with these matters in the

assizes? Because you will appreciate, Madam President, when this particular Bill is passed you will find that the sufficiency hearings, based on whatever backlog that we have that we do not know about, but the new cases that may come will actually be disposed of quicker, meaning that they go up the ladder into the assizes. So can the Attorney General tell us what resources are going to be put in place with respect to the dealing with the backlog that will come with respect to the proclamation and the implementation of this Act? What will come?—because, Madam President, you will appreciate when you look at this particular legislation it now includes electronic filing of documents to speed up the process. But one of the particular drivers with respect to the new procedure of the sufficient hearing is a paper-based procedure because you are now getting rid of leading evidence via viva voce and you are now getting rid of the cross-examination of particular witness, which all of us in this Senate will appreciate is a very time-consuming procedure.

Now, we tried this already, Madam President. In 2005, there was an amendment made to the existing law to allow for something called “paper committals”, but what happened with the paper committals is that we thought that it would have disposed of these cases very quickly, meaning that as a witness in any criminal matter, I file a sworn statement, I sign it, it is served and filed, Madam President, and then the defence counsel has an opportunity to determine whether or not he would require the witness for cross-examination. So therefore the magistrate who is sitting can form a view whether or not the evidence before him or her is sufficient enough that it establishes a prima facie case. Now, with that particular amendment that came to the old law, which is a very similar process to what is taking place here, is that you had problems, Madam President, with

witnesses especially, and police officers in this country. Because you would have police officers coming to attend a preliminary enquiry hearing and you would hear that they have not gotten the statement signed by the witness after 4 years.

What has been put in place to prevent that from occurring now? Because as I said earlier, this is also going to be a very heavily paper-driven procedure that is going to take place. Has enough been done to identify that problem and have some solution because we will end up, as I said, in the same position? Madam President, those are some of the concerns I have with respect to the administrative part of the criminal justice system, because we could pass all the laws that we want in this Parliament, if it is not properly implemented then we reach nowhere. Then we would just have words written on a piece of paper and it means nothing, unless it can be properly implemented. The first clause I want to deal with in this particular Bill, Madam President, it is clause 5 of the Bill and clause 5 of the Bill is probably one of the most absurd and objectionable clauses that I saw in this Bill because it deals with an invasion of your constitutional rights, freedoms and privileges. When I read this I thought, Madam President, that this Government may have forgotten that we have something called the Constitution.

So, Madam President, I would just ask you to allow me to remind them what the Constitution says and the rights that are guaranteed to persons who are subject to the criminal courts, and any individual who is a citizen of Trinidad and Tobago, Madam President, because the Constitution says that a person has the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived of, except by due process of law. The right of the individual to equality before the law and protection of the law. Madam President, a right to a fair and public hearing by an independent and impartial tribunal.

Madam President, these some of the rights that we have in this country. This Constitution is the supreme law of the land [*Desk thumping*] and continuously we have seen a Government that has shown disrespect to our supreme law of the land, complete and total disrespect. Madam President, my colleagues said it in the other place, it is that the intention of this Government is to change a democratic state that is Trinidad and Tobago into a police state with this type of offensive laws that they want to implement in this country?

Look at what happened in the previous law. When we amended this Bill in February that Bill was assented to, Madam President, you would have seen that the Attorney General, there is constantly a chipping away of the protections allowed by the law in this section. Madam President, when you look at what happened in that first amendment in this particular clause you would have seen that the Attorney General would have changed and amended the standard for the acquisition of a search warrant from “reasonable grounds for believing” to “reasonable grounds for suspecting”. There is jurisprudence and there is literature to show that the reasonable grounds for suspecting standard is actually a lower standard than that of reason grounds for believing that an indictable offence was committed. Madam President, that is one aspect of what happened in the first amendment to this. We come with the third amendment now and what you have, more invasive powers now.

More invasive powers in this particular piece of legislation where you now find that the police in this country—this is the power given to the police in this country that they can be accompanied by any person, by any person to go and execute an arrest warrant. Who is this “any person”? Their partner? Their “pally-wal”? That is who they are carrying to execute this warrant, “any person”, Madam

President? The last time I checked police officers are the only persons who should be authorized by law to execute a search warrant. [*Desk thumping*] Why is the police going to be accompanied by any other person? That is very wide and far-reaching provision, and this is found at clause 5 of the Bill. Then you go on to hear and read that a new power is being given so that a search warrant could now be issued for multiple premises and you do not even have to particularize the premises.

Madam President, that is absurd in this country. That means we are giving—what?—the police officers a free-for-all in this country now? We must remember what happened in Gulf View when just last month, and I think the Attorney General was present at that meeting where the Commissioner of Police in this country had to apologize for the execution of search warrants to the residents of Gulf View. [*Desk thumping*] Madam President, I have an article here dated the 22nd of November, 2019, written by Rishard Khan, “Gary apologises to Gulf View”, that is what it says, Madam President. The Attorney General was photographed with the Commissioner of Police there. I think he went to meet his constituents after a very long time. But, Madam President, this is what you are going to give the police powers to do now? Just last week you brought a Bill to this Parliament to say there are problems in the police service so we are going to increase fines for misbehaviour and this week you are going to give them so much power? What is really happening with this Government? What is happening with this Government, Madam President?

Madam President, then you have, it reads that a police officer can get a search warrant if:

“...it is not reasonably practicable to specify in the application for the search

warrant all the premises which the person in question occupies or controls and which might need to be searched.”

Is it that we are now legislating poor investigation and surveillance in this country? So that the police do not need to do any work, all they need to do is just go and get a warrant and say, “Well, I cannot list all of these persons where they live. I doh know how much property they have, well, just give meh ah warrant.” No investigation, and the standard for acquiring a search warrant in this country is very low now. It is reasonable grounds for suspecting. Madam President, this Government is continuously whittling away at the rights and privileges of the people of Trinidad and Tobago. [*Desk thumping*] There are so much laws in this country and so much authorities in this country. The Interception of Communications Act, anti-gang, explain your wealth, all of these Bills that were passed and you now come here to legislate that you do not know which property you are going to execute a warrant on and you ask this Parliament to approve that? Madam President, we cannot support that. [*Desk thumping*] We cannot support that.

Madam President, then you have clause 5, (1B), a new (1B) is being inserted where it allows a search warrant to now be issued so that the police can go multiple times over a specific time period and execute your warrant. So if, for example, they get a warrant to execute on Sen. Mark’s house for one month, every day the police officers might be in Sen. Mark’s house. This is the law that they want to pass in this country, Madam President? We have seen how the police has operated, we know that there are bad police in this country; I commend the good police officers in this country but, Madam President, we have to have the checks and balances on this institution. [*Desk thumping*] We cannot as a conscionable

Parliament allow particular pieces of legislation like this to be passed. This Parliament is not no rubber stamp, it may be treated like one by this Government but this Parliament ought not to be any rubber stamp in this country because we would stand up for the rights and privileges of the people of this country, [*Desk thumping*] the ordinary man of this country. We will protect those persons. And the Attorney General under the Constitution has to be the guardian of the public's interest and when you bring laws like this how can we certify and have confidence that the Attorney General is the protector of the public's interest?

Madam President, do you know what happens when things like this happen, when search warrants are issued especially on business people in this country? There is a stigma attached to these persons. They will tell you that this business stigma that they get they will lose business. Do you know the trauma that family suffer when police officers come heavily armed in homes and now we are allowing this to be happening on multiple occasions over a particular time period? We cannot support this particular clause, Madam President. [*Desk thumping*] We cannot support this particular clause at all. I am of the belief, Madam President, that if the Attorney General wants to put this in the law, let him come with a constitutional majority. [*Desk thumping*] Let him come with that.

I would now go on to what happens with respect to the execution of the search warrant. The Attorney General said that they put some safeguards in the law and, Madam President, it says that when a police officer, for example—this is at page 5 of the Bill, new section (2A), it says:

“Where the occupier of any place which is to be searched is present at the time when a constable seeks to execute a search warrant, the constable shall-

(a) identify himself to the occupier and, if not in uniform, shall produce to

- him documentary evidence that he is a constable;
- (b) produce the search warrant to the occupier; and
- (c) supply the occupier with a copy of the search warrant.’;”

Now, I am glad that that is now in the law. It provides some sort of check and balance and safeguard to the persons whose homes are going to be searched, but, Madam President, what happens if the police does not do this? What is the sanction that the police officer faces if he does not identify himself, if he does not produce the search warrant and he does not supply them with a copy of the search warrant? Because we know in this country, Madam President, that when search warrants are being executed sometimes the person who is in the home is not shown a copy of the search warrant or the search warrant is not even read to them. So in this particular clause I want to ask the Attorney General that we put some sort of sanction with respect to police officers who do not comply with this particular provision.

I also would like to ask the Attorney General that on production of the search warrant let us amend the law further to ask that the police officer now be placed or given an obligation to also read the search warrant to the present occupier or the owner of that property. Right? That is what we need to do, Madam President, because you have to understand there are persons who may not be able to read in this country. This is what the Attorney General brought for us in this Parliament in order to pass and for us to approve. Madam President, we in the Opposition we are not going to approve this; I can say that. [*Crosstalk*] Now, Madam President, when I look at clause 6, clause 6—and I want to ask the Attorney General whether or not this was an omission, at clause 6(a) where it reads:

“Where a complaint in writing is made to a Master that an indictable offence has been committed by an accused, the Master may, if he is satisfied that there are reasonable grounds that an indictable offence has been committed...”

Attorney General, I want to ask if after the words “reasonable grounds” to be consistent with the other provisions of the Bill, whether or not you would be placing the words “reasonable grounds for believing” or “reasonable grounds for suspecting” because it is open there. I do not know if that was omitted—if it was deliberate or if it was omitted.

Now, the next clause I want to deal with is with respect to clause 11. Now, clause 11 provides for extensions of times with respect to directions being prescribed by the particular law and this amends section 11 of the Act, in particular subclause (2)(h), and this provides for, for example, the filing of the witness statements and the exhibits that would be annexed to the witness statement, and currently the time in which that this has to be done is three months from the date of the scheduling order. So the prosecution must file within three months of that. Now, I see that an additional power is being given to the master to also extend that period, but that has to also be read alongside sub (5) which deals with that the master can only granted one extension for a period of 14 days. Also the accused only has 28 days in order to file his witness statements afterwards when he is served with the prosecutors witness statement. I want to ask the Attorney General whether or not we should be fair and also enlarge the time for the accused person to also file his witness statements because it is particularly unfair that the prosecution has three months and now the accused is only being given 28 days?

Madam President, I also want to deal with the clause that deals with the

electronic filing of witness statements. I want to ask the Attorney General whether or not this particular provision deals with witness statements of witnesses who may be abroad and they may have to be required to file witness statements right here in Trinidad, whether or not the registry, there is an electronic registry set up already for the filing of these particular witness statements, and also whether or not this deals with witnesses abroad? Now, I am looking at the Seetahal, as we commonly call it, the text *Commonwealth Caribbean, Criminal Practice and Procedure*, and I was looking at the provision in Grenada that deals with the requirements and the stipulations with respect to written statements and there is a list of conditions that must be satisfied in terms of that the witness statements must be signed, they must contain a certificate or a declaration that the person knows that whatever is contained in that statement is to the best of his knowledge. It must be served two days before and there is no objection. So I want to know whether or not these particular prescriptions will be covered in the Criminal Procedure Rules or should we prescribe it in the particular law itself, especially when it comes to electronic filing?—because I do not know what conditions now that has to be satisfied if you would be required to file your witness statements in an electronic format.

Now, as the Attorney General said with respect to the standard in which the master has to satisfy himself or herself of is now including the prima facie case. I know we had a lot of tug of war with respect to this particular provision in the past. I even printed all of the *Hansard* where myself, Sen. Chote, Sen. Vieira would have fought for this particular inclusion, and we told the Attorney General, we advised the Attorney General that the standard is vague, that sufficient evidence alone is very vague. We do not know what it means therefore you must have the settled test of what is a prima face case. And just for the record, Madam President,

the prima facie case standard is coming out from the settled case of the Queen v Galbraith where it says that the evidence must be sufficient that a jury properly directed will convict. And that is the test with respect to what the prima facie case is, and we had pleaded with the Attorney General that that is a requirement because we cannot just leave it up to the masters to determine what a prima facie case is because it would be extremely vague when this law is applied especially to the litigants and the accused persons, Madam President.

Now, there is one other particular clause I want to deal with which is the new clause 24 that was included in the other place, and that clause 24 deals with the amendment to the Evidence Act. This is found in the schedule, Madam President. And what it does it repeals section 14B of the Evidence Act, Chap. 7:02. Now, the Evidence Act provides for the method in which computer-generated records will be admissible in court. Now, from my learning and from consultation with other persons, we agreed that computer-generated records will be or will constitute hearsay evidence. Now, there are three exceptions to the hearsay rule, one being “res gestae”, talks about contemporaneous statements; the other one being “dying declarations” and the other one being “statutory exceptions”. Now, in this particular case at section 14B it created a statutory exception so that computer-generated records which is hearsay evidence, once it satisfies certain criteria it will be admissible in court and then the weight of that evidence will be determined by the tribunal of law—sorry—by the tribunal of fact, because the tribunal of law will be responsible for only determining whether or not the evidence is admissible.

Now 14B sets out several criteria in which the evidence will be admitted if it is deemed to be computer records and, Madam President, it will say that there must

be a certificate identifying the document containing the statement. It must give the particulars of the device involved in the production of that document as may be appropriate for the purpose of showing that document was produced by a computer, dealing with any of the matters mentioned above and signed by the person occupying a responsible position in relation to the operation of the computer. So therefore the record-keeper will be the one deposing the evidence, stating that, yes, these are the true and authentic records of the computer. Now, I see that the Attorney General has now repealed the entire section 14B of the Evidence Act and it reads that the admissibility, one, and, two, the sufficiency, so that goes to weight, both the admissibility and sufficiency will now be determined in accordance with common law.

I do not know if the Attorney General in his winding up, because he did not get to do it in the piloting of the Bill, whether or not he could shed some light on the common law principles with respect to the admissibility of computer-generated records and really give us some more insight into the rationale with respect to the repeal of section 14B of the Evidence Act, because 14B of the Evidence Act, it is prescriptive. I must admit, it is very prescriptive, but it ensures, Madam President, that the hearsay evidence that is being admitted in the court is in fact authentic and verified evidence, Madam President, because I do not know if we allow the common law to just prevail. There will be a level of uncertainty, I believe, with respect to the applications that are going to be made by the prosecution in particular for the admission of this particular type of evidence in the court.

Madam President, there are a few other clauses in the Bill that I just want to touch very briefly on because I know my time is quickly running out on me, and these are just some very minor housekeeping matters. At clause 8 of the Bill it

proposed to delete the word “arrested”, I believe we need to include the word “and arrested” because it does not read properly when you look at the particular amendment here. That is the amendment to section 8 of the law. With respect to clause 16 of the Bill, which amends section 24 of the Act—

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

12.00 noon

Sen. S. Hosein: Thank you very much, Madam President.

Section 24 of the Act speaks to the discharge of the accused, and it deals with the procedure or the process that takes place after an accused person has gone through a sufficiency hearing and has been discharged. Now, it is settled and it is in the current law, that the DPP has a power to prefer an indictment, notwithstanding a prima facie case has not been made out against that person, flowing from the powers of the DPP under the Constitution.

Now, Madam President, the amendment which is suggested here at subsection (5), it says that there is a time limit set for the record of the proceedings. This changes the time limit now, because once the person has been discharged. It says that the request—it says:

Where an accused person is discharged, the Master on the written request of the Director of Public Prosecution shall transmit within fourteen days to the Director of Public Prosecutions the record of the proceedings.

And if the DPP is of the opinion, after considering it, that the person ought not to be discharged, he may apply to a judge for a warrant for the arrest, and for an order to put the accused on trial.

Subsection (5), right under that, speaks about that this must be done within 28 days. Now, the amendment that we propose here is that the DPP—we changed

the extension of the power of the DPP now to just go for the request of the proceedings from the court, rather than how much time now the DPP has, in fact, to make an application for a request to get the proceedings from the court:

The ex parte application shall take place within the three-month period.

Again, this is setting timelines to the Director of Public Prosecutions' office, and I just would like to re-emphasize my submissions that I made earlier on with respect to the resources and staffing issue at the DPP's office, because now there are very strict deadlines that would be set by this particular law, especially when a Scheduling Order is issued by the Master.

I already mentioned this one to the Attorney General, at clause 6, which amends section 6, whether or not we have to include the words "reasonable grounds for suspecting" after the fifth line of that particular provision.

Madam President, these are the extent of my submissions in this matter. My colleagues will expand further on the other clauses and the other issues that arise from this matter. But I must say before I close that there is a lot of talk about national pride in this country and what constitutes national pride. I believe that when we pass particular pieces of legislation like this, national pride should not be something tangible, but it should mean that persons in this country are treated fairly and they are treated equally, [*Desk thumping*] and that their rights and freedoms and privileges are respected. I also believe that national pride lies in our Judiciary, where persons in this country can get swift and very affordable access to justice.

I thank you very much.

Sen. Charrise Seepersad: Thank you, Madam President, for the opportunity to contribute to the debate on the Bill, an Act to amend the Administration of Justice

(Indictable Proceedings) Act, 2011 (Act No. 20 of 2011).

This Bill is intended to abolish preliminary enquiries and allow for the conduct of initial and sufficiency hearings by a Master of the High Court. Currently, the Magistrates' Courts facilitates preliminary enquiries into serious criminal matters, indictable offences, to determine whether there is enough evidence for a case to be sent to trial in the High Court.

Given the estimated annual volume of approximately 146,000 cases coming before the Magistrates' Courts and the fact that the resourcing is inadequate, clearly, the judicial system is stretched beyond capacity. Of this number, approximately 26,000 are preliminary enquiry cases. Presently, thousands of criminal cases are stuck in the Magistrates' Courts, some languishing there for as many as 10 to 20 years in the preliminary enquiry phase. At this phase, the court is merely supposed to determine if there is enough evidence to make out a prima facie case. The available statistics indicate the following backlog of cases: 2014 to 2015, 26,342 cases; 2015 to 2016, 24,745 cases; 2016 to 2017, 25,531 cases; and 2017 to 2018, 27,124 cases. Preliminary enquiry cases alone account for between 77 to 85 per cent of this backlog.

Madam President, I would surmise the court is manned by magistrates who are unrealistically tasked by the current volumes and legal handicaps. So whilst some citizens have been waiting for more than a decade or two to learn whether their cases would be discharged or sent to the High Court for trial, the victims and their families also are waiting and they too must have their day in court. The situation is further exacerbated when an accused person is unable to secure bail or is charged with a non-bailable offence. Not only is the State burdened with the cost of incarceration, but the person is denied their freedom in the absence of a

determination of their guilt or innocence, whilst going through a lengthy preliminary enquiry.

With the abolition of preliminary enquiries, about 26,000 cases would be removed. As a result, 43 magistrates in 12 courts will only have to deal with a few thousand matters, as opposed to several thousands. The municipal police should now have more time to focus on policing of the environment, while the police force will be left to deal with more serious crimes as there will be a drastically reduced number of case matters before the courts.

Reduction in the volumes alone will not guarantee significant improvement in the administration of justice. The entire system must be adequately resourced with both human, physical and technological capabilities. Transference of the backlog from the Magistrates' Court to the criminal court should not be an option.

Based on the provisions in the Bill, the Director of Public Prosecutions (DPP) will be allowed to determine whether there is enough evidence to proceed with a trial. The DPP will be getting matters at an accelerated rate and must be able to adjudicate these cases to determine if indictments are to be filed. This would be possible only if the DPP's office receives all the requisite resources to effectively and efficiently do so.

Given these changes, the prison system must also be prepared to effectively manage the new reality. The prison should not be treated as the proverbial dustbin. Persons on remand must be able to access all, and I stress all, the programmes available to convicted prisoners and not just one or two programmes. The main objective is to avoid persons languishing in remand with no access to tools and skills that would aid in their rehabilitation and prepare them to seamlessly resume their lives.

Madam President, I was heartened to hear the Prime Minister say that support would continue to be given so that the work of the Wayne Chance initiatives will go on. The business community also need to play its part. They need to help people who have changed their lives, and provide opportunities for them to be gainfully employed.

I do have some concerns with 5(b)(i). I am concerned that properties occupied or controlled by the person named in the warrant, but not necessarily specified in the warrant can be subjected to search by the police. In my view, there is too much latitude allowed in this measure which can be abused, and which can lead to citizens being threatened, intimidated and victimized.

Time limit: While the Master is expected to specify an indeterminate time limitation for the life of a search warrant based on his judgment call, deliberate or otherwise, the Master can specify five, 10, 20 months I assume, and every day the police can come breaking down your doors. Again, there is room for citizens to be intimidated. Due process requires that the rights of citizens be maintained and warrant extensions can be sought as necessary.

It is my belief that humane application of the law is needed. My experience in other jurisdictions is that the face of the law is more helpful and less disrespectful than experienced in our jurisdiction. The initiatives of the Commissioner of Police in promoting the reporting on social media of a kinder face of the law is encouraging.

Madam President, with these few words, I thank you.

Sen. Sophia Chote SC: Madam President, thank you for the opportunity to contribute to this debate. Having listened very carefully to the Attorney General's comments during his piloting of the Bill, and particularly to the well-researched

contribution by Sen. Saddam Hosein, my contribution before this honourable House today is likely to be quite brief. Perhaps I can do them under headings.

In that part of the Bill which proposes to provide for multiple search warrants being obtained and so on, I do not have a difficulty with that because it has occurred in the past. It is just that different officers will go to different Magistrates or Justices of the Peace, and obtain warrants to search business premises which may be located at different addresses. So it has happened in the past, this is really not something new.

I do think, however—and I have constantly pressed for this, whenever this matter reaches the stage of debate in this House, I do think that it is important for us to have sufficient checks and balances. I have suggested in the past that accountability means that the person giving the warrant or granting the warrant, ought to make a record of what information is given on oath to him or her to justify the grant of the warrant. So that if for any reason someone wants to challenge the issuance of a warrant, there is a proper record which is available which can be checked, and it also serves as a check on those persons who may be inclined simply to grant a warrant if a police officer comes and raises his right hand and says, “I believe that there is evidence at so and so place for me to be able to obtain a warrant.”

I think it protects the judicial officer. It protects the police officer to ensure that he does the right thing, and it also protects the citizen, who, if he or she believes that the warrant had been obtained improperly, that citizen will be able to seek access to that recorded information. I think that check and balance is absolutely crucial, and I would respectfully ask the hon. Attorney General to see, if perhaps, it could be included.

With respect to named persons attending on searches, well, I had experience of that. I had an experience where a certain forensic accountant purported to show up for a police search many years ago, and he was kindly asked to leave the premises and had to do so because there was nothing which allowed him to be on the premises of the person. He was a trespasser. Now, in that particular case, that forensic investigator really was not doing much more than saying, "Look in that draw, look in that draw", and that kind of thing. I suspect what the hon. Attorney General has in mind is perhaps IT people accompanying the police officers.

Well, I think for us to be clear, and the law must always be clear I think, I see no reason why the person going for the warrant cannot name the person who is going to be accompanying the officer or officers, so the judicial officer is quite clear in his or her mind, okay, so you need to have an IT expert accompany you, and the police officer commits to that judicial officer that the person who is accompanying him on the execution of the search warrant is, in fact, an IT expert and this is the person's name. I think that that can only lend to accountability and transparency, instead of leaving it wide open. Because if we leave it as simply someone can go with a police officer, then what is to prevent a possible accomplice, for example, going along on the search and unfortunately tainting the possible prosecution of a case? All of these things can happen and we need to ensure that the processes are clear and clean.

With respect to the filing of witness statements, I think 28 days is really absolutely not enough time for a number of reasons. One, the Criminal Bar, as it exists, is tiny. I think the misconception held by members of the public is that because crime is high it means that the Criminal Bar is large. That is absolutely not the case. In fact, the contrary is true. So 28 days to file witness statements for

someone's defence where you are dealing with a very serious matter, or you may be dealing with very serious matters and very complicated matters, I think on the face of it, 28 days is far too short a period of time.

In addition to which, there are cases where we often in preparing our defence we have to deal with experts. We have to provide them with material. We have to get their opinions, just like in civil cases, and then we have to reduce what they say into the form of statements which can be filed in court. So I certainly do not see 28 days being sufficient for the kind of case which requires the input of an expert, as many cases now do.

Madam President, with respect to the clause—if I may just have one minute to find it—I think it is section 20 of the Act which is proposed to be amended, which allows for:

“14(a)(i) no original exhibit or statement to be produced to the Court, unless the prosecution elects to do so or the Master rules that it is in the interest of justice so to do...”

I would respectfully ask that the defence be included in that consideration, because at the end of the day it is the accused person who is on trial. So, if for some reason, it is significant to the defence to see an original document where it is in existence, then I certainly see no harm for such a request to be made. I do not see why it was not included in the first place. [*Interruption*]

Hon. Al-Rawi: Thank you, hon. Senator. May I just ask with the previous point that you made, before I get to the other one so I can clarify it? The 28-day position, we propose in the Bill that we actually extend that time frame. It is no longer 28 days. It is such other time frame as the Master may give. Is there something that I have missed in that? Is there a particular clause that you are

referring to there?

Sen. S. Chote SC: Yes, hon. Attorney General, I am suggesting that we should not have 28 days as a starting point at all. I think we should have perhaps a three months period, but certainly not 28 days. Because you see, once you put that in there you are confining—sorry, Madam President, through you—you are confining yourselves to a starting point of 28 days. The clock starts ticking at 28 days for the defence, and I do not think that that is fair or really practicable in the circumstances.

Through you, Madam President, there was another issue hon. Attorney General?

Hon. Al-Rawi: No, I will look at it a little bit further. Thanks for giving way. I apologize.

Sen. S. Chote SC: So I was just saying that perhaps we ought to include the defence in that process, in determining whether originals ought to be made available.

With respect to the revocation of the section or the repeal of the section that deals with computer-generated evidence, and the reversion to the common law position, I see that in 2017, the English did it. So it means that basically what we are saying is there is now a presumption that the computer is working well, but that presumption is rebuttable. There are particular categories for the admission of other kinds of records business records, and public records, as I understand it those categories will remain unchanged.

So, I do not know how it has worked for the English, but perhaps the hon. Attorney General in his winding up might be able to tell us, because I do not know much about computers, and I would imagine that any judicial officer dealing with a

case which has computer-generated evidence is not going to be an expert on computers either. So, I do not know what can go wrong with a computer which may affect its output, and I suppose there maybe any number of things or there may be very few things. But because I do not know, I think it would be useful for us to find out whether the reversion to the common law presumption—since 2017 in the UK has worked well—or whether the practitioners have found that there have been difficulties reverting to the old law. I certainly would like us to have some sought of actual evidence before us with respect to that.

Hon. Attorney General, the final thing is this: I think much of what is contained in this piece of legislation can already take place and already takes place in the criminal justice system, and we already do it as part of criminal procedure. The fact that we are creating legislation to allow for it, is good because it means that now we have a law as opposed to the common law principle. We have legislation which says that, “This is what you should do”. So, from that point of view, I think this piece of legislation may be considered fairly uncontroversial, subject to what I have said.

But there was one point raised by Sen. Hosein, and I would be grateful if, hon. Attorney General— Madam President, through you—if we could have some commitment, as Senators, that the electronic systems upon which we would be relying for the working of all of this, that is to say the FTR—and is it the “we law” system?—that these systems are in fact functioning well. Because I think it would be such a disappointment for us to have waited so long for the abolition of preliminary enquiries and believe me, hon. Attorney General, at this stage everybody wants PIs abolished. We are quite happy to get rid of PIs because they are time consuming. They cause a lot of injustice in many instances to persons

who are custody and this kind of thing. So we are quite happy to support any system which will make the system of justice move more quickly. But we do not want to support a piece of legislation only to hear, “Oh well, nothing is really happening because the FTRs, the electronic recording systems and so on, are not up to standard, or they have glitches or they are not working properly.” So I just wanted to make that enquiry of you through, Madam President, hon. Attorney General.

Otherwise, I think having regard to what I have said, I think it is quite clear that I support the legislation, subject to the few points that I have made.

Thank you very much.

Sen. Foster Cummings: Madam President, I want to thank you for this opportunity to make a brief contribution to this Bill. I think that it is generally accepted by members of the public, by practitioners in the criminal justice system and, indeed, by Members of this House that preliminary enquiries should be abolished. I do not think that we have a disagreement on that issue, because we have a lot of information that suggests to us that there are issues with the administration of justice. We have seen over the last few months the Attorney General and his team comes to us time and time again, with various pieces of legislation designed to improve the administration of justice in Trinidad and Tobago. We know that the system has significant backlogs and inefficiencies and, Madam President, these changes, we welcome these changes.

We dealt earlier on with the traffic matters that were designed to bring ease to the courts. We dealt with the children and family matters. We dealt with judge-only trials. The Attorney General has indicated to us that the number of officers in the Judiciary has been improved; that the DPP’s office will be resourced; that the

police are being resourced, and now with the abolition of PI, this will also go a long way in bringing some relief.

Now, I am no attorney-at-law and most of the speakers who went before me are quite distinguished attorneys, but you do not need to be an attorney to understand that we have a problem. Let us be practical about this situation. The length of time that it takes to determine a matter in the criminal courts of this country is just very inefficient, and it does not represent what we would consider timely justice for the accused, for the victims, and their families.

We have—it is well-known, I think one speaker mentioned it before, that we have in the system, thousands of matters, some of them as old or approaching 20 years and still at the preliminary enquiry stage. Now, Madam President, that has to be something that we can call “dysfunctional”. It cannot be that you are accused of committing an offence or a crime in 2019, and that 10 years afterwards or 20 years afterwards, this matter is still at the preliminary enquiry stage. I spoke on the last occasion dealing with the question of persons who are on remand and who are in prison awaiting trial, some of them unable to access bail and so forth. Some of these persons may have already exceeded the maximum time for those if they were found guilty and sentenced, and are still incarcerated and awaiting trial.

12.30 p.m.

And so, Madam President, this is the welcome move, a welcome move for Trinidad and Tobago, and the fact that a deadline has been set, Sen. Hosein, is not a rush, it is not that—it is called “work”. This is what the Government is about. The Government is about making sure that within the given time frame that we do what is necessary to make sure and bring relief to the citizens of Trinidad and Tobago. It is not a question of anything being rushed through. This legislation

first passed in 2011, and the fact is that it has not brought any relief to the situation, and that is the fact.

And so the several amendments, you would know I am sure, is really designed to make sure that the final product can bring the relief that is intended. What is the urgency? It is urgent. It is urgent because it affects the citizens of Trinidad and Tobago, it affects real lives and real people. We like to speak about crime and how much crime is affecting us, but the fact remains is, we have to take serious steps to make sure that crime is not attractive to those who choose to live a criminal life. Because if you know, and this is what has seeped into the society, that the criminal-minded elements know that even having committed a crime that it takes forever to go through the criminal justice system.

And therefore, we care about the people's business and, yes, we plan to free up to courts to make sure that we can move with efficiency to deal with criminal matters. There are too many people, too many accused waiting on justice, too many victims and their families waiting on justice. The police, in the case of the police, there are some matters where officers started to—even the officers who laid the charge in the first place have gone to retirement, some have left this part of life as we know it and these matters are still pending. And so there is a clause in the Bill as I mentioned police, Madam President, that I found will serve us well. Right. That is clause 7. And:

“Clause 7 of the Bill would repeal and replace subsection (8)”—which will—“allow for the proof of the service of a summons to be made, principally, by an affidavit made by the constable who served the summons. This would eliminate the need for the constable who served the summons to attend court and to prove service of the summons.”—and so forth.

And these measures are designed to make the system more efficient, and also to make sure that we have the police doing the work that they should be doing instead being tied up with simple matters like that.

Two Senators before me, I think all Senators spoke about clause 5 and, Madam President, at clause 5—what is clause 5 attempting to achieve? We all know that you may have persons with multiple properties, residential, commercial office, et cetera, and therefore as Sen. Chote SC said earlier on, this is not something that is unheard of, we know that there are people with multiple properties and therefore this clause will allow the police and the officers of the court to have the warrants done in such a way that it can capture all of the properties that the police requires to serve that connects or concerns the accused person or the person who the police has an interest in.

And therefore, I do not think that there is any need for that sort of panic situation that there some attempt to paint the situation. I know that the Opposition has to look at their matters and find some reason to object, but this is not a matter that I think that they need to lose any sleep over.

You know, it is not always Chicken Licken Hen Len situation in this country. We need to look at the matters that are designed to improve, and where the Opposition will really stand out is when they are able to put country first and give support to legislation that is intended to improve the lives of our citizens.

Madam President, I look forward to the abolition of preliminary enquiries. I like to follow the news and there are several matters that we know that we have been hearing about in the news, and citizens asking, “When will these things ever come to an end?” I imagine even the affected persons would like to know that they can see the end of the tunnel in these matters. I imagine that civic-minded citizens

who observe what is happening around would like to see these matters come. I imagine, as I said earlier on, the persons affected by these things would like to see these matters come to an end. The Government is determined to make sure that this matter of the preliminary enquiry is abolished and that we can make significant improvements.

And Sen. Saddam Hosein also spoke about the question of courts and where are all these matters going to be heard and so forth, and I sure the Attorney General in his winding-up will give you some information about that because I know that he has been doing a lot of work in respect of making sure that the Judiciary is well resourced, both in terms of personnel and in terms of accommodation and equipment, et cetera.

We are on the right track. We are on the right track, we are going to do everything possible as we have demonstrated to make sure that crime is dealt with in Trinidad and Tobago. But in order to do that, you have to make sure that several things are working together. You have to make sure the police is well-resourced and organized, you have to make sure that the judicial system, that we deal with all the bottlenecks that we deal with all the inefficiency, and this is what this Bill is designed to do. And, yes, Sen. Chote mentioned it, that you must always have checks and balance, that goes without saying. In the implementation of these issues you must that in place. We agree with that, there is no question about that, but the legislation that is required is what we are bringing to the Parliament consistently. It is a holistic approach, it is not any one part being left out. If you have observed what has been happening, as I said earlier on, the Attorney General has been bringing consistently different pieces of legislation to address the overarching problem that we have in the criminal justice system.

So I think I want to ask all of the Members of the Senate today, the Independent Bench and the Opposition Bench, let us think about country first, and let us support the legislation to make sure that we have the improvements required in the criminal justice system to the benefit of all of the citizens of Trinidad and Tobago. I thank you, Madam President. [*Desk thumping*]

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

Sen. Sean Sobers: [*Desk thumping*] Thank you, Madam President, for acknowledging me and giving me an opportunity to contribute here this afternoon to the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 3) Bill, 2019.

Now, Madam President, when we were told that we had to treat with this particular piece of legislation I was a bit astonished because I thought that we had dealt with this, as Sen. Hosein and Sen. Chote and others may have indicated on previous occasions. But still, as a responsible Opposition, anything that we can do to properly vet legislation or Bills, so that when they end up in the hands of the end users that it redounds to their benefit, we eagerly awaited to see what the Bill would have been about.

Now this issue about preliminary enquiries, I mean we spoken about this time and time again, we have spoken about why we are here, what would have existed before the operations of the courts, how they have stressed the courts out, the idealism that would have been held by a particular individual in 2005 with respect to certain reforms, the AG then, I think it would have been Senior Counsel John Jeremie as he is now, with respect to the same paper committal proceedings that Sen. Hosein alluded to.

And Sen. Hosein indicated in summary fashion in terms of what actually

transpires at the Magistrates' Court where all matters begin at the Magistrates' Court and as they proceed, if it is an indictable matter or either way and it is elected to go to the High Court, they would have a preliminary enquiry. And as Sen. Hosein would have indicated, it would have been thought back then that in terms of having paper proceedings and witness statements simply being filed, as opposed to viva voce evidence being given which means persons going into the box and giving live evidence, it was expected, I suspect based upon the efficiency upon which our civil jurisdiction operates with the same methodology, that matters within the criminal vein would have operated in a smooth and efficient manner as well. But as I would have outlined on the occasion when we dealt with this particular Bill and matters of this particular vein, that the biggest distinction between civil proceeding matters and how they proceed generally through civil courts, and criminal matters is sanction.

In the civil realm there are sanctions that exist for almost every single aspect of a particular direction given by a court, and if persons, litigants, attorneys, even attorneys as a matter of fact, who disobey the directions of the court, they may very well find themselves being subject to a wasted cost order made by the court. But when you are dealing with criminal matters, criminal proceedings, you do not have those types of sanctions. I mean, I know that we have the Criminal Procedure Rules where there is some degree of sanction, but in terms of treating with criminals matters, you are dealing with life and liberty, and it would have been thought, I suspect, that to place certain sanctions in a scenario like that, may not be the best way to operate.

So the outcome was, matters actually took much longer passing through the court system than it existed before, and to a very large extent, those matters take

that inordinate amount of time, really and truly based upon one of the key principals or key facts that Sen. Hosein spoke about, which is the actual filing of the documents.

Now, I would want to go further by saying that, preliminary enquiries, the failings or the failures of preliminary enquiries are not only subject to the failure of police in procuring witness statements. I mean, I try my best to be as honest as possible, and it goes further to lawyers as well too not being ready when matters have to be called, lawyers not being present in court. It goes as far as witnesses not adhering to directions given to them by members of the police service in trying to ensure their attendance to court to be cross-examined. It goes to just the general operations of the court systems in some courts, for whatever reason being closed on a particular day or the lack of enough magistrates. So a magistrate may have scheduled to start a particular matter on a particular date, but because another colleague is ill or is out of the jurisdiction, they will have to go to another court to adjourn matters there. So all of these things are additions to the entire sum or equating to the solution or to the issues relating to the slow pace of preliminary enquiries in this country.

And what is proposed here, to be very honest, is as the Government has indicated and even Sen. Hosein has indicated, what you are inherently going to do is really and truly shift that system now to the High Court, which we have spoken about on several occasions, I will not rehash that particular situation, save and except to say, that by simply removing cross-examination, which in my opinion having been involved in many preliminary enquiries on my own, cross-examination generally does not take a long period of time, especially if you know what you are going to cross examine about or what you are trying to get from a

particular witness in terms of trying to debunk the elements of an offence or if the offence itself has been made out. But cross-examination generally would take maybe a couple of weeks, a couple of days in some instances.

So by eliminating cross-examination from the entire equation, you not going to save the type of judicial time that you are proposing to the public. Yes, all members of the criminal justice system are eager for this preliminary enquiry situation to be abolished, but the manner in which it has been rolled out or the information that has been rolled out to the members of the public in terms of attaching some degree of savings to the elimination of cross-examination will do no good. It will not equate to a shorter period of justice within this new system, and I suspect that we will very well be in the same position that we would have been in times gone.

My other issue, Madam President, before I actually jump into the Bill itself, is the fact that I think for some time now, many a times when Bills come to this House, at least, I would want to safely say, that we really do try to make certain pieces of legislation better. Some of the comments that we make, if not on the floor but at committee stage, is really and truly geared towards making the Bill a better Bill, and to make good legislation at the end of the day. So, it is a bit disheartening to see that this is the third time that we are going to be treating with this particular Bill, and having gone through the Bill, seeing that some of the comments that would have been given on the last occasion, that unfortunately were not adhered to then, finding themselves within the Bill now, I mean, precious time could have been saved and not wasted had those comments been taken on board then, so that we would not have to be in this position now treating with this legislation at this umpteenth hour to try to rush to get it dealt with in January of

next year.

So that, I mean, I thought for a moment while dealing with legislation of this nature or dealing with Bills, we were on a roll in this House. I mean, we gave support to the cannabis legislation, support would have been given—

Hon. Al-Rawi: Really?

Sen. S. Sobers:—support would have been given to an amendment that we made. *[Interruption]* Everybody voted on the Bill, and support would have been given to the police, the omnibus Bill that would have dealt with the security sector, and I thought we were really on a roll, we going down this thing nice, everybody agreeing, we working, and then boom, Christmas time come when it is supposed to be very merry and then we get this Bill which, on the face of it, it looks good, you know, well wrapped and what not, but when you actually open the present you are getting this clause 5 situation which I will get into very shortly which is, you know, I definitely—it is something that, I think, should be properly be jettisoned from the Bill itself. *[Desk thumping]*

Now when I looked at the Bill I looked particular at clause 3(b) which could be located on page 5, and this for consideration by the Government, I wanted a bit of clarify with respect to:

“in the definition of the “documentary exhibit”, by inserting after word ‘printout’ the words ‘, digital file in any format contained in any device;”

This particular documentary exhibit, my understanding, I could be wrong and I am subject to the hon. Attorney General’s correction at the appropriate stage would be the file that the police would be bringing to court for the exhibits in the matter that would be before the court. And I am wondering whether or not maybe the format which it is contained in should be a format that is approved the Commissioner of

Police as opposed to just any device that actually being used. It could very well open up officers who bring a flash drive for home or whatever the case is, and it could very well be that that particular device may have been corrupted or whatever. So if it is an approved device possibly issued by the Commissioner of Police it may augur well for the police officers.

Going down now to clause 5(a)(ii), and this is touching with what Sen. Hosein and also Sen. Chote touched on with respect to:

“...or any person accompanying him;”

—meaning the constable. Right?

Now, I have been present fortunately in some instances when the police have, in fact, raided certain homes or certain business places, and in situations like that, I can say from all of the raids, well the search warrants that been executed where I have been present, and even in matters coming before the court, I have never been made aware or I have never seen for myself personally, apart from the police officers on the exercise or executing the search warrant any other individual.

Now, I hear what the Government is saying, and I also listened to what Sen. Chote touched with respect to the possibility of computer experts coming into the home. Now, I wrestled with that issue, because I know in terms of when the police are executing a search warrant to procure a computer device, generally they would remove the device from the location having already executed the search warrant, police officers alone being present in the home, and then take the device at a secondary location where they will have their experts come and tinker with the device.

There may be a conversation or a narrative concerning other individuals apart from computer experts accompanying police officers. So what about forensic

analysis and persons, but I know that those persons really come onto the scene subsequent to an arrest being made and they have to process the scene or something like that. So they are not really present during a search of a location, at least, I have not been, I do not know of any situation like that existing. So I wrestled with the fact—so I dismissed the forensic aspect of it, and I wrestled with the fact about a computer experts accompanying the police officers.

And in terms of doing some reading on that particular issue, I came across literature to suggest that there are some computer devices that once connected in terms of the hardware connected to a physical device or something, if not removed properly, the information on the system could, in fact, be wiped, it is a failsafe or something like that. So in those instances it would be best that a computer expert accompanies, but in terms of the actual search itself, I mean, if these search warrant is, in fact, executed and you are going to have maybe this one-off situation with a computer expert being actually needed, I would have to, in fact, agree with Sen. Chote that you actually name the individual who would be accompanying the police officer and not leave it open to any other person accompanying the police officer in the execution.

I did not go as far as thinking that there is a possibility that person who is accompanying could be an accomplice, but the fact is, you do not want any and everybody involved in the search, because is it pertains to search warrants, which I will get into a bit later on, what I think a lot of persons do not understand is that they suspect that if a search is conducted at the person's home or at a premises, if the search is illegally done, then anything procured from the search will be tossed out as evidence. That is wrong, it does not exist in Trinidad and Tobago. That is a concept that exists in the US, this notion about fruit from the poisonous tree, but in

Trinidad if a search is improperly executed or is illegally executed, any illegal item found, the police could still charge the individual, that is the law.

So that my issue with this particular clause is that, the person is, in fact, charged and he goes before the court. The issue of the improper execution of the search warrant or an individual accompanying the police officer in the execution of the search warrant comes up, it does not dismiss the charge before the court, but when it comes to trial under proper cross-examination, a very prudent attorney can demonstrate that maybe the device may have been planted because certain procedures may not have been followed correctly, and it has happened in several occasions, so I would want the hon. Attorney General to consider that as well too.

Now moving on to the real, in my opinion, offensive part about clause 5, what this particular amendment sets out to do, in 5(1A):

“(a) one or more sets of premises specified in the warrant;”

Now, ideally I, again, this is something that I would have wrestled with, but I agree with Sen. Chote, it happens. Sometimes in executing search warrants at different premises you would want to ensure that you have multiple officers at different homes executing search warrants, because you do not want a situation where you go to house A and you execute a search warrant at house A, and their items are at house B, and person in house A before you gain entry to the home, telephones person at house B and tells them, “Destroy whatever or get rid of whatever because the police they are here right now”.

So simultaneous search warrants at several different locations is nothing new, it happens and there is a particular reason for that happening, but what this particular piece of legislation calls upon the Parliament to approve is where you are going have to have a warrant for one or more sets of premises specified in the

warrant which, as I said before, I have no issue. But then when you move on you have.

“(b) any premises occupied or controlled by a person specified in the warrant...”—

—but you do not name the actual the premises, and that is where I have a problem. It leaves that level of interpretation open then for any police officer, very few of them who may want to thwart the law as it is intended, to run wild, and we already have settled positions in law as it permits and to search warrants and how they are executed.

Many persons are not aware that, as the law stands, an officer can in fact enter a premises or a home without a search warrant. He can enter a premises or a home with a warrant to arrest someone, and if in terms of entering the home or trying to enter the home, the persons within the home refuse to allow the police to enter the home with an arrest warrant as opposed to a search warrant, the police has the right to break down the door and enter the home. Right?

The other instances where the police can enter homes without search warrants are where the police are, as they say, in hot pursuit of someone. So if they are chasing after a suspect in a matter and the suspect goes into a home, they can follow that suspect and gain entry to the home. And then they can also enter a home which, again, people may commonly see on television and we call it “exigent circumstances”, but basically it treats with where police officers can enter home to prevent the commission of an offence from actually occurring.

And in terms of my criminal practice I relied heavily on a text that was prepared by a very learned senior counsel and a Senator who sat in this Chamber and that is Dana Seetahal. And in terms of the text itself which is the

Commonwealth Caribbean Criminal Practice and Procedure, the 5th edition at page 40, there is learning with respect to entry and it indicates that:

“There has always been a common law right of entry to anybody to break open the door of a house to prevent a murder and to arrest the offender.”

In *Swales v Cox* 72 criminal appeal at paragraph 174 the English Court of Appeal defines four situations at common law where the police may enter premises to effect an arrest. They are: to prevent a murder, to arrest a felon who had been followed into the house, to prevent the commission of a felony and the right of the police to follow an offender running away from an officer.

Right?

The section 3(6) of the Criminal Law Act, Chap. 10:04 of Trinidad and Tobago also contains this power in respect of arrest for an arrestable offences. So those are the instances where persons can, in fact, enter homes without search warrants in terms of gaining entry to a home.

So that it is not and I think in terms of the discussion that I have been hearing from persons within the public domain, I do not want to be a fearmongering situation, but what I want the public to understand is the manner in which this has been rolled out it can, in fact, create fear on its own. It cannot pick up its own legs and run amok if persons do not have the proper checks and balances implemented at this particular stage to manage how the development of search warrants in this country is rolled out.

There is no definition really and truly save and except for what I suspect may be in the common law or in some other case law to define “occupancy and control”. I would want to think that when we are dealing with occupancy and control we are talking about legitimate occupancy, and not just simply a person

passing through. When we are talking about control, it must be legitimate in terms of type of lease or deed or title being procured to demonstrate to the Master that this is a person who has a significant degree of control over that particular premises. And then the Bill when it goes further it is at clause 5(1A)(b), it speaks to the justification now in making the application under (b). It speaks to:

“(i) because of the particulars of the indictable offence referred to in subsection (1), there are reasonable grounds for suspecting that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application for the search warrant in order to find anything referred to paragraphs (a) to (c) of...”—reasonable belief of which the suspect is named, but the premises is not.

What information is really going to be brought to this Master to make that decision? The suspicion alone for a suspect possibly being in controlled of a home that you do not know is insufficient information for someone, a judicial officer of that rank to make such a decision. And then when you move further on—

Madam President: Sen. Sobers.

Sen. S. Sobers: Yes, please.

Madam President: Hon. Senators, the sitting will be suspended and we will return at 2.15 p.m.

1.00 p.m.: *Sitting suspended.*

2.15 p.m.: *Sitting resumed.*

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

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

Sen. S. Sobers: So when last we broke before lunch, I was going through this

issue that I had with the warrants, and during the luncheon period I had some discussions, and maybe in terms of what was being put forth was a lil bit academic in nature, so let me try to break it down a bit. [*Interruption*] Nah, let me try and break it down a bit.

Basically, what I want the public to understand, and this House to understand— let us give you an example, a proper scenario. The police, before they approach an officer, a magistrate, or a Justice of the Peace to procure a warrant, they have to go with information. Information would usually find its way in the form of surveillance, or information from a criminal informant, who they may have been watching for a particular time frame, based upon that information finding its way before that particular officer, the magistrate or the Justice of the Peace would usually grant the warrant. Now, in most instances in this country, police officers would go before a Justice of the Peace, because in most instances the reality is the police officers are very familiar with the JP, and the information, unfortunately, that is put before the JP may not be as comprehensive as we would like it to be.

So, what this Bill would now propose to do, is that an officer would go before a Master and basically indicate, under the particular section that, “Listen, we have information on John Brown who lives at No. 24, Clarence Rambharat lane, and whilst watching him live at No. 24, Rambharat lane, we know that he lives there, we know that he has control of that particular location because we may have a lease agreement, or a deed, or whatever in his name, we have conducted surveillance for quite some time seeing him going into that property.” But with respect to the legislation now, we are able to say to the Master, that in terms of watching John Brown, John Brown from time to time would visit No. 22,

Minister's lane and from time to time he may visit No. 19, Moses lane. We cannot say specifically what the actual address for 23, or we cannot say the address for 19. We can possibly inform the Master, that in terms of occupation and control, we have no proof of control, we do not have a deed, we do not have a lease or anything tying John Brown to these other two properties. All we have is, in some form, a bit of occupation, because we saw him spend a night at No.23, and from time to time he would go at 19, and based upon that, we put that information before the Master and we are to get a warrant now, to raid premises and armed, that are occupied or in control for John Brown.

So, we would capriciously now go, raid No. 24, which we are certain belongs to John Brown, and then raid 23, and raid 19, and if we so desire on that particular day we raid 18,17,16,15,14, seven , six, five, and we go down the road doing those things. Now, I do not suspect or suppose the number of officers who may intentionally operate like that are very few in nature. But there are very young police officers out there without proper guidance, may very well unintentionally do something like that. And yes, the law provides, in some instances, for persons to take action against the State for trespass, if the person enters their home illegal and whatever the case is and nothing is found. But now you are going to have them having a defence of this search warrant which indicated, that pursuant to certain information they presented, it was sufficient enough for them to get a warrant, to say that they could raid John Brown's home, which is 24 Rambharat lane, and any other premises occupied or in control by John Brown. It is too wide. It is too open. And that definitely mirrors when you think about it, a World War II scenario, a Gestapo situation, and we cannot have that in this country. [*Desk thumping*]

Yes, I understand what has been put on the record by the hon. Attorney General and the Government, that this particular part of the legislation was taken from PACE, but I must say, in terms of listening to some of the contributions in another place and even in my own understanding, PACE is set up in a particular way to treat with a particular set of police officers in another country that operates totally differently from how we operate in Trinidad and Tobago, and you simply just cannot copy and paste legislation without understanding the socioeconomic instances at play within our own country. It just would not work. It would be simply fitting a square peg in a round hole. That cannot operate here. And in terms of going further, when you consider the aspect of multiple searches as well too, I looked at that and I said, but, what is the sense, what is the likelihood of an individual, who is so steeped in criminality, that one, they are going to have drugs and guns at their home, or at a premises that they control or occupy.

In most instances, especially if it is the police raided that particular establishment once and they “eh” find anything, bet your bottom dollar you will never find anything at that location again. They are not that silly to have something there on a second occasion. Lightning just simply does not strike twice in such an instance. In most instances, when you deal with criminals or individuals who operate in that realm, they do not hide those things at home. During the break period, maybe you think as I was speaking to a particular officer, I remember in my second year of call we were doing a matter where an individual’s house was raided, and when we visited the police station after they brought him in, he kept saying that, “Dey did not find dem drugs and guns there. Dey eh find anything home by me, dey find dat by de neighbour.” Which is usually what some of them say from time to time. But when we spoke to him and

we took proper instruction, what he told us was, the police raided the home, they had a dog, they passed the dog through the house, and as they passed the dog through the house and they went into the yard, the dog kept going to the back wall of the property and scratching the back wall of the property, and the way in which the property is located, the back wall now is a wall that is utilised by the neighbour's house as well too. And, the neighbouring property, the persons who occupy that home were two elderly individuals. One of them, the male, was senile, he could not hear, he could not speak properly, whatever, and he was bed ridden, and his wife, an 87-year-old lady, was equally a bit senile as well too.

So the dog is scratching at the wall. The police officers go around, start ringing the doorbell to enter the property, no one comes out, the neighbours now come out and say, "Well, listen"—they indicate the situation with the occupants, the police gain entry, and while they go down to the back wall where the dog was scratching, they told the other officers let the dog go and they hoisted the dog over the wall, and as the dog landed in the yard, he scratched and drugs and guns. Now, when we were here a bit earlier on in another debate, if that particular legislation was passed, "aji and aja was going down de road", no bail. Because it was enough drugs and guns, first-time offenders as they would have been. They would have been caught by that trafficking legislation in the Bail (Amdt.) Bill, and it would have been no bail for them.

Hon. Al-Rawi: There was no mandatory bail, Sean, be honest.

Sen. S. Sobers: No, for trafficking in drugs and guns?

Hon. Al-Rawi: There was none.

Sen. S. Sobers: Yes, you would be able to get bail for a first-time offender.

Hon. Al-Rawi: For seven days, that was the discretion of the court.

Sen. S. Sobers: Right. So, they would have been arrested and taken down with no bail. The police officers enter the property now, find this cache of drugs and guns and, from what we understand, they would have radioed for a senior officer to come on site, the senior officer would have instructed the majority of the police officers to leave the yard, and then it was alleged that he would have given instructions, “Well, we know dem drugs and guns doh not belong to aji and aja, pick it up and throw it over de wall.” And they did that and they charged our client. At the trial, those instances would have come out based upon cross-examination, and he would have been found not guilty. It goes to the meat of the matter that in most instances, individuals steeped in criminality, do not keep those items at home. So, to think then that raiding the place a second time you would find anything there, is really and truly wishful thinking, and that is why in terms of this entire section, it must be jettisoned from the Bill. It cannot be supported.
[*Desk thumping*]

When I read further on as well too, as it pertains to the showing of the warrant—at the execution of the search warrant at (2A), and it indicates that the officer should:

“(a) identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;”

When last we were here we made amendments to that omnibus legislation that dealt with several arms of security forces, and then we recognized that there was rampant criminality in persons putting on uniforms and imitating police officers and raiding homes and whatnot and whatnot. And because we understand and appreciate that that is what is occurring currently within our society, I am thinking that at (a)—now, I welcomed the fact that we are actually legislating now

for what should take place with respect to warrants. I think Sen. Hosein, the hon. Attorney General, Sen. Chote as well too, went through the importance of legislating that, because of the different issues that may arise within— [*Crosstalk*] Issues that may arise within a matter. But what I would want to put for the consideration of the hon. Attorney General is that, with respect to whether or not the officer is in uniform, he should produce an identification card to the persons so that they would know, or some form of ID so that they would know that this person is in fact a police officer and not some rogue imitating the police and trying to gain entrance to their home.

Now, I also saw in the law, which I thought made some sense—I mean on the last occasion we spoke about it when we dealt with this particular Bill, the fact that items that may have been seized by the police, in some instances, if they do not—they can no longer further assist the police in terms of conducting their investigation, or even bringing—subsequent to a charge being laid against an individual, that the item should be photographed and return to the individual. I would have raised on the last occasion that it opens the State to a plethora of civil actions in the form of detinue and conversion being filed against the State. And I am happy to see that in legislation, because in practise some officers would take the photographs and then return it to the owner. In some instances, you would have to get an attorney to send off a pre-action protocol letter for “detinueing”. I am glad that it is now in legislation so that you would be able to positively point the officer as to what the law says, and hopefully he complies. And in any event for whatever reason, when you read further, if the officer does not comply, then an application could be made by both the prosecutor and the owner himself at court to have the item released, which, again, I think is a welcomed approach because it

would save the State a considerably amount of time, resources and money as well too.

I saw as well too, that the Bill has been amended now to allow for a registrar of the court to have concurrent jurisdiction as a Master and a magistrate in certain aspects. Now, while I think this is a good approach, the difficulty is, and I know that in all instances now, a registrar would be a legally trained individual in terms of his profession as being a lawyer. I just want to ensure that the registrars as well too, they are very well aware that they are going to be taking on this particular mantle, because time and time again we have seen, in some instances, that persons have been a bit apprehensive about exercising their duties when thrust into that particular position.

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

Sen. S. Sobers: Grateful please, Mr. Vice-President. So that I want to ensure that sufficient training would have taken place, and that the registrars appreciate and understand their responsibilities that they are now going to have to execute.

I also thought it fit that some of the time frames would have been curtailed as well to in this legislation, and in some instances, removed. I thought that that was a good approach as well too as it pertains to understanding that, in terms of preliminary enquiries, sanctions, operating in a criminal environment may not be the best, almost fertile approach to treating with the legislation. With that being said, Mr. Vice-President, I do understand the eagerness for our society to rush to have preliminary enquiries abolished. Many persons have suffered under the mantle of being involved in that particular environment for far too long. But, we should caution our pace at which we attempt to do it and not rush into actually doing it because, in some instances, you would have an unfortunate opportunity

to—or an unfortunate instance where you would include provisions that will serve or do no good to the end users of this particular piece of legislation.

I can see no good coming out of including that entire warrant section, apart from either: A, persons would intentionally abuse it, or B, those who unintentionally access it, will do so without proper training and proper education.

There would be a lot of abuse that would be meted out to members of the public, who should not be in the process of such antagonistic behaviour, and I think we really need to focus a bit more on ensuring then that we do not only just speak about justice being on time, and justice prevailing, and indicating to the public that there is this big architecture, or plan at work, to ensure that the criminal justice system finally takes off, but we actually feel it. Because it is the saying that, “He who knows it feels it”, and the only way for us to actually feel it, is seeing it operate in practice. We all know the situations at the courts throughout this country, especially in San Fernando, Rio Claro and Princes Town, and I applaud if the case is that we are going to have now 100 courts in Port of Spain for criminal matters to be heard, but the situation in San Fernando still persists. Sen. Chote spoke about this recording system and whatnot. I have not heard anything about that system being implemented in San Fernando or Rio Claro.

Hon. Al-Rawi: Throughout.

Sen. S. Sobers: I mean, these are things that we would have to really wait and see and take on board, and we would hope that they actually bear fruit, and it extends to all persons throughout the system. I thank you. [*Desk thumping*]

Sen. Anthony Vieira: Mr. Vice-President, today is historic, and today we form part of history. It is fitting that today we are doing away with the Indictable Offences (Preliminary Inquiry) Act, Chap. 12:01, which took effect on the 29th of

May, 1917, a process which has become archaic and out of sync with the times. Today, also, would be the last sitting of the Senate, and probably the last sitting in this place. Today we bid farewell to these salubrious premises, which have served us for so well. [*Desk thumping*] When next we reconvene, it would be back at our ancestral home. [*Desk thumping*] Necessary endings, new beginnings, as we look towards 2020. The significance of the moment should not be lost on us.

Once in the early 1990s, when I was a prosecutor in the British Virgin Islands, I was tasked with the prosecution of a rapist, and the victim was an attractive, young American woman who had come to the islands for a sailing holiday. Now, cruising is a very important tourism activity in the BVI, so it was important to show that this sought of illegal activity was heavily frowned upon and that the offender would feel the full weight of the law. The police had their man, he was known to the victim, so identification was not a problem, and on paper it seemed like a relatively simple and straightforward case. Now in those days, I do not know what it was like now, but in those days the criminal courts in the BVI were not congested. Matters moved through the system swiftly. In fact, I had the distinct pleasure of being able to successfully take cases from PI stage to the assizes and appeal all within a two-year time frame. A very far cry from what was happening the Trinidad at the same time. But I digress. Back to the rape case.

So, try as I might to convince the distraught victim that I would protect her while giving evidence on the stand and that the Crown had undertaken to pay her airfare, hotel accommodation, and other expenses, while the legal proceedings were going on, the thought of having to relive the ordeal, not once, but twice, was just too much for her to handle. In the end, she opted not to give evidence, and her known rapist was allowed to walk free and remain at large. The lesson learnt then,

and it is one which has been reinforced time and again to me, in my years of practise, is that it is not enough to have the law and the facts on your side. Process is a substantial, critical element in its own right. Now this is well-known in the Industrial Court, for example, where so many employers learn to their detriment that it is not enough to fire somebody for good cause. The way in which you go about it, the process that you use is just as important, and it will be determinative. Mediators also know about the importance of process, because having the right plan from the outset, promotes confidence in the parties, the parties appreciate a sense of order and predictability in the session, knowing what will happen and why.

So, there is value in having a good road map to follow, whether it is mediation, arbitration, in the Industrial Court, or court process. A properly designed process does not favour or discriminate against any particular party. A properly designed process is effective and efficient. It should facilitate, not obstruct. Thirty years ago, 30-plus years ago, in the early 1980s when I was practising in our local criminal courts, and I am talking in particular now when the Magistrates' Courts were at NIPDEC on Cipriani Boulevard, being involved in a preliminary enquiry was little short of being painful. All right? If I said the proceedings moved at a glacial pace, you could accuse me of exaggerating. But that is certainly how it felt. PIs were agonizingly slow. Everyone suffered. It was painful for the magistrate, who, as you have heard, he had to have every exhibit identified and marked, and he had to write everything out in longhand. Section 16(2) says:

He— “shall take or cause to be taken down in writing...”

Have to read it back to the witness, signed on a deposition, typed up. When

I first farted practise one of my mentors told me that a barrister's holiday was the time between asking the witness the question and getting the answer. That was not what he meant, but I could tell you in the preliminary court it certainly felt that that made sense. It was painful for witnesses. Now, witnesses are trying to do their civic duty, they are taking time off from work. They might have children to drop to school, or to pick up. They have to take time—you know, get permissions from bosses and all this kind of thing. But every time the matter is called, and you are talking about if the accused is on remand and the parties do not agree to an adjourned date, every 28 days the matter is being called, right? *[Interruption]*

So, every time the matter is called, until they are released from having to give evidence they have to be showing up in court. And when they are giving the evidence, you have to speak slowly, because the magistrate is trying to write down and capture what they are saying. Right? Being repeatedly instructed to speak slowly, in fact, being warned to speak slowly could throw anybody of their game. So, even the quality of their evidence was being diminished, and would affect their composure and everything. It was painful too for the police. I remember going into those courts and you are seeing throngs of police officers milling around all the courthouse precincts, waiting for their names to be called, if at all. Time better spent by being out on the field, but trot like insects on fly paper in an archaic and fog-like process.

Painful too for the accused, often on remand while the process drags on interminably, now himself a victim of an unyielding, unsympathetic and plodding system. But most of all, painful for the victim. Dehumanized by the description virtual complainant, who besides having to relive the ordeal, not once but twice over, now found to her or his distress, that their time is beholden to the State and to

the State's agents. Being a witness for the prosecution was not as glamorous as it sounds. Now, this was English 19th Century processes and systems in action. Processes and systems in action 100 years later, at a time and a place which bore little or no resemblance to the Victorian age. When preliminary enquiries were first introduced in the United Kingdom, they were hailed as innovative, and an improvement to what existed previously. The 19th Century Victorian Parliament took action to reform the operations of the judicial system as an outcome of rapid urbanization, and the Industrial Revolution. That period too saw the introduction of the policeman in England called “Bobbies”, after the Prime Minister, Sir Robert Peel.

So, I want to put it in context, because the Industrial Age, the Industrial Revolution was a turning point in history. It was a change from agrarian to machinery, when we are now in the Fourth Industrial Revolution. We have shifted from machinery to cyber-physical systems, new ways in which technology have become embedded within our societies. We are in the digital age. The PI system is analogue. But systems like motorcars and airplanes, must evolve. They have to change with the times. They cannot be rigid and static. They must be adaptable to the circumstances, and they should always, where possible, make use of appropriate technology. It is a continual process. Good processes, good systems are always evolving.

Today, in this Senate, we are making, and we will be part of legal history. Today we have the unique and the distinct honour of playing a role in the evolution of law in Trinidad and Tobago. The PI system was a product of its time, and there was much good to it, as a means of getting the State to disclose its case to the defence before trial, as providing a forum where the accused was afforded an

opportunity to discover and appreciate the case against him, and in keeping with its main purpose, the committal function, and opportunity to evaluate the evidence and charges to see if there was enough to commit the accused to stand trial before a judge and jury. But today, preliminary enquiries are the poster child of the maxim. The wheels of justice grind slowly. PIs are not good for complex crime. I am an intellectual property lawyer. It is very hard to deal with that type of matter in a preliminary enquiry—well, through there are summary offences, but they would not be a good fit.

Today, the new Criminal Procedure Rules provide robust discovery and disclosure procedures. So, the justification for that no longer exist. PIs in my respectful submission have become obsolete, if not archaic, a relic of the past, which has out lived its usefulness. The PI system served like a funnel. A senior magistrate would sift through the evidence to see if there was enough to go forward. But the funnel was too small to cope with the heavy workload and demands being made on it. The funnel could not handle sufficiently all the various trances of evidence which need to come together in a timely and efficient manner, marshalling and coordinating your witnesses, waiting on forensics to conduct and certify whether the exhibit is really a gun, or really drugs.

So for today's needs, in the 21st Century, PIs are a flawed and poorly designed process, a plodding justice system, hugging up the courts, counterproductive, and perhaps, even toxic. What was once a staple of the UK 19th Century criminal justice system, is now being processed re-engineered by this suite of legislation. A suite of legislation which has considered the current demands on the legal system, our legal processes, our legal offices and institutions, our rules, and the participants involved. It treats with searches, searches of aircraft.

Trinidad and Tobago is a member of ICAO, the International Civil Aviation Organization, and ICAO allows member states to have power to regulate, including power to implement and maintain security measures.

2.45 p.m.

Let us not forget what happened on 9/11. The terrorist attacks on 9/11 were a wake-up call for everybody in aviation to reassess security measures and to develop more robust security systems. So now you can search airplanes for prohibited items such as guns, drugs and other devices. This legislation allows experts and other relevant persons to accompany the police when conducting searches; computer experts, accountants and the like. Well, we already have something like this in the civil jurisdiction with Anton Piller orders. I have done a number of Anton Piller orders, and you would have the police there; you would have an independent attorney to supervise and report to the court, but you would have to have with you your experts. Because if it is like you are dealing with computer software, counterfeiting, things like that, the ordinary policeman, the ordinary lawyer is not going to be able to discern what to pick up, what to leave behind. So this makes perfect sense to me.

This legislation expands on the requirements through the form of a search warrant which is specified by statute, by allowing for more than one premises to be searched on the same warrant, to be able to search a premises more than once and for searches to be conducted within a certain time frame. I have no problem with this. It provides for photographing and digital recording of seized items. Well, I want to tell you that is a real benefit for the property owner, and less need for storage space in the police stations or where have you. And because photos and digital evidence will now constitute sufficient evidence, it minimizes, if not

obviates, the hassles and all the risks attendant to the chain of custody issue.

Now, one suggestion I would like to make, in the copyright law at section 44, there is provision for the use of samples. So you seize a container-load of counterfeit DVDs or jerseys, you are not going to tag and mark every single item. You are not going to bring the whole container to the Magistrates' Court. Section 44 allows for samples to be used. The court need only examine a few specimens of the seized items. And there is a rebuttable presumption that the remaining items are also infringing and unlawful. So maybe that is something we could consider in this legislation as well. It allows for judicial officers in the criminal justice system, registrars, clerks of the court, magistrates and Masters, to exercise concurrent jurisdiction, and this will prevent potential gaps or cracks in the system. It allows for the filing of documents electronically, an important feature of life and practice in the 21st Century. You know, when I am asked to talk about how does the CCIJ compare with the Privy Council? I say one is a totally paperless court, one is steeped in 19th Century procedures and systems. Paperless is the way to go. It is sustainable development as well.

So all told, what we are doing here today with this, which is just part of a suite of legislation all interconnected, is we are laying a foundation. We are designing a future. We are creating an ecosystem for the criminal justice system in this country. We are seeing with the new Criminal Procedure Rules, better case management. It would have been nice too—another suggestion—if we could have incorporated the Chief Justice's practice direction on defence statement and giving it legislative force. I would have liked to have seen that in the legislation. But we still have the practice direction.

Mr. Vice-President, the current preliminary enquiry system has become

irrelevant and costly to the effective administration of justice. It is not just a bog, it is a nightmare. This legislation will simplify procedures. It will make better use of technology, like the voice recording. I mean, it is time to get rid of this long-hand note-taking. It will make giving evidence less distressing for victims and their families. It will save police officers the time to come to court and testify. It is going to free-up limited judicial resources and it is going to make for speedier trials. The status quo is not an option. Our citizens deserve swift and fair justice, effective and efficient administration. This legislation will modernize the antiquated and inefficient preliminary enquiry process.

In a couple of weeks' time we will see the end of 2019. The 21st Century is no longer a teenager. It is a well-established adult in a couple of weeks' time. So it is time for our legislation to grow up. This law will bring us—it is going to leapfrog us into the 21st Century. So I wish to compliment all those who have participated in its design and I am privileged and honoured to be a part of this. Thank you. [*Desk thumping*]

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

Sen. Hazel Thompson-Ahye: Thank you. Why this Bill? We have had this law for a long time. Is it the time when it should be at an end? And if so, why? There is no law that will please everybody. But should it continue? That is a question that we have to ask ourselves; the law as it stands today. Obviously, the Attorney General thinks it should not and as a voice of the Government, one can say the Government thinks this Act has seen its last days—this preliminary enquiry—and it should be brought to an end.

So we come today, Mr. Vice-President, on this Bill, the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 3) Bill, 2019, and we have heard that

\we have come here time and time again because we are trying to get it right. There is no doubt that the Attorney General is correct when he says that preliminary enquiries are time-consuming and persons who are brought before the court will tell you that it is costly. Some defence counsel would prefer that it would remain for the selfish reason that is it would accord them more money. And that is not just old talk, because I once heard a very high-ranking senior defence attorney saying, “Well, you know, if my submission is accepted, it would be less money for me so that it would be good if it goes to trial”. “I will get more money.” That is the reality.

So we have the question of the cost; we have the question of the delay, and there are practical reasons why we want trials to be as speedy as possible. Because we know that we are dealing with human beings, we are dealing with evidence, and many times what happens is that evidence—the mind operates in such a way that memories will fade, and that is a very real thing that happens. So sometimes it is thought that the witness is giving trouble when the witness really cannot remember what happened.

There are cases also where the matter has taken so long to come to trial that the victim is no longer interested and finds, really and truly, “Why are you bothering me with this case”? “So long I forget about that. I want to get on with my life.” And sometimes the circumstances that have evolved would cause much more distress because of intervening circumstances. There was a case where an incest was the charge and the product of the incest, the boy, was now almost a teenager and did not want the mother to give evidence against the father, and she was really torn about how she should operate in this case. There was a case of a teacher who had to give evidence in the trial of a child and she was in such distress

every time she had to go to the High Court. You know, it was so long after the trial and she just wanted, of course, to be free of that.

So we have an instance now where we are looking at sufficiency of evidence hearing. The evidence is to be assessed and a determination has to be made. Now, if it is that at the end of the day the Master believes that there is sufficient evidence, the case is sent forward. If the Master dismisses it, the DPP can appeal. What if the case is such that the matter should not go forward? Is there provision to appeal that decision of the Master as the law now stands? I recall a case where I was appearing in a preliminary enquiry in the Tunapuna Court many years ago and it happened that I put forward a situation of self-defence and the DPP's representative agreed that we had not "negatized" self-defence and the magistrate at the time did not want to take the responsibility of discharging the accused, and so, that young man who was 17 years at the time, had to wait three years until that matter came on for trial and then the jury found self-defence had been proved and therefore he was set free. Three years he spent waiting because the proper thing did not happen at the end of the preliminary enquiry.

Now, the Attorney General has stressed the fact over and over again that it is not magistrates, you know; it is Masters, so it is at the High Court level. But is that a real advantage? We have in our system a number of magistrates who are very, very experienced. They have been sitting in the court for many years. Not all of the Masters, as I understand it, are persons who operate in the Magistracy and have that kind of experience. So we have to be very careful about who are persons who have been selected to deal with these kinds of matters, to make sure that we get the best results, because we do not want a situation where, instead of operating in a way that we achieve justice, we do not achieve justice.

Now, we know a question of a speedy trial is a constitutional right and we all want to make sure that we operate a system where justice comes at the earliest opportunity, because justice delayed, we know is not just a cliché; it is a fact that justice delayed is justice denied. So we want speedy trials. So we have to make sure that the evidence is assessed. But how do we always ensure that all of the evidence is brought forward by the persons before the court? Because the prosecution office will depend on what the police bring forward in terms of their investigation. So we have to work as well, to make sure that the police always do their duty in terms of the evidence that they bring forward to the court, that it is not fabricated evidence. And that is why the question of taping statements by the accused to make sure that the statements were in fact made and not fabricated, that is very important that we get on with doing that to make sure everything is done above board.

Now, I have enquired from other jurisdictions as to how this law is operating, and in speaking to Jamaica, to someone at a very high level, the response was, “It has been working to some extent very well, but what we have observed is that the backlog has now been transferred to the DPP’s office”. I have heard the cry of the DPP for a long time in terms of the human resources, in terms of the physical space, so when we implement this legislation we ought to be sure that everything is in place to assist the DPP to carry out the very onerous responsibilities that he has been faced with. Because many times we find that we put legislation and all of the infrastructure, all of the things are not in tandem. So we find on the one place we are putting a lot of legislation but then the implementation, because everything is, you know, not prepared, causes problems.

So therefore, we cannot pat our backs and say, “You know, we have put this

law in place; we have put this law in place”, if we have not put in place all the attendant support systems. So we must have a properly resourced Director of Public Prosecutions department so that he can carry out his job and we must have persons at the Masters’ level who are properly well experienced and properly trained to do the job that they have to do.

Now, when Jamaica brought their legislation into being, what they did at the same time was to implement another piece of legislation, and that piece of legislation was Jamaica, Law Reform (Miscellaneous Amendments) (Restorative Justice) Act, 2016, which introduced restorative justice at various steps of the proceedings. Trinidad and Tobago has been talking restorative justice for many years. We have heard all the support, all the platitudes, all the praise being showered at Wayne Chance on the occasion of during his life, and on occasion of his death high officials attended his funeral. And Wayne Chance, his mantra was restorative justice. Many times we would discuss together, and I would always tell him, “You know, you do not have a proper concept of what is restorative justice, you know, because you still have this punitive mindset”. But his heart was in the right place. And he was trying to send a message that not only the offender—although he emphasized the offender—but also the victim, restorative justice and the community must be involved.

So what Jamaica did was instituted restorative justice at the level of both before court proceedings commenced while you are before the court before the trial commenced, while the trial was going on, and even at the end of the trial when you come to the stage of sentencing, that you can still have the matter being taken out of court, sent to a restorative justice session, so that the offender, the victim and the community would be involved. Because if we are talking about getting

people out of prison, if we are talking about healing, we ought to be talking restorative justice. But for some reason, Trinidad and Tobago has been very wary of even attempting the holistic picture of restorative justice. So we have portions of it. We have victim support which deals with the victim. We have situations where we help the offender. We have the drug treatment court and so on, but we do not have the holistic picture of restorative justice. And if we want to bring about a changed community, if we want to bring about healing in the community, then we must be looking at instituting restorative justice for 2020.

Now, the Attorney General said this morning that I would be pleased about a proposed amendment which is clause 15. I am not at all happy with that, so that is an error on his part. He has misread my thinking on this issue. Because what clause 15 is doing, is amending section 21 to reduce the age of children who would be permitted to give unsworn statements, from 14 years to 10 years. Now, we cannot look at that in isolation. We must look at this clause in relation to the fact of the age of criminal responsibility which this Government, like all the governments before, stubbornly refuses to change. So we are in the scandalous position where the age of criminal responsibility in Trinidad and Tobago is seven, but in Jamaica where it is 12, they have not reduced the age for children to give unsworn evidence. So it remains at 14.

And this is important because if you are giving evidence, you are allowed to give evidence—unsworn statements—below the age of 14, so he wants to lower it to 10 years, if it is found that having given a statement, or you have made a deposition—a child—which is false in fact, then that child can be prosecuted. So we can prosecute. Whereas in Jamaica you do not prosecute children under 12, in Trinidad and Tobago we can prosecute children. So why would we want to lower

that age and put the children at risk?

So my recommendation is that we do not lower that age but keep it as it is. And I just want to point out that the section of the law that we quoted in the Bill Essentials and in the Bill itself, is incorrect, because when one looks at—I think you said, section 91 or so, that deals with the compulsory age for child labour, and the one that deals with giving evidence, a child of tender years, which is interpreted as a child under 14 years, which we are seeking to change to 10 years, is really section 98 of our present Children Act. So we need to look at that and correct it in our Bill. When we are looking at reform of the criminal justice system we ought to take a holistic picture, and over the years we have been talking about doing so many things. And these many things have really not been happening. We have been doing other things that we have not been speaking about before.

For many years we have been talking about a parole Bill, and during the time when we met with prisoners—I am sure the Minister of National Security, the Attorney General and so on—we keep hearing about people—even from the Commissioner of Prisons—who really have been model prisoners over the years, who they take out sometimes into the community to talk, and even in schools, to talk to members of the community; in schools. Wayne Chance used to do a lot of that, and some of his colleagues who are still inside. So they talk about what happened to them to cause them to get involved in crime and they have been very much, you know, doing a lot of good things in the community. We bring them out sometimes when we want to show the world that, you know, we are doing good things in prison: “Look, they are painting beautiful pictures”. “So they have artwork going on. They are doing things in the library. They are winning competitions in public speaking and debating. So many good things are happening

in the prison.”

These people you hear many times when I meet them at different fora, that they have been exemplary prisoners. Why are they not being released? You hear the Commissioner of Prisons time and time again. So when we are looking at all of these things, why have we not looked at instituting some system like that? What is the reason for it? What is keeping us back? What is keeping us back from instituting restorative justice? So there are many things that we can do which would not be causing us money but what would help to relieve the prison population, and yet we cherry-pick what we want to deal with at a particular point in time; at this point in time. Why are the other things not seemingly politically correct for us to do?

So I would ask that we look holistically at the whole system of our prisons and our criminal justice system and see what can we do as a population that is committed to reducing the prison population, that is committed to reintegration and to making this a better and a safer place for all of us. So, at the end of the day we will have our Bill but we will not feel totally satisfied that we have done all that we can do. So I am asking for a parole system. I am asking for us to look at the age of criminal responsibility, which is not only the lowest in the Caribbean but the lowest in the world. And as I told the Attorney General when he first got this position, do not let that be your legacy, that you leave—and I am not saying that you are leaving the position of Attorney General—but do not let it happen that at the end of the day this important reform in child law is not brought to fruition. Thank you. [*Desk thumping*]

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

Sen. Augustus Thomas: Mr. Vice-President, thank you for the opportunity to

contribute to this important piece of legislation, the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 3) Bill, 2019. As I rise to make a contribution on this piece of legislation I would like to commend sincerely Sen. Anthony Vieira, because he could not have said it better and he could not have given a better piece of this position on what this piece of legislation is intended to do and why it is so important at this point in time. And I am saying this, Members of this House, because as a young boy growing up in Trinidad and Tobago I have witnessed every tabloid in this country, every one: *Express*, *Guardian*, *Newsday*, *Evening News*, *Bomb*, *Punch*, every one, during the era of the 1980s, 1990s, criticize—“government go, government come”—on this criminal judicial system that we have—every one. All governments were embarrassed: NAR, PNM, UNC, call the names, they went through the rigours of our criminal justice system. Nobody did anything. All our laudable and eloquent and distinguished lawyers who sat as Attorney General, from the “Richardsons”, to the “Maharajs”, to our own Mr. Jeremie, all of them, while this thorn in the society continued for years, nobody did anything.

And I want to thank the Attorney General today for having the testicular fortitude to sit and do at least one thing to try and adjust this system. This has been a thorn in this society for as long as I could remember myself, even before I engaged in the practice of law.

3.15 p.m.

Mr. Vice-President, this question of preliminary enquiry is one that has always engaged my attention long before my initiation into the legal profession. When I started to study law, it was as a result of a friend of my father whom I was told had been arrested and charged for wounding with intent to cause grievous

bodily harm. I was told that this gentleman would have gone to assist an old lady, a neighbour, sometime in the night when somebody broke into her house. And not knowing who the person was, after he got close to the person, he would have used, in those days in the country, a “planass”, and instead of “planassing” him, would have had the wrong side of the “cutlash”.

Mr. Vice-President: Senator, let me just at this point caution you on the use of certain words that might be deemed unparliamentary.

Sen. A. Thomas: With the flat side of the cutlass. But instead of doing that he would have hit him with the edge and would have caused serious damage to the face and chest, but he was a good friend of my father, a very good friend of my father. And for years I will hear my father complain that Colin cannot get his day in court, and he would dress up and go to the Princes Town court on every occasion. Every month he used to be there. He would dress up and go just to see what happened and he will complain.

Now, it really was not my business because as a child I really did not concern myself with who did what and who did not do. But one day, faced with the reality of having to choose a topic to write for an elective—I think in those days was law and society—this run back to me and I decided to actually research the paper on this issue of indictable offences and preliminary enquiry. And, Mr. Vice-President, when I went to my cupboard where I store my books, I actually found it and I have it with me [*Senator displays book*] and I would want to seek the permission of this honourable House to read some excerpt from it. But I tried getting some information from another close friend of my father—because he is now deceased—and he told me that it took this gentleman, Colin, 16 years to get a day when the court pronounced that he was discharged.

And, Mr. Vice-President, when issues as this particular piece of the legislation raises its head in society for so long, whatever initiatives that one takes to try and address the issue would always be a welcome sign. And for all of us who sits here, whether we on the Opposition side, the Independent side, or Government side, this should really be a day of redemption for us. At least something is being done so that there is a start, and we hope and wish it all the best so that we could have some degree of ease because it is not just us, it is the public confidence in the criminal justice system that I feel that matters most.

If I may just look at parts of what this thesis would have actually said, it started off by saying that:

“The complicated process of criminal justice is divided into different parts, responsibility for which is separately vested in various participants upon whom the criminal law relies for vindication. Essentially, the administration of criminal justice system is a sequential process performed by agents and agencies of government, each having clearly defined functions. Thus, its ultimate success depends upon an orderly progression of events activated and operated by agencies of government, inclusive of the police, the Director of Public Prosecutions...the magistrates and judges. Members of the public and defense attorneys engaged in private practice are all active participants in the criminal justice process. In aggregate, they make up the administration of the criminal justice system.

Delay in the administration of justice arises more often where an accused is charged with an indictable offence. An indictable offence is one that lies for any treason and for any other offence other than an offence over which courts of summary jurisdiction have exclusive jurisdiction. The process commences with

the police, who on the basis of prima facie evidence arrests and charges the accused for the commission of an indictable offence. The police, after accessing the relevant evidence sends the criminal file to the office of the”—DPP. “The Director of Public Prosecutions rationalises the evidence and prepares the case for preliminary inquiry to be heard before the magistrate.

Where a person is charged with an indictable offence is brought”—to— “a magistrates’ court, the court must hold a preliminary inquiry for the purpose of determining whether, there is sufficient evidence to put the accused on trial for alleged indictable offence. Once the court is satisfied that the prosecution has made out a prima facie case against the accused the magistrate would commit the accused, to stand trial before a judge. This process as far as it operates in Trinidad and Tobago is seldom an expeditious one.

Since the 1960’s, the courts”—of—“Trinidad and Tobago have been faced with the perennial problem of a backlog of indictable offence cases pending trial. Although some attempts have been made by the authorities to reduce the backlog, only marginal success has been achieved. The situation as it stood at the commencement of the decades of the 1990’s was described by the...Chief— Justice Michael de la Bastide— as nothing short of a national scandal.”

And this he said while making an address to the Judiciary on the occasion of the opening of their 1995/1996 law term.

“He noted that the increase in the volume of cases had grown to such a monumental proportion that up to the present time the delays in the determination of cases has also become grotesque.”

I have a problem with the pronunciation of this word, but it is G-R-O-T-E-S-Q-U-

E.

Hon. Senator: Grotesque

Sen. A. Thomas: Grotesque.

“Presently, it is usual for committal proceedings to take as long as two (2) years to be completed. But, a further wait of eighteen (18) months between committal and trial is certainly an exaggeration.”

And this in 1995/1996.

“One of the fundamental qualities of the administration of criminal justice system in England, from which English speaking Commonwealth Caribbean have fashioned so much of its legal principles, is that the judicial determination of the criminal offence for which an accused has been charge must be pursued expeditiously. Further, any appeal against conviction is heard promptly and any appeal procedure is quickly exhausted.”
Ultimately—“such virtuous quality is atypical to the jurisdiction of Trinidad and Tobago.

In Trinidad and Tobago there is no expressed constitutional right to a speedy trial...within a reasonable time.”

And Members, the reason why I have read that part of the thesis is because the real problem that faces this country as far as the criminal justice system is concerned is not really that the preliminary enquiry is oblivious. If it is expeditiously done it is quite okay, and therefore, finding another avenue, finding somehow, some method by which we can exercise these trial—because they are important—differently to make it more expeditious, it is something that I think this House should support at all cost.

[MADAM PRESIDENT *in the Chair*]

And I just wanted to indicate to the House that this is an opportunity for us, as a society, to make this particular area of law a more amicable and amenable place so that members of society could benefit. I want to thank you, Madam President.

[Desk thumping]

Madam President: Sen. Haynes.

Sen. Anita Haynes: Thank you, Madam President. As I rise to join in this debate on the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 3) Bill, 2019, I came here prepared, like Sen. Cummings I think, to talk about the need to improve the administration of justice for the people of Trinidad and Tobago, and I understood, from the framing set out by the Attorney General, that the intent of this piece of legislation, as indeed the ones that would have gone before, would be to have an improved justice system overall for the people of Trinidad and Tobago. Time and time again, the Attorney General comes before the Parliament and gives to us the list of what he would indeed consider to be his achievements over his tenure, and we would be told that X number of pieces of legislation would have been passed, and you know, you have to get started, you have to do things and start somewhere, and once you get started, things will fall into place.

So I listened to Sen. Cummings as he raised his points about the people of Trinidad and Tobago deserving better and that we ought to welcome this move, but here we are in 2019, the end of 2019, facing the end of the tenure of this administration and it is time for them to account. So when you come after a certain number of years and you say you have done X, Y and Z, the time to account to the people is now, to say, this is how it has improved the lives of persons in a measurable way. And if in piloting pieces of legislation that adds to legislation that has gone before, you are not able to tell us this is how the system has

improved, this is the way the people are benefiting now, then I would consider that to be a failure in terms of the accounting to the people of Trinidad and Tobago.

Sen. Cummings said that this is not the time for what—there is not always Chicken Licken and that we ought not to always be running around talking about the flaws in the Bill and, you know, it is a misunderstanding—

Hon. Senator: UNC style.

Sen. A. Haynes:—of what the role of the Opposition is.

Sen. Ameen: Exactly. He “doh” even know what his role is.

Sen. A. Haynes: The Opposition must hold the Government to account [*Desk thumping*] and—

Madam President: Sen. Haynes, please. Members, we have been proceeding fairly quietly in this Chamber with the debate and I would like it to continue along that line. Continue, Sen. Haynes.

Sen. A. Haynes: Thank you, Madam President. So, Madam President, it is indeed to hold—we have a role to hold the Government to account, and my contribution here today is in that backdrop because as I prepared, and as we were thinking about the justice system and its effectiveness, I decided to approach the research for today in terms of what would have been done over the last four years and what was the measurable impact thus far and I came upon a report from the Joint Select Committee on Finance and Legal Affairs.

Now, this committee met in the session between 2016 and 2017, so that predates my tenure in the Senate and some of us on this Bench. But what it shows is that this conversation—and the Joint Select Committee was appointed to— well, decided to investigate criminal case flow management in the High Court. This is in 2016. And if you would permit me to read just a little from the report in terms of

what the enquiry was supposed to do, Madam President. And the Committee—and I am quoting here from the report:

“The inquiry process involved gathering and collating oral and written evidence with respect to the issue from primary and secondary stakeholders as well as from the public.”

They spoke about:

“In this regard, the committee”—reviewed—“evidence from several major stakeholders in the Criminal Justice System including the Director of Public Prosecutions, officials of the Legal Aid and Advisory Authority”—and—“the Ministry of the Attorney General and Legal Affairs...and the Inspector of Prisons.”

And this is from the Executive Summary:

“From the evidence...the Committee took particular note of what, in its view, were the significant issues and developments concerning criminal case flow management in the High Court. These were as follows:

- i. the disparity between the small number of crime practitioners and the volume of the criminal cases in the Assizes;
- ii. the challenges faced by the...Director of Public Prosecutions in the recruitment and retention of State Counsel;
- iii. the security risk faced by prosecutors and their families due to their involvement in criminal cases;
- iv. the need for building the human resource and” —the—“technical capacity of the DPP’s Office;
- v. the increasing numbers of prisoners being held on remand for extended periods and the increasing acts of violence done by person

on remand;

- vi. the failure of Police Officers to provide disclosure and other information in a timely manner;
- vii. the capacity of the LAAA had been increased so much that there was now in-house Counsel who are briefed on criminal matters; and
- viii. the inability of the LAAA to have attorneys sent to remote magisterial courts and also make arrangements for complex trials.”

And, Madam President, I went to the—so the Ministry of the Attorney General and Legal Affairs issued their response to the report by the Committee and I thought that was instructive because as the Attorney General comes before us and ask for our support on a piece of legislation to improve the justice system, part of that I think is important in answering the questions because certain promises would have been made as far back as 2017, and in reporting, you need to tell us where we are at with some of these promises that would have been made.

So the Ministry of Attorney General and Legal Affairs responded in terms of the recruitment at the DPP’s office, and they noted, in that regard, concerns raised—no, sorry, is that the Judicial Legal and Service Commission is currently conducting interviews for 33 state counsels at the positions, and that the JLSC also advertised for positions of state counsels and five appointments for this position were anticipated. And so while we are discussing legislation and the legislative backdrop of it, the Attorney General could quite easily tell us what is the state of recruitment at the DPP’s office, and what is currently being done or what has been done since this report and this statement in Parliament in 2017. So we are full two years later, what would have been done? And then given what they would have done, what is the impact on the people of Trinidad and Tobago? Because if you

cannot answer those questions then you are just doing things without really trying to impact people because you are not measuring anything, you are not checking to see if what you are doing is working.

The Attorney General reported in terms of financial autonomy for the DPP's office and said they were:

“...currently reviewing the situation, especially in view of a move towards more financial autonomy for the Judiciary, and will require Cabinet consideration for”—proposals of any such policy. “In the interim, the”—Ministry of the Attorney General and Legal Affairs—“is undertaking a comprehensive review of interdependent structures across the Ministry.”

So I ask the Attorney General in his wind up today— because all of these things impact the criminal case flow management and will directly impact the people of Trinidad and Tobago. So I think the Attorney General, in asking for anybody to support a piece of legislation, could tell us where he is at with the things that they would have reported on in 2017.

And then we got to the physical expansion of the DPP.

“The Committee commented”—that—“the pace at which the process of the expansion the Office of the DPP was moving.” And—“the status of the matter is as follows:

- South Office - Feedback is awaited from the DPP on the draft layout of the space.
- Port of Spain - Feedback is awaited from...the DPP...”

And you see, Madam President, this is where Trinidad and Tobago really gets fed up because you come to the Parliament and you are talking about legislation and Ministers come and report, and then years go by and nothing happens and then

nobody is checking on the report. And so, it seems a lot like everybody is wasting time and nobody is interested in doing the work of improvement. [*Desk thumping*]

You see, I went through to look at all of the things that the Ministry of the Attorney General and Legal Affairs promised that they would be doing, and interesting in this bit—because the Committee noted that there was an inability to access counsel—so public defenders—and the Ministry of the Attorney General and Legal Affairs, in 2017, said that:

They had—“embarked upon discussions with local, regional and international partners, geared towards the creation of a Public Defender System which proposes to create”—the—“establishment that would house salaried defense attorneys who would be appointed to criminal matters to share the volume of matters currently engaging the attention of private criminal attorneys.”

Now, Madam President, this would have been something that, had they done it, they could name as an achievement 2019. But you see when Sen. Hosein said that they were committed to a lot of talk— and so you will come here and pass pieces of legislation and talk, and talk, and talk, but the actual work to get things done is missing, he is right. [*Desk thumping*] And then I noted further down and I asked the recommendation that there be fixed penalty for certain summary offences, and in 2017, the Attorney General said, by way of ministerial statement, that:

“A draft Bill, (Summary Offences (Fixed Penalty) Bill)”—had— “been developed to give effect to this initiative and the policy paper for the Bill”— was—“before the Law Reform Commission” —and— “It is intended that the legislation would be brought before Parliament within the current session

of Parliament.”

That is 2017, Madam President. And I checked back and none of this had been done, was not laid before the Parliament.

Now, Madam President, you see when you come and you bring the Bill before us—it goes to the House of Representatives on Monday and then it comes to us on Wednesday—and you tell us this is a cure for the ills of the judicial system, and then you tell us that once passed, it is some sort of cure. But we had a joint select committee that this Parliament established that went through the evidence, met with stakeholders and gave certain recommendations. The Attorney General answering those recommendations, and then we are seeing no action or reporting on those recommendations, but we see legislation coming before us time and time again saying this is the cure to the ill.

Madam President, no wonder the population is sceptical, because as we speak here today, concerns raised on the last occasion with this Bill about the state of affairs in Princes Town with respect to persons still having to access the Rio Claro Magistrates' Court that still exists today. And so, as we discuss things, the disparity between what is done here and what is felt outside by the people of Trinidad and Tobago is a large gap. So you tell us, time and time again, that the legislation that we will pass here and that would be implemented by January 2020—coming soon—would fix the problems that, as Sen. Thomas indicated, existed for many years, and then you wonder why we are sceptical and you say that, “The Opposition is opposing for opposing sake.” But what we are saying is that we are holding you to account as the Government of the Republic of Trinidad and Tobago, that if you have a mandate to improve the lives of citizens, you ought to do so and not come and talk about it time and time again. [*Desk thumping*]

Now, Madam President, as persons would have noted before, this has been a topic that has been in the public domain for quite some time, and the committee report showed us that vast majority of persons do not believe that legislation is the fix. That they are simple policy cures, that they are actionable items that can be taken now that can assist in fixing the problem, but we have a Government that is committed to only taking a paper approach or a legislative approach to any problem you face, the problem of crime and criminality. Anything we are facing in Trinidad and Tobago, they tell us they will pass a piece of legislation and that will fix it, and there is no implementation anywhere in the spectrum at all. And therefore, we would constantly have the problem, and we will constantly have a conversation, and the Attorney General will tell us, “Time to stop talking is now and we must act,” failing to realize that the very action they are talking about is talking. They are talking about coming here to pass legislation and then doing nothing with it beyond that.

Madam President: Sen. Haynes, I have to—you have been speaking for a little while now, but you have been sort of going in cycles on the same issue. So I need for you to move on to deal with other issues if there are any to be dealt with by you.

Sen. A. Haynes: Thank you, Madam President. Well I was actually closing my contribution at that time, Madam President, but I appreciate—

Madam President: Certainly you forgot.

Sen. A. Haynes: No, I appreciate your guidance. I really was concluding. Because, like I said, what I came here to speak about was that there was a report laid in this Parliament that raised certain concerns, raised recommendations. The Attorney General responded many years ago to those recommendations and then

there has been no accountability since then. So if you are interested in the people of Trinidad and Tobago, do the work necessary to fix the system and I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to partake in the discussion on the Bill, an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011. Madam President, since 1960 I think Lord Devlin had indicated—he described the system, this preliminary enquiries, as an ossified form of regulations under which we labour. So since 1960 the judicial system—you know the UK has recognized, listen, you know we need to move on, we need to quicken, we need to have that pace of justice move on, and I am looking at the fact that the preliminary enquiries, we know, it is important. It has its importance in knowing a case, probing a case to know if to dismiss it, if there is a prima facie case to go on with, and all those are elements that were very important in carrying a case forward to know if you have that evidence to go forward or dismiss it. And even in certain instances, this would have even dismiss cases where probably police were fabricating evidence, or you know, there is not enough evidence to go. You just wanted to go after someone.

3.45 p.m.

So I am saying, you know, Madam President, we have all known this delays in the judicial system. It was mentioned here by some attorneys here that this is something long overdue and we have known and we have seen even in the civil system, when there were changes, the whole system in the civil courts that has been changed, I mean there was opposition when it came, those changes were suggested as the Attorney General suggested, but eventually we saw the benefits of

those changes in the civil cases. Changes in this legislation, I think it is quite in 1997, attempts were made to put changes into this and then 2014, we saw also attempts were made to see if we could dismiss this preliminary enquiry.

Madam President, I am the first to say, if we could improve the system, it will eventually help with the delays and the frustration of the persons who have to go to court for 20 years sometimes, as you know. Sen. Seepersad said sometimes 20 years cases are going for and obviously, there is a need to improve the system and I see this is a commendable need. Economically, it is not good for persons who have to pay attorneys. I mean the attorneys may benefit but at least the pockets on the persons now again would help.

So therefore what I am saying, we well know justice delayed is justice denied but justice rushed can also lead to rights denied and this is what we have to be careful for. As Sen. Saddam Hosein mentioned that, you know, it is rushed, we come here, we are rushed in this day. The Attorney General is rushing this. He comes at a fast pace and I have to say, well, you know, we are looking at the PACE Act of the UK, so I am thinking probably because of that, he wants to have this great pace into getting this going. But the rush is there and the Attorney General came with this today at this sitting, and I am saying that he probably realizes that he has to get certain things in order before January next year and again, I could commend that. So I could commend that and I am thinking that it will definitely help the frustration of persons who have to wait and I mentioned the economic benefit.

However, what I would like to mention that, you know, I would like to support measures to fast-track cases, I would like to support measures to give that ease but I also have to look at the fact that, you know, could citizens' rights could

be somehow affected by any sort of legislation that we are going to rush? And a few questions I asked myself, Madam President. I asked myself, when you are looking at this piece of legislation, you are looking especially at clause 5 which looks at the warrants, you know, you are giving warrants, you are giving police officers a greater leeway. I asked myself a few questions: Does the population or the majority of the people trust police? And I must say, I will think not, because there are lots of cases where people may not want to come forward with cases. We have seen even the Commissioner of Police wants to implement lie detector test on his police officers. I asked myself: Has police been acting sometimes, you know, abusing their power? And I said, “Yes, because there is evidence that that occurs.” Can abuse continue or could the abuse be extended in this piece of legislation? And I think it can, and this is where I have a little concern, especially with clause 5.

So you see, when I looked at clause 5, I think there is an element there, that piece of legislation, that can allow the police officers to continue, you know, or may continue to abuse their power or individuals. And people may say, “Has there been abuse?” And there have been abuses that we have seen and even Sen. Chote mentioned that certain safeguards should be put in place and she mentioned the safeguards and as an esteemed attorney—I support these safeguards. The fact that she mentioned these safeguards, it is really a need I think that we have to make sure that these safeguards are in place. So I think that I see deficiencies in the system but I also think that it is dangerous and unfair to people if we are giving more powers to the police where we have not put mechanism in place to make sure we can stop any misgivings that occurred in the past. I see it as a widening of powers of the police to give these warrants that could further traumatize people and

we have not attempted to look at ways that we could prevent any sort of abuse. So I would have rather that we would have come with something like a police reform Bill first. [*Desk thumping*] Some sort of Bill where we could have looked at the police officers, how we could curb abuse, how we could prevent this and I would then have a little level of comfort after to give them that additional powers.

So, Madam President, imagine you hear “ah loud noise in yuh home, yuh door break open, yuh see ah gun at yuh face, ah strange dog in yuh bedroom” and persons in your house are causing a disruption. These are real-life instances that happen. These are real-life instances, Madam President, that you see persons who have had that abuse, who have had that abuse of police invading their homes, they undergo what you call “anxiety attacks”, “panic attacks” after, “acute stress disorder” after. And I have patients who—there is a lady from Bagatelle who actually got a heart attack after police broke down the door, I think it was two o’clock in the morning, to go after her son, she got a heart attack. And things like that, even though you have nice pieces of legislation, you have to look at the human element of it. How it could affect persons, probably even their neighbours, probably even their neighbourhood, probably even their businesses. When I look at persons who—because one of my colleagues mentioned that the incident in Gulf View, certain people after that incident, there is a certain individual who right now has something called post-traumatic stress. Anytime she sees a police officer, hears a siren, her whole life has changed and this is something that we have to look at. We have to look at widening powers but if you are widening the powers, you have to put things in place to prevent abuse. Those people are suffering, Madam President, and I think that we have to be very careful.

I remember cases before, a Chief Justice had warrants executed on him, a

late Chief Justice. We had a media house again, warrants were executed. Even an MP, Mr. Sadiq Baksh, I think in his home, things were found in his water tank. So even though you had that, you see warrants could be instituted from all persons, any persons, no matter what walk of life. I remember even a former Speaker of the House was under house arrest. There was not a warrant in that case but what I am saying a convoy of police officers had to go to her home. So the effect of police coming to your home, serving warrants, is again, a traumatic event. And, you know, if we give these warrants willy-nilly, persons who have also been served warrants, they are stigmatized. People look at them and want to know, you know, are they involved in drugs, guns? And those persons here now are telling me that sometimes their whole face is in the community, so we have to be careful and I just want to belabour that point.

Madam President, you know this piece of paper called a “warrant” has a great responsibility. It is a paper that can destroy lives. It is a paper that can make people undergo trauma for years. And we were here recently discussing the marijuana legislation and in the marijuana legislation, the Attorney General mentioned that a lot of those persons incarcerated in Remand Yard are young Afro-Trinidadian males who cannot afford bail and that this whole idea of decriminalizing marijuana, we have to look at that element of that population who, when he mentioned, were somehow not able to afford bail, they were there, they were languishing in jail and he brought in that point.

And it is the same way, Madam President, I want to bring to the attention that a lot of those cases where police break into people’s homes, go into people’s homes with warrants, with false warrants sometimes, are really the Afro-Trinidadian individuals who suffer, who actually are there asking, “What is police

doing? How could we get any sort of justice in this?” I would like to quote Loop News, 10th of November, 2017, where this Loop News actually spoke of a video where it showed heavily-armed police trying to gain entry into a woman’s home while she frantically requested to see the address of the warrant several times.

Madam President: Sen. Deyalsingh, if I may, you have been speaking for a little over 10 minutes now and you have dealt with this issue of the warrant and from what I understand you to say, that you think it is something that should be looked at, there should be safeguards. But I would ask you now to move on to other points that are relevant to the Bill.

Sen. Dr. V. Deyalsingh: Thank you, Madam President. Well, it is two points I just wanted to elaborate from this piece of article. One point, I must say that it mentioned:

“...Senior Supt Radcliffe Boxhill assured the public that they would be compensated for damages, once they could prove that the damage was done by the police.”

—And—

“He made the comments at a town meeting in Laventille, where residents complained about police kicking down their doors in search of illegal items.”

—And you see—

“Boxhill said, persons should take photographic evidence of the damage, and document the police officers names, vehicle numbers and any other relevant information.”

Madam President, what I am trying to come at is in any piece of legislation where we are going now to increase the powers of the police, I am not seeing a level

where we could increase any sort of safeguard or compensation to the persons who may think that they have been abused by the police officers and even in this same article, I quote:

“Laventille West MP Fitzgerald Hinds...also stated that a fund should be set up by government for compensation to be made to persons whose property is damaged by the police in the conduct of their duties.”

So the point I wanted to make, yes, people are getting, what they claim, abuse by the police officers. They are maybe concerned that their articles are damaged, their houses are damaged, their doors are kicked down and they are traumatized and I am saying that the MP had recommended a fund be set up and somehow I am thinking, if we are going to look at the administration of justice to help persons, to help people get quicker justice, we should also have something in there, taking his recommendation and Mr. Boxhill's recommendation that something in there should be in there to protect the rights of the individuals or even to give them that right that they could seek compensation.

Madam President, I want to quote *Trinidad Guardian* where an article by Mark Bassant and Radhica De Silva, 3rd of May, 2019, where it spoke of the issue where there was chap called Ravi Dinanath where he actually claimed:

““I had no idea they would come to my home next...””

Madam President: Sen. Deyalsingh, I think you are repeating the same point with reference to different newspaper articles but it is the same point that you have made so I really do think that you should move on to other points. You are the 11th speaker in this debate so I need for you to cover some other areas because I think in your contribution, you have covered this substantially. Yeah?

Sen. Dr. V. Deyalsingh: Thank you, Madam President. So it was mainly to

belabour the fact that those persons claimed that they were traumatized and there was even a teacher called Minty Ishmael from Naps, her house was broken into and all of those instances, we have no idea if those people got compensation, so I am thinking, somehow we have to look at that level of compensation to be given.

What I would like to look at, Madam President, is the fact that when I looked at this Bill and clause 5 and I looked at the fact that clause 5 of the Bill seeks to insert the following three new subsections after existing subsection (5) as follows. And in subsection (1A), it provides that:

“a search warrant can authorize the search of—

(a) one or more...premises as specified in the warrant.”

The search can authorize the search of:

“(b) any”—occupied— “premises...controlled by the person specified in the...”—search.

When I looked at this, I looked at the end of that where it also stated that the search warrant could also be given to all the various premises occupied and controlled by the suspect which may need to be searched. I have a problem where, you know, you are going after certain persons’ properties but you are not specifically naming which properties you are going to and I think the widening of these powers is something that I find that somehow I am not too comfortable with it, given the present climate, given the complaints that I attempted to read into this discussion, the claims about cops raid seven Gulf View mansions. I mean when I wanted to bring in these, it was to actually show that the level of persons in Gulf View—

Madam President: Sen. Deyalsingh, I am sorry but I have to ask you—you have made reference to these things already and you have made your points and the points are fairly clear. So what I am asking you to do now is to move on to other

points because you have spoken about this already and you have spoken at length about clause 5 so perhaps you can move onto other clauses on which you wish to present.

Sen. Dr. V. Deyalsingh: So, Madam President, I thank you and I am guided. As I said, I have some hesitation in giving my support to this, especially since I have seen people traumatized by police abuse. Now I understand the police may want to act and may need more powers but we have to look at protecting also the rights of the citizen.

I also make mention of subsection (1B) which provides that one search warrant can authorize the search on a premise on multiple occasions. Again, I have some problems with that, multiple occasions. So, therefore, you may be giving a police officer that power to come into your place and then you do not know when next they can come in. They go to a place, they can come in next week, they can come in the day after and I think this is not in keeping, I think, with a good practice in the sense that—especially in our climate that we have seen misuse.

You see, Madam President, they said:

“(1B)...if the Master is satisfied that it is necessary to authorise multiple searches to achieve the”—intended— “purpose for which the search warrant”—was—“issued.”

Well, I understand what the police officers may want to do. They may want to go into a place, they may not find anything and they may want to go back to that same place. But you see in the past, eh, I have seen cases where—I think it was mentioned on the other side—that in certain court cases, certain persons may want to go down San Fernando in the High Court there because they may have an

affiliation with some judicial figures there. Similarly, police officers in their courts may look at a magistrate and may decide, well, I will go, I know that magistrate and anything I tell him in oath, he would just give me that permission. So, therefore, if there is some sort of collusion between a magistrate or a magistrate serving in an area—

Madam President: Sen. Deyalsingh, I do not think it is proper to say that all at. A magistrate is performing judicial functions and I therefore do not think that you should be casting any sort of aspersions on the administration of justice. So can I ask you please to desist from that and to move on to your contribution?

Sen. Dr. V. Deyalsingh: Thank you, Madam President. But, Madam President, if we looked at clause 16 where you would actually see that where a Master finds insufficient evidence to establish a prima facie case and discharges it, it still allows for the DPP now to override the magistrate, probably for whatever reason to come in and ask the judge now to say, “Well, I do not think the magistrate made a wise decision” or for whatever reason and it gives the DPP a discretion now to—I do not know if it is a mistrust of the magistrate or a mistrust of what proceedings but allow that DPP to go to a judge to get an overturn in that decision.

So what I am saying, Madam President, I think a good situation should be, if you are having to want to go to a premise on multiple occasions, it may be beneficial to go to different Masters or different magistrates or it may be beneficial to have a pool of judicial figures you can go to, to say that there are about five names and I could choose whichever name so therefore I can pick up a name to say, you know— because even in the court cases now I think there is a case that judges, they are actually assigned cases. So, therefore, I am thinking that probably it should not be one magistrate to one area but it should be a variety of magistrates

who you can choose to go, that police officer can go to get that warrant. So I am not comfortable, I am saying, with that subsection (1C) which gives limited or unlimited searches, multiple searches.

Madam President, I also want to look at clause 10 which looks at the current jurisdiction of the Masters and the magistrates where clause 10 of the Bill seeks to amend section 10 to authorize the Registrar of the Supreme Court to exercise the same concurrent jurisdiction that Magistracy Registrars and clerks of the court exercise with Masters. So, again, I am saying that there is a pool of persons who can actually be available when a police officer is applying for bail that I am thinking he can go to different persons in that pool rather than one magistrate or one Master in a certain area. And again, one of my colleagues, Sen. Ahye mentioned the fact that you may get some Masters and they may not have that level of experience as some of the magistrates, so sometimes it is probably advisable not to just have one Master, one police but a pool.

As I look at clause 5 again, Madam President, subsection (6A) which provides that the Commissioner of Police can authorize that anything seized upon execution of the search warrant can be photographed or digitally recorded. I think this is a very welcomed piece of legislation. So again, we have seen sometimes graveyard of cars in certain areas. We have seen cars parked up which, again, theft of articles from the cars. We have seen pollution, we have seen vermin living in the cars. So I am thinking to get rid of this, this certainly is a welcomed move and I think we are looking at environmental laws, I think this is something that can help clear up the environment. So at least this is something I commend.

And I might also want to say that when we are looking at digitalizing and photographing evidence, Madam President, I also want to make reference to the

fact that if we are going this way, we have a lot of claims of people being—claiming that they have been abused and even in one of the newspaper articles I mentioned where the Supt. Boxhill mentioned that if you have your things damaged, take evidence, take photos of it. I am thinking to prevent any sort of abuse, could we not somehow in the law put in body cams for these police officers so when they are going into every single room, they are not—even though our police officers, people may have claims that they are going to plant evidence, they are going to plant a packet. So I am thinking somewhere along this legislation, if you want to widen the powers, they are going into your house, body cams must show every single room they are going into.

As well as, Madam President, I am saying in the past when persons tried to video tape the police officers in their activities, they were told sometimes that they should not video tape the police in their activities, that it is against the law. And I am saying somehow we have to change that or get some sort of directive that if somebody comes into my place and— yes, I am thinking if we have the body cams in the police that we could refer back to, but I am thinking we should also have that level where I could video tape their activities searching room to room. And this is something as an additional level of comfort I think that police officers would not look at you and say “Hey, you cannot video tape us in our activities”. This is wrong. I am thinking you are coming into my home, I should have every right to video tape this to be able to show after if you are using excessive force, to be able to show after, if you are planting anything. I am thinking somehow in this piece of legislation, if we are going to digitalize and modernize, somehow we have to digitalize and modernize to protect the rights of the individuals too. Allow the persons to be able to video for themselves and have clear directives for that.

So, Madam President, I have to also commend the AG for clause 13 of the Bill which actually sought to amend section 19. And previously, when this Bill came, we got the impression that to establish the prima facie case, would not be there but this clearly states here now that it seeks to amend section 19 to allow the Master to determine whether there is sufficient evidence to establish a prima facie case of an indictable offence at a sufficiency hearing and the Master can also determine when it would be appropriate for a sufficiency hearing to not be conducted in open court. So this is something commendable because it brings in that level of comfort that you are getting a case that may be able to go forward.

So, Madam President, all in all, I am for the fast-tracking of the criminal justice system, I am for the abolition of the preliminary enquiries but I also against any sort of erosion of the rights of individuals. And I am thinking, yes, I would support certain parts of this legislation but the parts that I mentioned what I am thinking that would somehow, you know, we would not have any sort of safety checks in place and by allowing police officers to now go to any other property, by allowing police officers to have that unlimited time to search a property at different times without having it specified, I am thinking those two pieces of legislation here, I am very hesitant in giving support of this because I have seen what abuse of that powers could lead to certain individuals ending up with post-traumatic stress and even property damage.

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

Sen. Wade Mark: Thank you very much, Madam President. I am very happy to speak and make my contribution to the Bill before us entitled the Administration of Justice (Indictable Proceedings) (Amendment) (No. 3) Bill, 2019. Madam President, may I say from the outset that when we are addressing legislation

particularly of the type that we are addressing, there is need for a sense of balance between criminality and the protection of privacy and people's property or what I call "property rights". Legislation tilted or weighed too heavily in favour of the Executive and the prosecution as well as the police could represent dangerous business. I recall looking at the Supreme Court decision in the United States and the definition of "search" was provided by this Supreme Court judgment and it says "search" and I quote means:

"...a governmental invasion of a person's privacy..."

That is what a search means and that is in accordance with the Supreme Court of the United States definition of a search.

So, Madam President, the Government has brought this Bill and I will show in my contribution that it is riddled with several loopholes for many people to escape, they know who they are. It has a number of deficiencies and shortcomings. And, Madam President, if not carefully addressed, it will result in what I would like to describe as "prosecutor's paradise" and a "defence's nightmare". Madam President, we must do everything to ensure that there is balance in whatever we are doing.

And you cannot tilt the scales of justice too far in favour of the Executive arm of the State and all its agencies. Because that can pose a danger to the democracy and our democratic way of life, values and norms.

4.15 p.m.

Madam President, the Bill as currently constructed is dangerously deceptive and it can result in conflicts, not only as it relates to our Constitution. And as I talk about Constitution, let me remind this honourable House that under section 2 of our Constitution, 5(2) that is, Madam President, it says that Parliament may not

deprive a person charged with a criminal offence of the right to a fair and public hearing by an independent and impartial tribunal.

I will show in my contribution, an attempt by the Government in this legislation to establish a secret court. So open justice—

Madam President: Sen. Mark, I think you need to rephrase.

Sen. W. Mark: No, no, well—

Madam President: Yeah, I think you do. You just continue and—

Sen. W. Mark: I am saying that I will show that there is a provision in the law, which I can quote for you, in which for instance, the Government, through the Attorney General, is saying that a Master—who is less than a judge, does not have the power, as far as I am concerned, of a judge—can determine if your matter should be held in the open. That means a public hearing, in accordance with our Constitution. So Madam President, what conclusion must I draw, if you are telling me no public hearing, a judge or a Master can determine that? What does that tell me? It tells me, Madam President, that there will be a secret hearing in chamber, where the media will not be —

Imagine, Madam President, in a democratic country, in the 21st Century, we are passing legislation or attempting to pass legislation where we are giving a Master the power to determine if a hearing will be public and open. And it means that the media would not be allowed in. If I want to be in, I cannot be in. Madam President, that is dangerous, unacceptable and indefensible. [*Desk thumping*]

Madam President, I will also show in my contribution that this legislation that we have before us, very, very, early, is designed to weaken, it is designed to weaken the system of justice and the fair play and balance that is required in our system. The Government, led by the Attorney General, is attempting to weaken

the system that we currently enjoy in this society.

Madam President, let me go to clause 3, because I will go to clause 5, but I would not detain you too long on that because I have many other clauses to deal with. Madam President, would you believe that this Government, in clause 3, purports to amend the definition of a search warrant to include what they call similar warrants under what they call any other written law? Including the subject that is the Act, search warrants are available, as you know, Madam President, under, as far as I am concerned, based on my research, the Proceeds of Crime Act (POCA), the Dangerous Drugs Act, the Firearms Act, the Anti-Gang Act.

So Madam President, what is being said here is that a Master, a magistrate, and now a registrar will have the power, Madam President, to issue search warrants, including under the Proceeds of Crime Act and the Dangerous Drugs Act. Madam President, may I remind you that we are not dealing with substantive legislation here today. This is procedural legislation. And what I would like to ask, Madam President, through you, is that the Bill that we are dealing with gives power or powers to Masters, as I said, to registrars, and to magistrates to perform various functions. So, what is required here, Madam President, is this. Is this Bill that we have before us and the amendments that we are proposing, are these amendments, in terms of the issuance of warrants, search warrants, are we talking about, Madam President, in this instance, allowing these persons, or these office holders I should say, Masters, registrars, and magistrate, to issue search warrants that can only be issued in accordance with section 33 of POCA, that is the Proceeds of Crime Act, by a judge, and section 49 of the Dangerous Drugs Act by a judge?

Are we now saying that the judges is this these two Acts will longer have

that power, and that is the now a power that is being given to the Master of these courts? Madam President, I do not think the Government has thought through this thing carefully, because there is a clash, Madam President. Only a judge can issue search warrants under POCA and the Dangerous Drugs Act. And therefore, there is no justification offered by the Government at this stage as to why a lesser judicial officer should now be allowed to issue search warrants under the Act. And the way, Madam President, we are dealing, as I said, with procedural provisions, rather than substantive law. So, I would like the Attorney General, when he is winding up, to clear the air on this matter in clause 3, when it comes to any other written laws and it deals also with search warrants. I have made my position, as Mr. Manning would say, pellucidly clear.

Madam President, I would like to deal, just briefly, with the matter of this warrant. I know that a lot of my colleagues would have laboured on this point. I would simply like to say that there are constitutional points that must be considered when we are dealing with this search warrant matter. And I want to warn this Government that seems to be going down a speedy course “dat dey betta mash brakes”, because this Bill in its current form violates sections 4 and 5 of our Constitution. And if they do not change certain provisions in this Bill, in this Parliament today, then they will be forced to change it at the High Court. [*Desk thumping*] We are not prepared to allow the PNM and this Attorney General to undermine the rights and freedoms of the people of the Republic of Trinidad and Tobago. [*Desk thumping*]

So, Madam President, may I just again, based on what I have done, in terms of research, indicate that upon the research conducted it is clear to me that the Government is on a dangerous path, as it relates to these measures, as it relates to

unlimited, multiple and all the cosmetic changes that they sought to bring, but does not, at the end of the day, change the price of cocoa.

Madam President, I want to advise the Attorney General, through you, that there is a Supreme Court judgment out of the courts of Canada that he may do well to study, because he might need this in the court case that he may have to face, if he continues to go along the line that he is pursuing.

Madam President, on page 3 of this Supreme Court case, dated 1990, the judges, there were one, two, three, four, five, six, seven, eight, nine, 10 Supreme Court judges in this judgment of the Canadian Supreme Court of 1990. And I want to read this part for you, Madam President, very slowly, because I am not going to labour and bore you with this matter of search warrant, which has been exhausted. I am dealing with principles of law, even though I am a “bush lawyer”.

Madam President, hear what the Supreme Court of Canada had to say on this matter of searches. It says, and I quote:

The exercise of the power to search is not however unlimited.

This Government wants to give unlimited power to the police to come into your premises and my premises and the people's premises to search, multiple searches. Hear what it says, Madam President:

“First, this power does not impose a duty. The police have some discretion and, if satisfied that the law can be effectively and safely applied, they may see fit not to conduct a search.”

This is a judgment of the Supreme Court.

“They must also be in a position to assess the circumstances of each case, so as to determine whether a search meets the underlying objectives, forming the basis on the right to search.”

Madam President, these are principles that govern searches of people's homes, and persons.

“Second, as regards these objectives, the search must be for a valid objective in pursuit of the ends of criminal justice—such as the discovery of an object that may be a threat to the safety of the police, the accused or the public, or that may facilitate escape or act as evidence against the accused—and for the purpose of the search must not be unrelated to the objectives of the proper administration of justice.”

What this is saying, your searches must not be politically motivated. That is what it is saying. And third, Madam President, and I am coming to the end of this quotation:

“the search must not be conducted in an abusive fashion,”

Let me repeat. The Supreme Court of Canada, it:

“must not be conducted in an abusive fashion, and in particular, the use of physical or psychological constrain should be proportionate to the objectives sought and the other circumstances of the situation.”

I end, Madam President, with this sentence:

“A search which does not...”

Madam President, may I repeat?

“A search which does not meet these objectives could be characterized as unreasonable and unjustified...”

I will pass this judgment to the Attorney General because he will need it.

Madam President, let me go on to deal with some other pressing matters in this Bill. Madam President, may I invite you to join me and look at clause 8 of this Bill? Clause 8 of the Bill, Madam President, directly impinges upon the liberty of

its citizens and, therefore, engages sections 4 and 5 of the Constitution. This is what my research has shown, Madam President. The substitution, we have gone, Madam President, from arrest to charge. And you know, this thing might have escaped a lot of my colleagues here, but this is very dangerous business.

The substitution of arrest to charge is significant as it, in effect, Madam President, means that a citizen will be deprived of a judicial process and remedy for a longer period of time. Madam President, when a citizen is arrested he can be detained for a reasonable period of time to facilitate the investigation—the common law—as it now requires that the police justify the detention, no matter how long that period. If the period is unjustifiable then a citizen has a right to make an application for habeas corpus. Madam President, this particular clause is seeking essentially to defeat the right to habeas corpus, because it allows detention for the purposes of charging someone.

So we move from arresting someone to charging someone, Madam President. And therefore, the police can simply say that a citizen is being detained because he is about to be charged, and that would enable the police to detain a citizen for a longer period, Madam President. Madam President, if the word "arrest" is used, then the police must act expeditiously to conclude their investigation from the time the person or the citizen is arrested.

So, Madam President, the Government, as I said, is moving to delete, arrest and go to charge. And there are implications for citizens' rights, as it relates to police action and the period of time that people, citizens that is, are going to be detained. And I am saying, Madam President, it is infringing and undermining the habeas corpus that we are entitled to and it is also clashing with sections 4 and 5 of our Constitution. So I just want to warn this Government that it is going down a

very slippery slope, Madam President.

Madam President, you know I do not agree with my colleague, Sen. Vieira, when he said that preliminary enquiries are irrelevant and are archaic and it has outlived its usefulness. I do not support that and I will give you some evidence to show how, in the last few years in Trinidad and Tobago, particularly in the last two years, how preliminary enquiries have been working very, very well in this country under the new Chief Magistrate. And I will show further, Madam President, the bottleneck is really in the Office of the DPP and the High Court. That is where the bottleneck is.

Madam President, you know what I found very interesting? Clause 11. Madam President, I found clause 11 to be interesting. This clause seeks to amend section 11 of the Act. And this, as you recall, Madam President, the Attorney General, in seeking to speed up preliminary enquiries through—well abandoning preliminary enquiry through initial and sufficiency hearings, came to this Parliament, and we all agree that this thing should be time-bound. So there were timeframes established for everything, Madam President, including witness statements. Madam President, you know what the Attorney General has done? He has summersaulted, capsized. Every time frame that the AG established some months ago, Madam President, he has now removed. So what is this AG about? He is speaking from both sides of his mouth. And you do not know what to believe.

Madam President: Sen. Mark.

Sen. W. Mark: All right, I withdraw.

Madam President: Yes, thank you.

Sen. W. Mark: And I apologize to you.

Madam President: You really should apologize to the Attorney General.

Sen. W. Mark: Yes, well he has my apologies full blast, a full blast. He is my friend, you know.

Hon. Al-Rawi: “Ah still love yuh”.

Sen. W. Mark: Well, I too. No love lost. Madam President, may I continue?
[*Interruption*] No, I have a long way to go darling. You are not going to interrupt me today.

Madam President: Sen. Mark.

Sen. W. Mark: Oh, sorry, Ma'am. Sorry, sorry, sorry, sorry. That is my friend. That is my friend. But sorry, I withdraw that word. I withdraw that word, Ma'am. Madam President, I want to be—I seek your protection right. You know, Madam President, this is Christmas "eh", so it is only love. It is love. You know that right? Love is in the House.

Madam President, may I go to clause 11, with your leave? Madam President, when I looked at clause 11, it seeks to amend section 11 of the Act. That is dealing with deadlines, Madam President, and time frames for compliance with various requirements and directions, pursuant to a sufficiency hearing. Now Madam President, the current law sets out the following timelines. I must give you an appreciation of the current reality, that is what we have now, and will then tell you what is being proposed in this section 11 or clause 11.

Madam President, in (iii), section 11 of the law, it says that:

“the prosecutor shall file in the High Court and serve on the accused all witness statements and other documentary evidence that he intends to use at the sufficiency hearing, which date shall be no later than three months from the making of the Scheduling Order;”

So, Madam President, there is a time frame in the current legislation for this matter of serving witness statements and other documentary evidence that he intends to use at the sufficiency hearing.

Madam President in (iv) it goes on, that is the time-bound arrangement:

“the accused shall file in the High Court and serve on the prosecutor any witness statements and other documentary evidence that he intends to use at the sufficiency hearing, which date shall be no later than twenty-eight days from the date on which witness statements and other documentary evidence are served...”

So, Madam President, one is three months. Madam President, you see the unfairness? The prosecution has three months, but the accused is given 28 days. This is a prosecutor paradise and a defence nightmare. There is no equity. There is no balance. There is no justice in the provisions that we have before us.

Madam President, the last one says:

“(v) the sufficiency hearing shall commence, which date shall be no later than twenty-eight days from the date on which witness statements and other documentary evidence are served...”

Madam President, would you believe that in our current legislation that we are debating, the Attorney General is saying in the legislation, or the legislation is proposing I should say:

“Where the prosecutor, the accused or the Legal Aid and Advisory Authority applies for an extension under subsection (2),...”

So they are saying that they are now changing, where they are saying that you could now apply for an extension:

“the Master may grant no more than one extension not exceeding fourteen

days to the applicant.”

That is what you can get at the moment if you apply for an extension.

Madam President, given the sufficiency hearings are supposed to speed up this system, the current proposed amendments, Madam President, would gravely slow it down, opening the doors for multiple adjournments and delays. So what the Government is seeking to do, Madam President, is give the Master the power to extend the period of time for all these matters. So rather than have time-bound periods, it is now going to be left up to the Master to determine, Madam President, if they would grant you an extension and how long it will take. It may take 10 months. It may take 11 months. I do not know, 10 years, I do not know, Madam President.

Madam President, whilst our Constitution does not provide a right to a quick or speedy trial, in other jurisdictions, including the UK and Canada, the court will dismiss prosecutions for noncompliance with timetables. So there is no reason why our prosecutors should not be held to the same standards.

So, Madam President, this is something that I am trying to get clarified, as it relates to the Attorney General. Because we have a situation, Madam President, where the Government has brought amendments. And sometimes I wonder, Madam President, and the Attorney General needs to answer. Is this ad hominem legislation? Is this legislation designed to achieve a particular objective, Madam President? I would like to ask the Attorney General in this Parliament today, whether he has to appear as a witness in a witness-tampering matter. His statement is yet to be signed and the matter is headed for the court to be heard at some time on January 20, 2020. Is the Attorney General directly involved—

Madam President: Sen. Mark.

Sen. W. Mark: In a matter?

Madam President: Sen. Mark. Sen. Mark. I will not allow you to proceed along this path. I would ask you please, to desist and to continue with your contribution.

Sen. W. Mark: Madam President, as you—you know I always take your guidance, especially around Christmas time. Madam President, may I continue?

Madam President: You may continue.

Sen. W. Mark: I would ask him on the public platform. Yeah you will answer. You have a lot to answer.

Madam President: No, no, no. No.

Sen. W. Mark: Sorry, Madam President, sorry. I withdraw. I withdraw. Madam President, the unfettered discretion of the Master to extend deadlines for submission of statements and/or material for sufficiency hearing is contrary to the intent and purpose of the proposed legislation. The entire point of abolishing preliminary enquiries is to expedite the criminal process, and to ensure that matters come before a High Court judge within a reasonable time, Madam President. If there are no time lines for these documents to be furnished to the Master, then the entire purpose of this legislation is being frustrate, “yuh understand?” There is no timeline. A Master should not, Madam President, I want to repeat. A Master should not have absolute discretion to extend time. The legislation should ensure very strict timelines for the prosecution to submit its evidence, which it intends to rely, in order secure promptitude from prosecuting authorities. There should be a strict time frame, Madam President.

Madam President, it is said that absolute discretion is the antithesis of legality. A discretion ought not to be drafted so wide and vague, particularly in the criminal context that could allow a Master to extend time for any reason.

So this Master, Madam President, can extend time for any reason. A Master is not the law, you know. The law must guide the Master. The Master is not the law.

4.45 p.m.

So, Madam President, the legislation should at least say “time is only to be extended for good and proper reason”. Attorney General, I would like you to consider amendments to the legislation on this particular matter. You should only have an extension of time, Madam President, for good and proper reason. And further, if more time is required sworn evidence should be required. If more time is needed sworn evidence should be required. Madam President, too often in the criminal courts, police come to court and ask for adjournments, because the complainant is on duty or is on sick leave, or the witness had a difficulty. There is no strict requirement to provide documentation to substantiate these excuses.

Madam President, I think we should borrow from the civil jurisdiction. If a party in civil proceedings needs an extension of time for a witness statement, he usually has to file an application supported by an affidavit. If you miss the deadline then you must file a relief from sanctions application. It would be prudent to ensure that if the prosecution is going to delay criminal proceedings by not complying with orders then the prosecution should make an application and demonstrate a good and proper reason supported by evidence. There should also be a limit in the number of times you can ask for an extension of time. And further the amount of time to be granted perhaps, Madam President, one month and no more. The removal of time lines is a retrograde step and will only propagate a cultural of lethargy in the criminal courts.

Vagueness in criminal law, Madam President, is unacceptable and it is our view that no sensible distinction could be made between a criminal offence and a

criminal procedure when it comes to ensuring that there is no uncertainty. In fact, there is a law to support the proposition—

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

Sen. W. Mark:—yeah, there is a law to support the proposition that a measure to have the quality of law should be certain, Madam President. So this conferring of discretion so broad on a Master, Madam President, to extend time is not acceptable. We will create a judicial system of people, and not laws. Such a measure does not have the quality of law and therefore, could be challenged as being unconstitutionally vague.

Madam President, I just want to say that this matter of the PI system since about for the last two years it has been working extremely well. My research has shown that the matter of preliminary enquiries before the Magistracy at this time, Madam President, is working well. The delay I understand is at the level of the DPP office and the High Courts of Trinidad and Tobago. That is what I have been able to research. The Government needs to pour more resources into the office of the DPP and the High Court, because there is where the bottle neck is located. So I do not think preliminary enquiry at the moment as we speak is a problem. I would like to say preliminary enquiries is a safeguard, and you know something, Madam President, this Bill that we have now is devoid of any safeguards for the accused and ordinary people.

Madam President, I have been advised, based on research too, that over the last two years over 20 persons were discharged at preliminary enquiries before the Chief Magistrate following cross examination and legal submission and those cases did not last as much as a year before this Chief Magistrate. Madam President, if these persons did not have a preliminary enquiry with the opportunity

to cross-examine and test evidence and thereafter make legal submissions they would have continued to sit in jail on murder charges for many more years until the DPP decides to file his indictment and a court is available to try them.

Madam President, I want to say in closing—I have three more minutes, I think?

Madam President: Actually, you have—

Sen. W. Mark: Two more minutes.

Madam President: One.

Sen. W. Mark: One more minute. We always hearing about the Government meeting with the Chief Justice and the Judiciary. I want to refer the Attorney General to this book by Lord Bingham, *The Rule of Law*, and I want him to go to page 93 and 94 and see what the former Lord Chief Justice had to say about this cozy relationship between the Judiciary and the Administration at the Executive Level. Madam President, with these few words I want to thank you very much for allowing me to make my contribution evening. [*Desk thumping*]

Madam President: Before I call on the Attorney General, may I just indicate that the tea is available. Members can avail themselves of it, we will not formally be breaking at this stage. Attorney General.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I wish to thank all hon. Senators for their contributions. Madam President, the office of the Attorney General is one that is required to work all the time, and I confess that whilst I am sitting here in this House, many of you would have seen boxes and boxes of papers that come at me and go back. The office continues to function. And in receiving the boxes this afternoon and going through correspondence, Madam President, I received a letter it is stamped the 18th of

December, 2019, it comes from one Russell Gonzales.

It is funny the way the Almighty works. This letter addressed to me refers to a letter sent to me in April 2016 concerning prison reform consultation at Remand Yard. And the letter encloses an article written by the new Archbishop in the latest edition of *Catholic News*. And attached to that is a publication coming from the *Catholic News*, Sunday, December 08, 2019. It is conversations with Archbishop J, it is entitled “Behind Prison Walls, Advent lives”.

“Q: Archbishop J: What is your Advent highlight?”

And it begins this way and if permit me just to quote briefly from this.

“Advent is about waiting in joyful hope. Visiting the prison during this time has opened the season’s mystery in a new and exciting way.

Waiting has a very different meaning for the men and women in prison. I understand why Jesus highlights the prisoner as a special way of encountering His love (Matt 25:36). The prisoner in Trinidad lives in perpetual state of Advent. They are constantly waiting in brutal and inhumane circumstances. In them, God is waiting.”

And this article then goes on through many paragraphs in particular to reflect upon Remand conditions where persons have access bail but cannot take advantage of the access to bail. The article notes that there have been significant amendments, for instance, the access to bail legislation that we passed which is in fact working, et cetera. And it quotes this and I will just end with this last quote:

“One young man made me promise I would speak of the injustice in the system. One young woman made me promise I would not forget her or her case. They would not let me go till I promised. Someone has to listen and respond; to care and believe.”

I could not imagine getting this letter and this publication at a more appropriate time than today while I sat here in this Chamber.

You see, Madam President, my colleagues opposite stand, sometimes with excellent submissions, but most often clothed in the threat of going to court, of a lack of support, of a need for more reform. Sen. Hosein, asked today “Why the rush?” Why the rush? Twenty-six years of talking in this country about abolishing preliminary enquiries. In that 26-year period, let me put it on record, the UNC had control of government in that 26-year period for 10 years and three months. And in the last four years of this Government, this Parliament can safely testify to a system for the administration of justice that has been implemented in a way that no other Government has brought it to life.

Sen. Hosein was quite strident in making the observation, his observation, that not a single court was opened. To the hon. Senator, I will be charitable this afternoon in my reply. To the hon. Senator, there have been 22 courtrooms created, between the Children Court and the Family Court structures alone. Twenty-two courtrooms, Madam President. In the Hall of Justice, we will get 70 courtrooms this year. And why the rush, through you, Madam President, in answer to Sen. Hosein, because this Parliament is going to close this week. This Parliament is going to move from this building into the Red House, and this Parliament will not be able to sit until the end of January.

So why the rush? I make no apology that in this season of Advent, that where Advent exists as the Archbishop has put behind the walls of the prison, one day more in facilitating and promoting delay is one day of hell to someone. And if Sen. Hosein is inconvenienced by having to sit in this Parliament which pays each and every one of us to be here to do the job well then so be it for Sen. Hosein. I

cannot drag him to the water and force him to intellectually drink from that fountain, Madam President. But I am prepared to be here, I am prepared to be here. Why the rush?—Sen. Hosein recommended as a submission for us, Madam President.

Madam President, let us deal with a few of the strong positions coming forward. We heard Sen. Mark and Sen. Hosein and Sen. Sobers, quite surprisingly, he built the courage to make the submission, almost timidly as if he did not believe in it himself, making the allegation that this law is unconstitutional. Sen. Mark, described himself, I do not like the term, but Sen. Mark, described himself as a “bush lawyer” and I would like to stress the word “bush” in that position. Sen. Mark.

Sen. Mark: Not marijuana.

Hon. F. Al-Rawi: Well not marijuana yet. [*Laughter*] Madam President, Sen. Mark made the submission the most incredible submission. Sen. Mark, made the submission that this law was so grossly unconstitutional, and then he went further to say that we were infringing habeas corpus by the law. And Sen. Mark reminded us of the written Constitution and Sen. Hosein quoted from the written Constitution.

Madam President, let me remind you. This law is statutory law. This law has been brought with a simple majority. Why? No. 1, we have a legitimate aim, the legitimate aim is to reform the system of pretrial scrutiny and to abolish preliminary enquiries. Not to modify a system of preliminary enquiries, Sen. Hosein. It is to abolish preliminary enquiries. Let me make that clear.

Secondly, that legitimate aim is tied into the system as we know it, delayed justice, thousands of cases in a state of disarray. Hundreds of thousands of people

and man hours having been poured into a system that just does not work. It is an ossified system as per Lord Devlin, thanks to Sen. Deyalsingh for reminding us of that quotation, way back in 1960. That legitimate aim has been upheld by the Privy Council in the Hilroy Humphreys case. That legitimate aim is being treated by a law which we amend today. And I make no apology for amending the law for a third time. That is what the Parliament is here for.

Having received consultation with a view to proclaiming this law in particular from the Judiciary and also from the Director of Public Prosecutions and senior counsel to the director. There is no cozy relationship. We are bound to make that consultative approach in the process of proclaiming law. Sen. Mark ought to know that. In a different incarnation he sat in the House of Representatives in a different place. And he saw the reading out of a letter from Roger Gaspard SC written to Anand Ramlogan, Attorney General, saying, you failed to consult with me when you proclaimed section 34. And we convened the House on a Saturday to remove section 34 from the laws of Trinidad and Tobago. That was met with the consultation from the Judiciary then. So why pour scorn and allege that it is a chummy and an unholy relationship? We are bound in the operationalization of law before we proclaim to consult with these personalities, but we do so with propriety.

The third amendment, rationally connected in the laws that we bring to a legitimate aim is that we prescribe a system that is now tighter in how we process flow the matters. Do we go any further than we ought to? That is the third limb of proportionality, which is the test of constitutionally set out in the Northern Construction Case, set out in Baroness Hailes' contemplations in the Surratt Case, set out in so many cases too numerous to mention. No we do not. And in the round

we are allowed, we are allowed to treat with section 4 and 5 rights in the manner that we do, because we are clothed with due process.

And that is what I meant by Sen. Hosein reading the Constitution. I noted his voice dropped when he saw the words, but like a skillful young advocate as he is, Sen. Hosein sought to just quickly step by it. So I will put the stress in the way that I wish to put it in the manner to the opposite of Sen. Hosein. He is a young fighting, young man. I make no criticism of my learned friend Sen. Hosein, but let me read it the way the think it ought to be read. Rights enshrined Part I, 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 of law.”

Stress. What does that mean? By court process, by the separation of the powers, by the separation of the three articles upon which we manoeuvre our society; the Judiciary, the legislature and the Cabinet. And therefore, due process recognized by Baroness Hailes, recognized in Northern Construction Case, due process tells us once your court is going to decide the process you are in a safe zone and that is what we do. That is why Hilroy Humphreys in the Privy Council was upheld and not infringing the law.

But let me get to the remarkable submission by Sen. Mark, who then, after making the submission that we were unconstitutional, went on to make this wild allegation as a self-professed bush lawyer that we were infringing and whittling away against habeas corpus. For heaven's sake, Madam President. Section 5 of the Constitution says;

“Except as is 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.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not...

(c) deprive a person who has been arrested or detained”

—and let us jump right down.

“(iv) of the remedy by way of habeas corpus”—this is (iv)—
 ”for the determination of the validity of his detention and for
 his release if the detention is not lawful”

Now, Madam President, the supreme law is the supreme law. Section 2 of the Constitution says the Constitution is the supreme law. Section 5 says you cannot abrogate from the law unless there is an exception in the Constitution by section 13 or 54.

Madam President, how could we in statutory law be abrogating the right which is a Constitutional right of habeas corpus? It just does not add up. And therefore, I humbly suggest in the next five years that the hon. Senator will have ahead of him, six years, my good friend Sen. Mark, that whilst he is in the wilderness of Opposition he should use the opportunity to qualify as an attorney-at-law and move himself out of the realm of bush lawyering into actual lawyering and read the Constitution. My dear friend Sen. Mark, who I have great love for.

Madam President, I am going, with your leave, to mention something now. Sometimes we have to do the right thing, because it is the right thing to do. Take support for cybercrime legislation. Madam President, I want to openly condemn here in Trinidad and Tobago what I consider to be an act of misogyny and an act of

brutal—a brutal act upon a citizen of this country. There is a young woman who has risen to the rank of Mayor in this country and I wish to condemn the attacks that are being put out against her right now and to say that Trinidad and Tobago needs to grow up. We need to grow up and we need to respect people. None of us are perfect, none of us know the circumstances that someone may have found themselves in and we ought to cease and desist immediately from attacking in this society and I say so even if that person is somebody who is in a political party opposite to me. We have to do the right thing, Madam President, [*Desk thumping*] and I would like as a Senate on behalf of all of us here, I am sure I speak for all of us to put that recommendation to our public.

Madam President, let us jump back to the submissions before us. I have addressed the constitutionality. Let us get into the position of—[*Crosstalk*]

Madam President: Sen. Hosein. Continue AG.

Hon. F. Al-Rawi: Thank you, Madam President. Let us get into the position of other substance. Madam President, we had a few questions asked directly in respect of the Bill. First of all, I want to give an undertaking to my learned friend, Sen. Hazel Thompson-Ahye, I have given the undertaking before and I will discharge that undertaking. Looking at the age of discretion, looking at the age of prosecution in this country. I have taken avail of the circumstances, we are in the act of consultation right now and I certainly intend to be making the recommendations that I must.

On the second ground of the need for prison reform and in particular a system of parole, I have drafted the law already. I intend to bring that law to the Cabinet immediately and to seek the introduction of that law into this Parliament. I have drafted the law already. The same way I have drafted campaign finance law,

the same way I have drafted other amendments to significant laws, domestic abuse, sexual harassment, arbitration, there are some significant laws in the work ahead of us and Hon. Senators I again come back to the point, I am not rushing the law we just cannot wait until the end of January for this law to go live. Hence the indulgence upon the time of this Senate.

Madam President, I can tell you that with respect to the system of search warrants and the recommendations coming from learned Senior Counsel, Sen. Chote, I do agree that there is a time that we ought to have the prescriptive aspects of what goes before the judicial officer in the grant of the warrant. Sen. Chote has made that recommendation on a previous occasion certainly, I think, more than one occasion we have received that, I think it is a very excellent and commendable position. I am not yet in a position to make the recommendations to that effect. The stakeholders have asked us simply to carry the law of search warrants as it exists in section 5 of the Act that is the current law, Chap. 12:01, the Preliminary Enquiries Act into the form and fashion.

We are seeking to codify it today into statute the concept of multiple search warrants. Sen. Chote has already, for the record, recognized that multiple search warrants can in fact and are done by way of technique. Multiple officers asking for different premises. The common law allows you the right of hot pursuit, you can get into the situation of entering premises. We prefer not to do that. We prefer to give the novelty on this occasion to the Master to allow the Master and not a magistrate. We are going up from judicial consideration from a magistrate which is the existing law to a master, we are asking for a master to consider the circumstances for the grant of a warrant for multiple searches and for the first time we are including time prescriptions because the Master may include terms and

conditions into the warrant. Our law does not provide in Chap. 12:01, for prescriptive limits. There is a rule of thumb that they use the validity of the warrant for one month and then they go back for a fresh warrant. The only law where I have seen the need for a continuation of warrants system is under the Inception of Communication Act in section 8 and 11 of the Inception of Communications Act, where you want to go beyond the 90-day period for having someone on warranted interception.

Madam President, Sen. Chote also made the recommendation that we have the person's named as persons who are assisting. I looked at that by way of recommendation. I contacted the various stakeholders who kindly responded with immediacy and what I can tell you, Madam President, is that we modeled after PACE, No. 1. No. 2, the position was that the certainty of the technical officers is often not known until the very last moment because it shifts in terms of circumstances. The rationale for this is largely on the IT platform, or forensics expert platform. On the IT platform it is critical to make sure that no damage is done to computers, et cetera.

But, I want to also rely upon the rules of discovery, the rules of disclosure and the criminal proceedings rules in the collection of those rules, you must disclose your case to the personalities, the accused and to counsel for the accused. You must disclose that to the court, you must disclose the case that is prejudicial to yourself as a matter of fact and therefore the identity of the person who accompanies the officer named in the warrant will always be discovered and disclosed and I think respectfully that we can let that system work its way out the way the PACE English law had its system work out.

Madam President, I looked at Sen. Chote's recommendation, and I thank her

for giving way to clarify, that we ought to have the defence time for filing of statements moved up from 28 days. I noticed that the newspapers have already put out online the submission which is not what Sen. Chote said. The newspapers put out that we were somehow going to only have 28 days for the defence and that somehow we were giving just the prosecution and the DPP and the court, the ability to extend the time. Madam President, as a matter of fact the 28 days is now circumscribed for the first time by saying, you will have 28 days but the Master may, at the request of the defence as well extend, the time frame.

So we have put the 28 days, the time frame applies. Sen. Mark, made the submission that you ought not to allow this thing to go on indefinitely. He made a most spectacular submission that a Master ought not to have the liberty to decide the extensions of time. That is in fact something that skirts along the line of interference with the judicial discretion at law, the separation of powers principle and we have to be very careful about infringing the constitutional arrangements there. We believe that allowing for the extension of time in the interest of justice specifically preserves the right of the defense attorney, the right of the accused to ask for discharge on the ground of delay nothing changes that. We have statutorily provided for it in section 24 of the parent Act, where the discharge can be done for other than schedule section 6 offences if the DPP fails to act within one year, but there is nothing to stop the court receiving submissions that the matter ought to be discharged on the ground of delay.

We had decided upon the 28 days. We used that formula right throughout, but I want to specifically underline that we are leaving it to the discretion of the court. Obviously the criminal proceedings rules, just like the civil proceedings rules will kick into effect. Obviously the judiciary still has preserved onto it

something called an Unless Order. Unless Orders are done at the invocation of defence attorneys in the civil arena by the court and also by both sides; claimant and defence. And the court makes an order unless you do something there will be a consequence. So the unless order provision obviously applies and the rules of the Supreme Court, pursuant to the Supreme Court of Judicature Act can be amended from time to time.

Sen. Vieira, I think made the point that we would love to see the embodiment of the practice direction of the Chief Justice and I would just like to tell you, I do agree. Fortunately, however, the court had the ability to pronounce upon this position. It is a settled case right now, Garth O'Brien and the hon. Chief Justice, Ivor Archie, take a guess who went to court to say that the criminal proceedings rules were unconstitutional? The UNC.

5.15 p.m.

Wayne Sturge, sitting Senator, went to court, CV 2018-00854, known advocate for the UNC, went to court to challenge the issuance of the Criminal Procedure Rules asking for an order for certiorari, a declaration that directions contained in the practice direction are ultra vires, unconstitutional, illegal, null, void, and of no effect.

Fortunately, common sense, prudence, and good law was upheld and the court very happily rejected the submissions coming from the UNC advocates and upheld the constitutionality. Madam Justice Joan Charles did that. The sanctity therefore of the flexible approach of practice directions and the rules of the Supreme Court have therefore been up held by the courts, and I think that we can allow that to continue to prosper as we work out the bugs in the application of this law.

Section 14B. Sen. Chote SC invited a reflection upon that. I think it was very prudent to ask for that. I regret that I did not in the piloting have the time that I required to do the reflections on that. So, permit me to do that now.

Madam President, we are in clause 24, seeking to abolish the application of section 14B of the Evidence Act. Section 14B of the Evidence Act was—is in equal terms to section 69 of the PACE Act. Section 69 of the PACE Act was in fact abolished, repealed, by amendments coming in the year 2000 when they had an abolition of that. Section 14 of our law is actually something which works against us. Let me give you some of the reflection of section 14B. Section 14B says:

“In any criminal proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated therein if it is shown that—

- (a) there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents;”

And, Madam President, the problem in this as it manifested itself in England, as they began to go deeper and deeper into their financial crimes and complex fraud matters in particular, computer oriented positions. And as Sen. Vieira quite correctly put, we are in the fourth industrial revolution, our children, the children of the generation now in their 20s and upward, they are native to the digital age. Let me repeat that, they are native to the digital age. They do not have to think by

way of algorithms, they look and feel, they know that double tapping does something or flipping does something, or a gesture does something. You can actually look at little babies right now with iPads in their hands, and they can maneuver successfully by look and feel, as opposed to arithmetic or logical approach that we sequentially apply from an analog era. It is a very different regime.

Proving that at all material times a computer was operating properly is a very difficult thing, and it is almost an impossibility. And I would like to take us to the International Conference on Electronic Litigation, Editor in Chief Justice Lee Sieu Kin, General Editor Yeong Zee Kin. It is a publication reflecting upon the amendments which are exact amendments to what we are doing now in Singapore. And in Singapore, they had a very interesting position. They reflected upon the English position and the Singapore position. The Singapore position is section 35 of their law and they said, and I am quoting now with respect to the English comparator, what is the equivalent of our section 14B:

“...fails to address the major cause of inaccuracy in computer evidence:”—
that is—“human error;

(b) advances in technology make it impossible to comply with s 69 of PACE as it is increasingly impracticable to certify the proper workings of all of the intricacies of the computer operation;

(c) a recipient of a computer-produced document, who wishes tender it in evidence, may well be in no position to satisfy the court about the operation of the computer; and

(d) it is illogical that s 69 of PACE applies where the document is tendered in evidence, but not where it is used by an expert at arriving at his

or her conclusions, nor where a witness uses it to refresh his or her memory. If it is safe to admit evidence which relies on and incorporates the output from the computer; it is hard to see why that output should not itself be admissible.

33 The Law Commission had reasoned that the major cause of inaccuracy in electronic evidence is human error, not the reliability of the computer itself. Insofar as the reliability of the computer operations is concerned, it was sufficient that the common law maxim of *praesemuntur omnia rite esse acta* would apply.”

That is well known to us. There is a presumption at law that there is regularity in regularity, or that it is safe if it is good, put quite simply.

So, we have an origin. Our section 14B of the Evidence Act is quite simply just archaic, it is technologically specific as opposed to neutral. Other jurisdictions got rid of it nearly 20 years ago, and we are in the domain of follow the money, of explain your wealth, contrary to Sen. Haynes’ bold assertion today that this Government has not operationalized any of its laws. Let me remind hon. Senators today, we were told by the Opposition “nobody in their right mind would use judge only, especially for murder.” We have had judge only trials for murder and in fact, we are on the second trial right now.

In the first matter, Justice Lucky, in fact acquitted for murder. We have had judge only trials for money laundering. We have had judge only trials into position, we have had plea bargaining when we passed the plea bargaining legislation, that we brought as a Senate all together. We have had ease in the access to bail as a result of the laws that we have brought, and very particularly, without going into any of the details of it, we have made history as a country, in

having the first two preliminary unexplained wealth orders ordered by the court last week Monday. Let me repeat that, we have made history as a country, in having the first two preliminary unexplained wealth orders done. Why? In England, unexplained wealth orders are only done for politically exposed people. That is tied in to everything that we do. All of the system and processes as we amend the laws to treat with land, companies, beneficial ownership, registration of deeds, as you will see in the month of January. Demonetization of money, all of these pieces come together because we say, time and time again, and in another place I am regaled with the virtues of the laws of Singapore over, and over, and over again. But in Singapore, Madam President, if you spit on the sidewalk with chewing gum you are publicly flogged on television. If you are caught trafficking in firearms in certain circumstances, you meet the hangman in Singapore. So, we want all of Singapore, but we want none of the discipline to get there, Madam President. And that is where the UNC and the PNM depart ways.

So whilst Sen. Mark has boldly threatened to go to court, to go and meet us in a constitutional court on this law. I welcome that. It will not be met with any form or favour, just like the attempts to go to court and just like the beating the UNC attorneys got on four occasions to deal with the property tax enforcement, they will be met with a defeat in court, because, Madam President, from the Privy Council come down, we have had assertions of propriety in relation to this law.

So Madam President, that addresses I hope in proper form the rationale for the abolition of section 14B procedures, the repealing of that law. It is true that we had looked at it at the special select committee in the public hearings to treat with the Evidence Bill. The DPP spoke to it specifically, when interrogated and asked questions in the course of that public hearing which was on television, and of

course, in the course of consultation of this Bill, the DPP also echoed support for the repeal of this particular provision, Madam President.

Madam President, we heard mention of the courts and the DPP's office et cetera. Let me report now, Sen. Haynes was reflecting upon a 2016 report to the joint select committee, Madam President. I can tell you right now, we have opened the DPP's office in Tobago, already. All of the ranks in the legal officer, legal counsel I position have been filled. In case you did not notice, we have carved out the fees for the DPP from the Attorney General's Office. There is a separate line item for the DPP. The Port of Spain offices at Park Street for the DPP are being outfitted as we speak right now by UDeCOTT. And those offices will be opened in the early part of next year.

The Public Defenders Division which picks up upon Sen. Chote's correct acknowledgement that the criminal bar is extremely small. There are about 20 of the high powered lawyers that control the criminal bar, just 20. So, even though we have raised judicial complement by 76 per cent, even though we will birth 100 criminal arena courts, even though we have rules of court, even though we have processes, even though we have IT, if "yuh doh" have a defence attorney, what are you going to do? We have brought that by way of a practical reformation of the Legal Aid and Advice Authority. We have birthed the Public Defenders Division, we are adding 30 lawyers in the month of January. We are getting mentors from the commonwealth to oversee and manage the transfer of information and position. And, Madam President, if your defense counsel is not ready for you, one shot, two shot, three shot, public defender comes to represent you, because you have a right to a fair trial. You do not have to have counsel of choice, you need competent counsel.

So, we are not relying upon the law. People, processes, plant and machinery. And, I cannot stop repeating that formula, as much as I can. I must say it because we have to really acknowledge what is being done. But, Madam President, do not take it from me.

I want to rebut everything that Sen. Hosein and Sen. Haynes had to say about operationalization. I invite every member of this country, every citizen of this country, visitor, resident, expert living here to read the Judiciary's publication its Annual Report 2018 to 2019, it is entitled: "Transformation for Enhanced Delivery." And, in that, Madam President, you will see page after page, transformation for greater efficiency and public convenience TT.jim core the IT processes, the FTR, the recording systems, the voice to text facilitates that we use, built on dragon dictation. You can dictate into your phone, via an iPhone Siri app or any other phone. We have taken that. We have trained batches of 50 people instead of taking three years to train CAT Reporters as we have in the Parliament at \$2 million. We in fact trained 50 people for a couple hundred thousand dollars and pushed them out in three months, and they are flooding the system. They can work remotely, they can have the access to technology, we have beta and alpha tested the platform for the IT, at the Judiciary. We have done demonstration to the bar. We have done demonstrations to the public, the Judiciary has managed that. Transformation of traffic courts with TT.jim, we go live on the 22nd of January, 2020. E-services, CourtPay, small claims, courthouse development beginning at page 43.

We then go into Magistrates' Court building, Princes Town, Arima, San Fernando, Sangre Grande, Siparia. I would like to say that whilst the UNC actually shut down the entire court facilities system in the Judiciary. Because they

said they would build the judicial complex, and I want to remind you, they said that they would build a judicial complex and they effectively shut down the entire court facility management. They did not build a single judicial facility, they procured a contract which breached the Central Tenders Board and it had to be pulled out.

But, Madam President, I can tell you, and I say this as the Member of Parliament for San Fernando West, the request for proposals for the Magistrates' Court in San Fernando were issued out on Friday, the financing arrangements were put in place by the Cabinet's approval. The Attorney General of Trinidad and Tobago took a property which we own in San Fernando at Irving Street, just by Irvin Park at Sutton Street at that corner there. We gave it to the Judiciary and they will start construction in the month of January.

5.30 p.m.

We were in the course of refurbishing the Magistrates' Court at San Fernando existing court, when the earthquake came and the building had to be condemned. An act of God interrupted that position, but it is a far cry away from the building brought by Anand Ramlogan in San Fernando, which was condemned by the Ministry of Works and Transport as being incapable of holding a courthouse. What can I do? It is my job, it is the Government's job to operationalize systems, Madam President, and so we must. Even if we have inherited a bad position, it is our job to do it.

Madam President, so the Judiciary report speaks and certifies all of the transformational measures that are in actual existence. Read it for yourself. Do not take it from me. Understand that it in—

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

Hon. F. Al-Rawi: Much obliged, Ma'am. Understand that in adversarial politics, this is just the way it goes. Madam President, there comes a time when, as a society, we have to accept that enough is enough. There comes a time when you have to draw the line and say, look, I am prepared to start. We have on umpteen occasions, pursuant to observations with the roll out of law and undertakings at the Parliament—and you have seen that they have kept all of our undertakings—we have come back to the Parliament. We have amended laws. We have taken a very practical approach to the administration of justice. Will we get this perfectly right? I am sure that there will be a need for further amendments as we roll it out.

Look at what we did in the Family and Children Division, look at what we did in the package of children's laws. We amended, in the first round, 19 laws in 2016; second round, 23 laws. We did the rules to govern child rehabilitation centres, we did the orders and we did the designations. We were not ashamed to come back to Parliament to amend, amend, amend, fix, fix, fix, implement, implement, implement. What I can tell you, is the courts are up and running. Children are being treated in a way that they never have before. The computerization of all the Magistrates' Courts is a feature of today in Trinidad and Tobago. These things did not happen by mistake, Madam President. We have a very aggressive agenda.

Today's opportunity in the Senate to consider this Bill is a golden one. The time has come. The House has already adjourned its purpose. I look forward to the committee stage. The Parliament will close, we will at best reopen in the third week of January 2020 at the Red House location. We cannot wait between now and then to operationalize this law. The methodology for operationalization comes from the Judiciary and the other stakeholders to make sure that we can get this

right.

Last point: There must be a system of dealing with the backlog. That system involves plea bargaining and maximum sentence indication. The shorter the time frame for a trial, the greater the risk that you will face justice in a faster space of time, the more incentive there is to deal with plea bargaining. It is just simple. If your trial is going to wait 20 years—witness died, judge retired, policeman gone away—well you sure you could just run the clock, but as you shorten that gap, which the abolition of preliminary enquiries will do, you will remove decades of delay, you are going to have your backlog being dealt with. And, Madam President, we treat with backlog, public defenders, increase in judiciary, increase in technology, increase in DPP and greater funding. We are applying the formula, plant and machinery; people, processes and law. This is constitutional law. I respectfully believe that we have answered the questions posed in the course of debate, I look forward to the committee stage, Madam President, and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 4 ordered to stand part of the Bill.

Clause 5.

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

Sen. Mark: Madam Chair, I want to apologize. I was supposed to circulate an amendment deleting clause 5. We are not in support of clause 5, but we did not get a chance, so I am just putting it down, we are not in favour of clause 5.

Madam Chairman: Any other questions or comments?

Sen. S. Hosein: Madam—

Madam Chairman: So, when I say any other questions or comments—

Sen. S. Hosein: Sorry.

Madam Chairman: Okay.

Sen. S. Hosein: I do apologize. Hon. Attorney General, with respect to new section (2A) that deals with the obligations of the constable who is executing the arrest warrant, it is just a matter of clarification. The effect is that if the police officer fails to do any one of the three obligations—I do not know if you are with me—if the police officer—the constable sorry, fails to identify himself, produce the warrant or supply a copy of the warrant, what would be the effect of the search, AG? **Mr. Al-Rawi:** Sure. Sen. Sobers actually answered that in his own contribution. Your own colleague reminded you that the effect of the search would be that that which is committing an offence is still valid under law. If your question relates to what is the consequence to the policeman for failing to do those things, well then it can deal with a number of things including breach of regulations, breach of the law, the commissioned service positions, the civil side remedies that are available. So I think between Sen. Sobers and I, we can confirm that.

Sen. S. Hosein: It would not go towards deeming the search—

Mr. Al-Rawi: No. Our law is clear on that.

Sen. Sobers: Madam Chair, I do apologize. We are on clause 5?

Madam Chairman: We are.

Sen. Sobers: Right. In terms of clause 5 where it was indicated that we are saying now that they may at any time issue a warrant—

Madam Chairman: Could you tell us what page, because clause 5—

Sen. Sobers: Page 6 please, Madam Chairman. I apologize. The inclusion of “any person accompanying him”, I know that both myself, Sen. Hosein and Sen. Chote indicated that may be it would have been better that we could amend that to indicate exactly who that person would have been accompanying the police officer. I do not know if you all considered such an amendment?

Mr. Al-Rawi: As I indicated in my wrap up, I did speak to the respective stakeholders across the plate, and the answer to that is number one, we took the precedent out of case; number two, the indication was that there needs to be care as to the availability of witnesses, experts at that point, and that sometimes the person may not be known or may be changed from time to time, for example, a technology person who is flying someone in, an FBI agent, as we had in a case which was just concluded in the Assizes. Right? And then also too, under the rules of disclosure, that you would always know the identity of the person who will be there. Of course then, that will run to the root of how you treat with evidence, what your objections are, et cetera. So the recommendation was to leave it as it is, it having worked well in other jurisdictions.

Sen. Sobers: All right, no problem

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Sen. S. Hosein: Madam Chairman, clause 6. AG, at clause 6, I raised this in my contribution, this goes to clause 6(a), the new one here, where it says that:

“Where a complaint in writing is made to a Master that an indictable offence has been committed by an accused, the Master may, if he is satisfied that there are reasonable grounds that an indictable offence has been committed”

I know we had used reasonable grounds for suspecting throughout the legislation. I do not know if it was deliberately omitted.

Mr. Al-Rawi: Yes, it is tied to section 5 of the Act. We are amending section 6 where reasonable grounds for suspecting are included. I must tell you that the Acting CPC next to me, we had a ring-down fight over the need for those words in the first place. She is a very strident person, who has worked with multiple AGs—

Sen. S. Hosein: And she won.

Mr. Al-Rawi: And she won. [*Laughter*]

Sen. S. Hosein: Okay. So it was deliberately omitted?

Mr. Al-Rawi: Yes.

Hon. Senator: She won again. [*Laughter*]

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clauses 7 to 23 ordered to stand part of the Bill.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

Sen. S. Hosein: Thank you very much, Madam Chair. Attorney General, just some clarification with clause 24. I know that you are reverting to the common law admissibility of the evidence. Will both treat with weight and admissibility?

Mr. Al-Rawi: Yes.

Sen. S. Hosein: What I wanted to find out, I raised it in the contribution, is whether or not the records that will be admissible in court, whether or not it will be considered as hearsay? I know that is why 14B was inserted in Evidence Act to create that statutory exception. Can you just give me some guidance with respect to that, please?

Mr. Al-Rawi: Yes. There are two methods of admissibility: one of them will be

pursuant to the hearsay rule. So it would be specifically incorporating that, and the law as it has been developed in period 2000 to 2019 in the UK, Singapore and the rest of the Commonwealth treats with the bifurcated route that you can actually have the admissibility. So we are leaving it up to the court really because if we stick with 14B as it is, it is too technologically specific and it denies the right of another witness or, in fact, the defendant, to cause the admissibility of the evidence.

Sen. S. Hosein: So practical speaking, at the end of the day, we will just—the prosecution sorry, will just require that the record keeper keeps record—

Mr. Al-Rawi: Exactly.

Sen. S. Hosein:—and produce the records?

Mr. Al-Rawi: Yes, yes. The usual methodology of admissibility will apply. So there would be a presumption of regularity, it would then be put to the test, you will have the opportunity to say that you do not accept that and go through the strict formal procedure and have the hearsay admissibility as well.

Sen. S. Hosein: Okay. Thank you.

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

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

Senate resumed.

Hon. F. Al-Rawi: Madam President, I wish to report that a Bill entitled “An Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act. No. 20 of 2011) was considered in committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee’s report.

Question put and agreed to.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this Senate do now adjourn to a date to be fixed. Thank you.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for one matter to be raised by Sen. Mark.

Sen. Mark: Yes, I was about to tell you that I am giving the House a Christmas gift. [*Laughter and desk thumping*]

Madam President: Hon. Senators, I take it that I can thank Sen. Mark on your behalf. [*Desk thumping*] I now invite Members to bring greetings on the occasion of the celebration of Christmas. The Vice-President. [*Desk thumping*]

Christmas Greetings

Sen. Nigel De Freitas: Thank you, Madam President, and I too wish to join, in terms of congratulating Sen. Mark in giving us that beautiful Christmas gift, and that gift in relation to the fact that this is the last day that we will be contributing or sitting in this Chamber as a Parliament. But, Madam President, it is with great pleasure that I bring greetings on the occasion of Christmas and the New Year on behalf of Members of the Government Bench and from the Office of the Vice-President of the Senate. I take this opportunity to offer heartfelt, goodwill, peace, love and prosperity to each and every one of you.

I would also like to remind everyone that in the season of giving, inundated with physical gifts, that we remember to give the gift of time to our loved ones, the gift of our hearts to our friends and neighbours and the gift of the best version of ourselves to our country. Indeed, as we do remember the reason for the season, let

us not forget what the birth of our Lord and Saviour Jesus Christ represents, and to sum it up in one word it represents love.

Madam President, colleagues, it is also not lost in me the importance of today, this being the final day the Seat of Parliament will be at this location. If these walls could talk, oh what a story they would tell. This place will always be a part of our nation's history, therefore, it is only fitting that the final words spoken in this Chamber, at this location, is one of peace, love and goodwill to all men.

[Desk thumping]

Madam President, to the Christian community, to the Members of this Senate, to the citizens of Trinidad and Tobago, I wish you a very Merry Christmas and a very prosperous and Happy New Year. *[Desk thumping]*

Sen. Anita Haynes: I thank you, Madam President, for the opportunity to bring Christmas and New Year greetings from the Opposition Bench in the Senate. Christmas time is a time for joy and celebration. Madam President, there is a saying that there is no Christmas like a Trini Christmas and I believe that with all my heart. It is a time when families gather to spend time together, share gifts, good food, laugh and create fond memories.

But, Madam President, please allow me a moment to pause our merriment to spare a thought for our brothers and sisters in Barrackpore, Debe, Woodland, San Francique, Mayaro and Rio Claro who are affected and all the other affected communities in Trinidad. They have endured devastating floods for the third consecutive year, and most will spend their holidays salvaging their humble lifestyles. My heart goes out to them, Madam President, as I saw photos and experienced Christmas trees and decorations under floodwaters.

I must pay tribute to the volunteers and generous donors who supported our councillors, MPs and other officials who were coordinating relief efforts. Our

citizens demonstrated great compassion and reverence which is the central theme of Christmas. And as we stand here, Madam President, and we think there will be little mirth in these homes during this period, as many of us will enjoy our sorrel and pastelles and our Christmas fair, I urge everyone to spare a thought and a pray for those families who are trying to cope with the upheaval of their lives. I urge everyone to continue in the spirit of giving and selflessness that we have seen in the past few days as we all came together to help our fellow citizens who were affected by the severe flooding and I give them the message of Christmas, do not lose hope, this too shall pass.

This Christmas, it is a time of reflection to strengthen the bonds of love that unite us all. During this holy season we can draw inspiration from the account of the birth of Jesus Christ. It shows us the importance of keeping the faith in God when all seems lost as Mary and Joseph did. It speaks to the need for greater compassion as in innkeeper gave them a safe space and, most importantly, Christmas gives us hope for a better tomorrow. Isaiah chap 9:6 says:

“For unto us a child is born, unto us a son is given, and the government shall be upon his shoulder, and his name shall be called Wonderful, Counsellor, the mighty God, the everlasting Father, the Prince of Peace.”

This Christmas, let us keep alive faith, compassion. Let us ensure that our country rises up to meet the challenges that we may face. Let us move into 2020 with a positive outlook and renewed commitment to building our nation. From the United National Congress and our UNC family and on the Opposition Bench in the Senate, from myself and my family, I wish Trinidad and Tobago a Merry Christmas and God’s blessings for a happy, peaceful and prosperous 2020 and beyond. [*Desk thumping*]

Sen. Paul Richards: Thank you, Madam President. It is my honour to bring

greetings on behalf of the Independent Benches in this season of goodwill, and I thank Sen. Mark also for his generosity of spirit. [*Desk thumping*] It is three minutes to six o'clock and I did not think we would be leaving here this early. [*Laughter*]

So, what is the reason for Christmas? Well, quite simply, the reason for Christmas is the birth of our Lord and Saviour Jesus Christ, and Jesus Christ was born for many reasons and displayed many qualities. He displayed leadership because he was a leader of the Christian community. He created Christianity. He was a teacher and he led by example in everything he taught, said and did. He showed self-sacrifice, teaching the righteous way and he went through sacrificing his own life for our ransom sins and salvation and he exemplified the qualities of love and purity.

As we seek to celebration Christmas, there are many parallels and lessons, no matter what religious persuasion you may be, in Christmas and in the tenets and thought by Jesus Christ, especially in tough and difficult times as it was back in Bethlehem at that time and Jerusalem, we are all leaders in our various communities and we must also understand that and revere that and lead by example. We are all teachers in our thoughts, words and deeds and we must also understand that people are watching us. We all must understand our sense of purpose and why we are here, and in the various other walks of our lives and we must also understand one of Jesus's greatest teachings, which is of self-sacrifice for the greater good of humanity, in this case, our work here for Trinidad and Tobago. These lessons are priceless as we seek to celebrate Christmas and we seek to also share the examples and live the examples given by Jesus Christ by his life, his teachings and his eventual sacrifice. So as we prepare to celebrate his birth, let us also connect it with his sacrifice to pay for our ransom and sacrifice for

humanity that they may have everlasting life.

6.00 p.m.

We have also to in this time remember that it is not a time of celebration for everyone in society. While we may be celebrating with our families and we are gratefully for that there are many others in society who do not, for many different reasons, have something to celebrate. Christmas time may be a time for joy for many but it is also a time where many think of taking their own lives because they do not get a sense of hope. So if you can think of someone who may be in that position, reach out to someone. If you can give anything, including as our colleague said, the gift of time and caring, do that and reach out to someone else or a family who may be in need who may not be celebrating with the rest of us and I think we will go a long way into making this country a much better place.

So on behalf of the Independent Benches, because there are nine Independent Benches, I would like to take the opportunity to wish you and yours, to you, Madam President, and your family, to our colleagues on the Government side and the Opposition side, and too I also want to single out the Parliament staff who are going to be working through [*Desk thumping*] this Christmas season, who have in this place and the other place provided yeoman patriotic service to this country and they are the unsung heroes in the work that we do. So I want us to congratulate them all and thank them because they would be working through this Christmas season so that we would have a place to continue the work of the people in the other place and the Red House. So on behalf of the Independent Benches I want to wish you all a merry Christmas, a safe Christmas, a sensitive Christmas, a thoughtful Christmas and a bright, healthy, safe and prosperous 2020. Thank you.
[*Desk thumping*]

Madam President: Hon. Senators, please permit me to join in offering greetings

as we celebrate Christmas and as we greet the New Year 2020, but before I do that may I just give you a short update on the activities of relocating the Parliament.

**Relocation to the Red House
and Cabildo Parliament Complex**

Madam President: I am pleased to advise that the Parliament has been informed that the restoration of the Red House and the refurbishment of the adjacent Cabildo Parliament Complex will be completed by December 31, 2019. [*Desk thumping*] This means that over the next six weeks the process of relocating the Parliament of Trinidad and Tobago, its auxiliary facilities and staff from Tower D to the Red House and adjacent Cabildo Parliament Complex will take place. As you should appreciate, this demanding task will require all of Parliament's resources, particularly its staff, to ensure a smooth transition back to the Red House. Members are therefore asked to note that the relocation will result in a temporary disruption of the auxiliary services which are usually at our disposal.

Please bear in mind that sittings of both Houses and committee meetings will stand adjourned and administrative services may become temporarily unavailable during the six-week transition period. It is anticipated that the move and a resumption of all our processes and services should be completed by Monday, January 20, 2020. I wish to assure all Members that the Clerks of both Houses will make every effort to apprise you of all available information and details during this transient disruption as the Parliament of Trinidad and Tobago returns to its home at the restored Red House.

Christmas Greetings

Madam President: Hon. Senators, as we have heard from all those who have brought greetings prior to me, the messages of Christmas namely of hope, of renewal, of generosity and peace and goodwill to all, I embrace not only by

Christians but by all of mankind. There are messages that are especially important in Trinidad and Tobago at this stage of our nation's development. They serve as a clarion call for reflection, for self-correction and more importantly for action. These are qualities that our country needs, not just at Christmas but all the time. My wish for everyone in this Chamber and beyond is for a brighter tomorrow built on the foundation of the messages of Christmas. May that foundation help all of us in this Chamber to work together now and in the New Year to improve the lives of all of those whom we collectively serve.

On behalf of the Parliament of Trinidad and Tobago and on my own behalf, I wish all Members here, I wish your families all the very best for Christmas and for the New Year. May I also add to what Sen. Richards has said, we need to thank the members of staff of Parliament, [*Desk thumping*] both the Clerk of the House and the Clerk of the Senate for the tremendous service that they offer to us. They have seen about our every need and they have made sure that we are comfortable and want for nothing as we serve in this Chamber, and they are, during this transition period, putting all of their efforts and putting aside their time with their families to make sure that this transition happens.

So I want to offer in advance, I want to say to them thank you for all that they have given us in 2019, all that they will give us in 2020, but, more so, all that they are giving us during this Christmas season. So I thank them. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.05p.m.