SENATE

Tuesday, January 19, 2021

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PAPERS LAID

1. Annual Report of the Trinidad and Tobago Civil Aviation Authority for the period 2019-2020. [*The Minister of Works and Transport* (*Sen. the Hon. Rohan Sinanan*)]
2. Civil Aviation [(No. 14) Aircraft Accident and Incident Investigation] (Amendment) Regulations, 2020. [*Sen. The Hon. R. Sinanan*]
3. Annual Report of the National Information and Communication Technology Company Limited (iGovTT) for the period 2018 to 2019. [*The Minister of Energy and Energy Industries* (*Sen. The Hon. Franklin Khan*)]
4. Value Added Tax (Amendment to Schedule 2) (No. 2) Order, 2020. [*Sen. The Hon. F. Khan*]

URGENT QUESTIONS

Medical Appointments Postponements (Steps Taken to Address)

Sen. David Nakhid: In light of recent reports of the repeated postponements of medical appointments at the Eric Williams Medical Science Complex, can the Minister indicate what specific steps are being taken to address this situation?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President, and a very happy New Year to you and all Members of this honourable Chamber. Madam President, on my insistence the board of the North Central Regional Health Authority had an emergency meeting yesterday afternoon at 6.00 p.m., where the entire board met with the executive management team from

the CEO go down. We ordered an immediate audit of all Outpatient Clinic appointments, both medicine and surgical to determine the magnitude of the problem and the number of patients affected. We are strengthening our telemedicine initiative to assess and triage patients determining their need and the urgency for care.

We have instituted, already, a pharmacy pick up collection service to be established for stable patients requiring refilling of prescriptions. We are reviewing the appointment system and we have done an operations review of the clinic management process with a view of improving efficiency, throughput and patient comfort and this is a very fine balancing act while maintaining all COVID protocols, guidelines and public health measures to ensure safety and to mitigate risks to both patients and staff. Thank you very much, Madam President.

Sen. Nakhid: Hon. Minister, the Health Sector Accreditation Bill, can you give us a status of the evaluation of that Bill as the RHAs are concerned?

Madam President: Sen. Nakhid, that question does not arise.

Sen. Roberts: Minister, could you alert me to the fact of why did the meeting only occur yesterday when it appears that there has been a deficit and delayed delivery of medical services for months now?

Hon. T. Deyalsingh: One must realize, without making excuses, we are in the middle of a global pandemic. Health systems around the world have crashed. In California right now you cannot get an ICU bed. In California right now you have to wait for a patient to die to get access to the equipment used for that patient. These are not normal times, but that is no excuse. But our parallel health care systems, both arms, have been working fantastically.

So, this review has been going on for a while but the recent urgency prompted me to get the board involved and to hold the executive management of

the RHA to account. I just want to quote:

> "A Best Western hotel in London is now taking in Covid-19 patients as hospitals run out of beds."

Ladies and gentlemen, we are in the middle of a global pandemic and little Trinidad and Tobago is leading the way. Things are not ideal, we admit, but we are in the middle of a global pandemic and balancing protocols to prevent infections and patient care. Thank you very much, Madam President.

Madam President: Next question, Sen. Nakhid.

Sen. Roberts: Supplemental?

Madam President: Only two supplementals allowed. Sen. Nakhid.

Closure of Asa Wright Centre (Government's Intervention)

Sen. David Nakhid: Having regard to Government's thrust to develop tourism as one of its diversification pillars, can the Minister indicate whether the Government intends to intervene to avert the impending closure of one of the nation's tourist attractions, the Asa Wright Centre?

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): (*Desk thumping*) Thank you very much, Madam President. It is not often that I get urgent questions, but Asa Wright like other tourism operators and accommodation providers has had its revenue model significantly disrupted on account of COVID-19 and as well as the closure of the borders. To its credit the Asa Wright Trust has kept its workers employed until its recent closure, which I am told is temporary until the borders are reopened and travel resumes. I have had the opportunity to speak with a member of the board who has indicated that of paramount importance, is the maintenance and security of the wildlife sanctuary. So thy have promised to submit its proposed requirements, their proposed requirements, to me next week.

Sen. Nakhid: Hon. Minister, that self same board indicated that they had reached out to the Government previously and have received no substantial response.

Madam President: Sen. Nakhid, is there a question in there, please?

Sen. Nakhid: I am making the preamble to it, Madam President.

Madam President: No preamble, please. Just ask the question.

Sen. Nakhid: Okay. Has the Government done anything in light of the fact that the board previously stated it reached out to the Government for assistance and nothing was done? What is your answer to that?

Sen. The Hon. R. Mitchell: I have recently spoken to a member of the board, Madam President, as I have stated, just before its closure and subsequent to its closure, and they have promised to get back to me next week with their proposed requirements and we will sit and we will discuss how we can secure the estate, the premises as well as maintain the premises.

Sen. Nakhid: Madam President, with all due respect that is not the question. The question says, the board reached out to them previously and nothing had been done. My answer is why nothing was done before?

Madam President: Sen. Nakhid, two things—

Sen. Nakhid: Yes.

Madam President: You cannot repeat—please take your seat.

Sen. Nakhid: Okay.

Madam President: You cannot repeat a question and hope for a different answer. A question was posed, an answer was given. You are allowed a supplemental and you have now utilized both of your supplemental questions. Next question, Sen. Mark.

Shortage of Multiple Sclerosis (MS) Drugs
(Rectification of Situation)

Sen. Wade Mark: In light of recent reports that there exists a shortage of drugs for patients suffering from Multiple Sclerosis (MS), can the Minister indicate how will this situation be rectified?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. I am so grateful for this opportunity to correct the public record. There is no stock-out of any drug in the public health care system to deal with multiple sclerosis. The report in today's papers is inaccurate. That particular drug we got in stock in mid-December, 600 syringes, more are expected in January.

1.40 p.m.

But here is the thing. That particular drug, beta interferon is an injectable, with a 30 per cent efficacy rate. It is no longer recognized as effective treatment for multiple sclerosis. We signed on with new drugs given orally, better compliance, and a 50 per cent efficacy rate in 2019. Fingolimod: What is happening, we must question the advocacy which ignores the medical status of the drug versus the commercial interest of manufacturers. Read in between the lines.

We have a better newer drug given orally versus an older drug given by injection, which has a lower efficacy rate and no longer recognized as effective treatment for multiple sclerosis. I urge all who are advocating for beta interferon to be care—because the doctors are absolutely appalled by this story. The doctors are appalled and saddened as to how far the commercial interest advocacy has now reached in this country. Thank you very much, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, I am going on to the next question?

Madam President: Sen. Roberts seems to have a supplement—

Sen. Roberts: Thank you, Madam President. Well Mr. Minister, if the drug is so

old and so inefficient, why did we order and receive in mid-December 2020 600 syringes of useless drug?

Hon. T. Deyalsingh: Useless? You cannot transition patients from one drug to another at the drop of a hat. You have to manage the progression of the disease, and if they respond to the newer better drug then you transition them. So your question as posed shows an acute lack of knowledge as to how drugs work and the clinical protocols that determine how a doctor uses a drug. [*Desk thumping*]

Madam President: Sen. Mark.

Patriotic Energies and Technologies Company Limited (Purchase of Assets)

Sen. Wade Mark: To the Minister of Energy and Energy Industries: Can the Minister confirm or deny reports that the bid by Patriotic Energies and Technologies Company Limited to purchase the assets of the Petrotrin Refinery and the Paria Fuel Trading Limited has been rejected?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Minister can now confirm that the bid by Patriotic Energies and Technologies Company Limited to purchase the asset of the Petrotrin Refinery has been rejected.

Sen. Mark: Could Minister indicate what took the Government—

Madam President: Sen. Mark, the time for urgent questions has expired.

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, as has now become the norm, the Government will be answering all questions on notice. [*Desk thumping*]

ORAL ANSWERS TO QUESTIONS

Acquisition of Manta Lodge in Tobago

29. **Sen. Wade Mark** asked the hon. Prime Minister:

Can the Prime Minister indicate whether an investigation will be launched into the circumstances surrounding the acquisition of the Manta Lodge in Tobago?

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. Madam President, the Office of the Prime Minister is not aware of any issues related to the acquisition of the Manta Lodge which require an investigation.

Sen. Mark: Can the Minister indicate whether he is aware that the Chief Secretary of the Tobago House of Assembly has admitted publicly that no feasibility study was conducted by the Government or by the THA in the purchase of this particular asset?

Hon. S. Young: Madam President, I am not so aware, but even if that is so and that what Sen. Mark has stated is a fact, it does not require an investigation into the acquisition of the Manta Lodge.

Sen. Mark: Can the Minister indicate whilst this asset was purchased in 2015, now we are in 2021, no attempts have been made to refurbish or to get that particular asset up and running? Can the Minister clarify for this honourable Senate?

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

Sen. Mark: Can the Minister indicate who was the Secretary of Tourism when this particular decision was taken?

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

Sen. Mark: Can the Minister indicate whether Tracy Celestine was in fact the Secretary of Tourism when this decision was taken to purchase this particular asset?

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

EBC Election Documents
(Procurement Procedures re Disposal of)

30. Sen. Wade Mark asked the hon. Prime Minister:

In light of the recent discovery of polling cards and ballot papers from three prior national elections, can the Prime Minister advise as to the procurement procedures used by the Elections and Boundaries Commission (EBC) in its selection process of the company contracted to dispose of these election documents?

Is it the Acting Prime Minister? No, they do not know. To the Prime Minister. Sorry—

Madam President: Sen. Mark, you of all persons are well versed and should be well versed in the parliamentary proceedings.

Sen. Mark: My apologies.

Madam President: Minister in the Office of the Prime Minister.

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. Madam President, there is no fixed contractual arrangement with any company for the disposal of election documents or any paper waste of the Elections and Boundaries Commission. Instead, as and when necessary, New Age Recycling, formerly Ace Recycling, is contacted to collect the shredded waste of the Commission and dispose of same at no cost. In this case, due of an oversight, some of the documents provided had not been correctly shredded before collection. As soon as the Commission, that is the Elections and Boundaries Commission, became aware of the issue, they contacted the company to ensure that all remaining documents in their possession was satisfactorily destroyed.

Sen. Mark: Madam President, can the Minister indicate to the Senate whether this

process that he has described has been in existence for how many years? What period of time this process has been in existence where companies have been selected randomly; how long?

Hon. S. Young: Madam President, there was absolutely no indication on my part and it is completely rejected that companies are being selected randomly. Elections and Boundaries Commission—whether they like it or not—is an independent body and they as stated in this answer contact a company, New Age Recycling, formerly Ace Recycling, to collect shredded waste, indicating that they do their own shredding, and that Ace is the one who collects it and disposes of it at no cost.

Sen. Mark: Madam President, is the Minister aware that Grand Bay located in O'Meara was the company where all these ballots or some ballot papers were found on their premises? Is the Minister aware of this?

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

Sen. Mark: Can the Minister indicate whether this independent EBC is governed by established procurement procedures in selecting companies to dispose of ballot papers when they are no longer in use?

Hon. S. Young: The answer is yes.

Sen. Mark: And can the Minister provide us with answers as to the process involved in the selection of Grand Bay, the company that got US $5 million from this Government for that particular exercise?

Madam President: Sen. Mark, that question is not allowed. Next question.

Export Finance and Insurance Corporation Australia/GORTT (Loan Agreement Details)

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

As regard the recently disbursed sum of US $139 million, in relation to the loan agreement between the Export Finance and Insurance Corporation of Australia and the Government of Trinidad and Tobago for the construction

and delivery of two ferries and two patrol vessels, can the Minister indicate the following:

(i) the terms and conditions set out in the loan agreement; and

(ii) whether the agreement referred to at (i) will be tabled in the Senate?

Thank you, Madam President. May I put this question to the hon. Minister who is grumbling at the side? I want him on the mike. I want him at the mike. Do not grumble outside.

Madam President: Sen. Mark, and there should be no grumbling at all. Okay?

The Minister of Finance (Hon. Colm Imbert): In July of 2018 Cabinet agreed to the acquisition from Australia of two fast ferry catamarans to service the interisland sea bridge, and two patrol vessels for the Trinidad and Tobago Defence Force, the coast guard, to patrol the offshore areas of Trinidad and Tobago as follows:

One Incat 100-metre fast ferry vessel;

One Austal 94-metre fast ferry vessel;

Two Austal Navel Cape Class patrol boats.

Cabinet also agreed that the Government of Trinidad and Tobago pursue financing arrangements for the vessels through the Export Finance and Insurance Corporation of Australia, also known as EFIC. The terms and conditions set out in the credit agreements with EFIC for the financing of the acquisition of the vessels are as follows:

- The tenure of the financing facilities, 12 years;
- Interest basis, six months Libor plus a fixed margin of 2.1 per cent;
- The current effective interest rate is 2.34 per cent and the repayment structure is 24 consecutive semi-annual repayment instalments.

With respect to part (ii): Subject to the approval of Cabinet, the credit agreements can be laid in Parliament.

Sen. Mark: Can the Minister—

Madam President: Sen, Mark, before you ask the supplemental question, can you, for the record, just say the number of the question that you have posed to the Minister? You did not indicate it.

Sen. Mark: I posed question No. 31 to the hon. Minister of Finance.

Madam President: And now you can ask your supplemental. Thank you.

Sen. Mark: Madam President, can the hon. Minister of Finance share with the Senate what was the actual amounts borrowed by the Government of Trinidad and Tobago through EFIC for the two fast ferries as well as the two patrol vessels?

Madam President: Minister.

Hon. C. Imbert: Madam President, the cost of the patrol boats is a total of US 91.5 million; and the cost of the fast ferries: the In cat ferry cost US $72.977 million and the Austal ferry cost US $71.48 million. The credit agreement covers 80 per cent of the total funding.

Sen. Mark: Could the hon. Minister indicate whether the credit agreement which was recently laid in this honourable House would have provided us with a clear appreciation of what this 80 per cent amounts to for the both vessels?

Hon. C. Imbert: I do not know what you are talking about.

Sen. Mark: Is the Minister aware that credit agreements involving both the loan via EFIC for the purchase of the ferries were in fact tabled in this Parliament? Is the Minister aware of this?

Hon. C. Imbert: No idea what you are talking about.

Sen. Mark: Madam President, can the Minister indicate whether the entire US $91 million for the two fast patrol vessels were in fact loaned to Trinidad and Tobago by EFIC?

Hon. C. Imbert: Madam President, I thought I said that the cost of the two patrol boats was a total of US 91.5 million and the ferries cost 72.977, I believe, for the Incat ferry and US 71.48 million for the Austal ferry, and the credit agreements cover 80 per cent of the total funding. I thought I said that.

Madam President: Sen. Mark, your questions, you have asked all.

Sen. Mark: Thank you very much.

Integrated Social Enterprise Management System
(Completion Date for Digitization)

56. Sen. Paul Richards asked the hon. Minister of Social Development and Family Services:

What is the expected date of completion for the digitization of all grants and programs through the Integrated Social Enterprise Management System (ISEMS)?

Madam President: Minister of Social Development and Family Services. [*Desk thumping*]

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Thank you, Madam President. The Integrated Social Enterprise Management System, known as ISEMS, is an enterprise resource planning solution that facilitates electronic case management of clients of the Ministry and the wider social sector, as well as provides a single door approach to assessing social services. The solution will provide seamless interoperable and integration and will enable data and information sharing across the organization, and other Government Ministries and service providers.

At present, iGovTT, acting on behalf of the Ministry of Social Development and

Family Services, has successfully procured and entered into a contractual agreement with Fujitsu for the implementation of ISEMS. The project commenced in October 2020. The Ministry has envisaged that the expected time frame for completion for the digitalization of all grants and programmes through the Integrated Social Enterprise Management System is the end of fiscal 2021.

Madam President: Next question, Sen. Richards.

Sen. Richards: Thank you, Madam President. Thank you, hon. Minister, for the answer.

Virtual Performances by Entertainers
(Measures Taken to Address)

61. Sen. Paul Richards asked the hon. Minister of Tourism, Culture and the Arts:

In light of the reduction in live music performances in this country owing to the COVID-19 pandemic, can the Minister advise:

(i) what measures, if any, are being considered to further develop the production of virtual performances by musicians/artistes so as to assist the performers' livelihood; and

(ii) has there been any stakeholder engagement or collaborative initiative conducted to inform any of the measures identified at (i)?

Madam President: Minister of Tourism, Culture and the Arts.

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much, hon. Senator. The advent of the COVID-19 pandemic has reduced the artistes' ability to perform in the conventional way. This has resulted in the need to reassess and rethink processes for the growth and development of the culture sector in the challenging environment. The Ministry of Tourism, Culture and the Arts encourages musicians, artistes, to host virtual performances and create virtual events which utilize digital platforms under

COVID-19 protocols. These platforms provide artistes and creatives with the opportunity to export cultural assets to a global audience and can be monetized.

In light of the above, and with respect to part (i) of question, the Ministry of Tourism, Culture and the Arts has implemented a number of measures to assist musicians/artistes. These include a 50 per cent reduction in the rental cost of performance spaces at the National Academy of the Performing Arts, SAPA, Naparima Bowl and Queen's Hall. This initiative would provide artistes with the opportunity to use facilities for the production of virtual performances at reduced cost. To date, 37 artistes and organizations have benefited from this initiative since its implementation in July 2020.

The national registry of artistes and cultural workers provides benefits to artistes and cultural workers through incentives granted to companies. Companies sponsoring artistes' productions receive a tax incentive of 100 per cent for philanthropy and investments in the arts up to a ceiling of grants one million under the Corporate Tax Act. This will facilitate corporate sponsorship of nationals in the local fashion industry, audio, visual or video productions for the purpose of local entertainment and local production companies in respect of their own productions as well as for companies which sponsor art and culture.

The National Days Festival Fund supports projects and events that facilitate commensurations and celebrations at a national level, and in communities that preserve and promote the cultural traditions and values associated with our national days and festivals. The Culture and Creative Arts Fund supports requests by cultural organizations which promote the development and sustainability of Trinidad and Tobago's culture, art forms and expressions. Since the advent of the COVID-19 pandemic, several of the requests received under both funds have been for virtual events.

The Ministry continues to consider and support requests which are innovative and developmental in nature. Due to the restrictions and public gatherings celebrations are curtailed for numerous cultural events. In response, the Ministry provided sponsorship to cultural events such as the Diwali and Hosay Virtual Concert, the Soca in White Virtual Concert, and the Sans Humanite Extempo Virtual Showdown. These events have reached a large audience with the Diwali and Hosay reaching 20 million views. As part of these sponsorships, the Ministry ensures that there is a return on investment through brand logo placement, streaming of destination videos and on-air mentions of sponsorships and support.

With respect to part (ii) of the question, the Ministry of Tourism, Culture and the Arts has utilized traditional and social media platforms to create awareness among artistes and creatives on several of the initiatives identified. The managers of performance spaces under the purview of the Ministry of Tourism, Culture and the Arts have indicated that several artistes and cultural organizations have collaborated to produce virtual performances inclusive of virtual concerts, plays and shows as well as recording of same at the facilities.

Madam President: Supplemental, Sen. Richards?

Sen. Richards: In light of the Minister's answer, can the Minister indicate if creatives involved and who depend on Carnival for their income and have been significantly impacted, have been facilitated by the Ministry in streaming their content on the Ministry's website?

Madam President: Minister.

Sen. The Hon. R. Mitchell: Not on the Ministry's website, but they utilize their own virtual platforms. We have collaborated on their behalf with TTT as well to stream via the TTT online platform.

Madam President: Sen. Richards.

Sen. Richards: Is the Ministry willing to provide that sort of facilitation through the Ministry of Tourism, Culture and the Arts its newly launched website to artistes who wish to access that?

Sen. The Hon. R. Mitchell: Through the Facebook page, yes, we are willing to do that.

Madam President: Next, question, Sen. Richards.

Strengthening of the Digital Music Framework (Consideration Given To)

62. Sen. Paul Richards asked the hon. Minister of Tourism, Culture and the Arts:

Given the negative effect that the COVID-19 pandemic has had on the music industry in this country, can the Minister indicate:

(i) whether consideration is being given to strengthening the digital music purchase/streaming framework in Trinidad and Tobago, to bolster the music industry in the absence of live music performances; and

(ii) if the answer to (i) is in the affirmative, when will requisite legislation be brought to Parliament?

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much, Madam President. The Trinidad and Tobago Music Company Limited, MusicTT, is mandated to stimulate and facilitate the business development and export activity of the music industry in Trinidad and Tobago. MusicTT also provides industry wide strategic direction and plans for the development of the music industry, guidance and access to music education, and capacity development especially in the business and monetization of local music and protection.

With respect to the digital music purchase streaming framework in Trinidad

and Tobago, MusicTT has indicated its support for the strengthening of the enabling environment for recording artistes. This is inclusive of digital music streaming, downloads and subscriptions.

MusicTT has advised that it has commenced the implementation of initiatives aimed at strengthening the enabling as environment as follows:

- Education and awareness campaign for the Trinidad and Tobago international Standard Recording Code: This campaign seeks to simplify the management of rights when recordings are used across different formats, distribution channels or products. MusicTT has advised that the Copyright Organization of Trinidad and Tobago has been identified as the national distributing agency for the International Standard Recording Codes. This will assist in identifying music that originated from Trinidad and Tobago for digital purchase, streaming and distribution.
- Hosting of the RVRB Webinar Series: RVRB is MusicTT's first ever webinar series on the business of music. These webinars educate artistes on music distribution and leveraging intellectual property and metadata for revenue gain.

Further to the above activities, the Intellectual Property Office has advised that several major music streaming platforms are available locally to artistes for the commercialization of content including Amazon Prime music, iTunes, Deezer and YouTube. It should be noted that these are based on IP licensing and is private sector driven by market forces. To date, Spotify is not yet available in Trinidad and Tobago. MusicTT has advised that there is no legal impediment, however, Trinidad and Tobago's market is not large enough to be considered for entrance by Spotify. Consideration is being given for the Caribbean region to approach Spotify as a single market to lobby for the introduction of the streaming platform.

In respect of part (ii) of the question, MusicTT has advised that where gaps exist or there is a need for legislation to correct shortcomings, the company will work with the Ministry of the Attorney General and Legal Affairs and its Ministry, Ministry of Trade and Industry, to bring the legislation before the Parliament.

Madam President: Sen. Richards.

Sen. Richards: Thank you, Madam President. I do not know if the Minister can answer the question because I know if I am not mistaken MusicTT falls under Ministry of Trade and Industry, but can the Minister indicate if MusicTT has done an assessment of the impact of the Government stated cancellation of Carnival on the local creatives who depend on Carnival as a launch path for their products?

Sen. The Hon. R. Mitchell: It is under the Ministry of Trade and Industry. I cannot answer that at this time.

Madam President: Sen. Richards?

Sen. Richards: Finally, Madam President, can the Minister indicate if in light of his answer to the last question—you could answer the question—if the Ministry of Tourism, Culture and the Arts is considering creating its own platform like Spotify instead of depending on an international platform for our local artisans?

Sen. The Hon. R. Mitchell: They do need to duplicate what MusicTT does. MusicTT is specifically charged with the monetization of the music, local music. So no, we are not considering that at this time.

EVIDENCE (AMDT.) BILL, 2020

Order read for resuming adjourned debate on question [January 12, 2021]:

That the Bill be now read a second time.

Question again proposed.

Madam President: There were nine speakers already who spoke on the 12th of January including the mover of the Bill, the Attorney General. Sen. John. [*Desk thumping*]

Sen. Jearlean John: Madam President, thank you for the opportunity to join the debate. Madam President, Sen. Vieira at the beginning of his contribution on this very Bill quoted Baron Tom Bingham, who said:

"The right to a fair trial is a cardinal requirement of the rule of law.

First it must be recognized that fairness means…both sides, not just one."

And:

The—"trial is not fair if the procedural dice are loaded in the favour of one side or the other."

The hon. Senator did pose a question. He said:

"Are we loading the procedural dice in favour of one side or the other?"

Madam President, the Senate plays a role in ensuring that this dice is not loaded, the important role of one side or the other, because in our jurisdiction the majority of persons who are before the criminal justice system are not the rich, they are not the privileged; it is the poor, sometimes illiterate and underprivileged; it is the common man who cannot afford attorneys; it is those who are negatively labelled as stereotype because of the areas in which they live. Indeed, the people who will never get a seat on that iguana tail. Those are the persons in the majority who are going to be affected by this Bill, Madam President.

I made this point to make another one because it appears as if our Government is not interested in treating with the mitigating factors which deter from crime. Because just last week the hon. Minister of National Security was in this very House responding to a question, and he was speaking on a committee called the community recovery committee and he said the committee held

consultations in several areas including Beverly Hills, Sea Lots, Second Caledonia, et cetera. And he said they identified based on their consultations that there was the issue of employability of jobs, education and infrastructure.

The Minister is claiming that he needed a consultation to find that out, that people needing jobs in particular areas as a mitigating factor against crime. So, Madam, we ask: Is the dice loaded? So in looking at the various clauses in the Bill, in examining the various clauses, I looked at section 12A, that is the first one. There is an attempt, of course, to bring structured cohesion to basically standardize the manner in which evidence is identified, recorded, stored, presented, and that is not bad thing on the face of it if we are to ensure this dice is not loaded. The hon. Sen. Lutchmedial spoke about the difficulties encountered with lack of paper. Sen. Renuka Rambhajan spoke of black and white photographs and photographs printed on photocopy paper, and I can tell you two weeks ago I was called by a police officer asking if I had any almanac and diaries for 2021. I am still trying to pick up a few from little stores as I go along and that is not a hyperbole. It is the truth. You know yet in this amended Bill it places a heavy reliance on audio and video taping when they do not have paper.

So the fundamentals in terms of implementing whatever is being proposed in this amended Bill, the fundamentals are not right because if the Government cannot provide paper for the police stations as at now, how are they expected to implement videography in law as a part of the requirements of this Bill. I mean, yes, our hon. Sen. Vieira went on and said these are matters that need to be addressed, but it does not mean and that we have to criticize, to hold back or challenge this legislation. But again, we have to answer the question as to whether the dice is loaded. Because it means if we cannot have these basic things and the fundamentals are not right, then how is one going to move forward?—and I am

hoping the hon. Attorney General will talk about whether there will be a period—if this Bill is passed whether there will be a period of training and ensuring that the officers who have to or the practitioners will be able to get the required level of training to ensure that people are not denied their rights.

2.10 p.m.

Madam President, section 12A of the Bill in the "First description" and this talks about the first report of description of the suspect who has committed this act and what I am seeing here is they have put in law where this form, that it has to be filled out and there is again a heavy reliance on the procedures and as I have said that is not a bad thing, but, will it be done? But in addition to that, they have the distance the eyewitness was from the suspect and I am being told because, Madam President, you know I am not an attorney-at-law but I am a lawyer by *google.com* and I think that is sufficient sometimes.

The distance the eyewitness was from the suspect, the weather conditions, you know. A witness who is flustered, who has just witnessed a crime, is it that they can take in all of that, the distance from the eyewitness? Maybe this is done now but certainly I think that the priority should be on the person, the personal features, you know, whether the description of the person because that may be what they may have immediately in their head which can help the police officer in solving or moving along with his solving the crime.

So, Madam President, what I am saying is given the nature of the first description, it will be impractical to expect officers to get a first description from a witness as we seek to include (i) to (vii) as is placed on the Bill and which makes no mention of the physical descriptive factors such as complexion, hair, height, built and distinguishing features if any. So this should be placed on the form to be noted because all I saw at the back attached is the JP's form, I do not know, I

cannot recall seeing it even in the draft regulations whether they have such a form that is in the purview of the Commissioner of Police. So having of all of these things, I think Sen. Welch also made a point, creates an undue burden, an impractical and unnecessary burden on the police.

Madam President, the use of photograph, that is in 12B, where it says:

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

The suspect has no right to object to this procedure being used nor to the photograph being shown. There is no indication of the source of the photograph and what happens to the suspect's photograph if he is not identified. Should the photograph of the person not identified not be destroyed? Again, the legislation is silent on this.

And in section 12B(7) of the Bill, it refers to the Commissioner of Police having the responsibility of keeping the photograph used in the line-up. I mean, again that is putting a big burden and a lot of paper on this Commissioner of Police. Is it that may be somewhere in the station, it cannot be kept for ease of retrieve after? Because if the AG, the hon. Attorney General that is, wants to create a proper process, then create a proper process that really takes into account the practicability of the enforcement and the implementation of this process.

Madam President, in section 12B(8):

"Photographs shall not be used to establish the identity of a suspect who is in custody."

And I have been told that this Bill sort of takes some of its own—it reflects what is done in this PACE UK 1984 Bill and basically, it says the photograph shall not be used to establish the identity. This should be compared with PACE UK Code D paragraph 3.3, in my reading, which states that a witness:

"…must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures…if…the identity of the suspect is known…"—to the police and the suspect is—"available to take part in…"—a video identification.

It should be noted that photographs being shown to a witness may encourage the witness to think it must be one of those persons because they are thinking if this photograph is shown, maybe that is my guide and I probably ought to identify him. And I think in ensuring that people's right to a fair trial is not compromised, we have to look at these things.

Now, Madam President, section 12F "Rights, consent and caution". There continues to be reference to everything being noted in an approved form. Now this needs to go in conjunction with the station diary because without this, we run the risk of police saying that the suspect refused all identification procedures. Because when I looked at the comments from the Judiciary, they made the point that many times when this is asked, the report on—what is entered in the station diary, when it is requested in the court, many times the police do not have it and they are wondering whether they do not have it or they never had it or whether it is a direct ploy because they do not want to account.

Madam President, and the comments from the Judiciary went on to claim that—because sometimes these matters are being heard 10 years after and this was taken straight out of what the Judiciary has submitted to this Bill. If it is that a matter is taking 10 years, would it not have served our purpose better to treat with the length of time cases take from the moment they are initiated to when they are resolved, that is? Because having justice and having that the dice is not loaded one way or the other, always means justice must be on time. So we are here talking about moving forward and embracing the technology which is all well and good

but if people are waiting—and when the Judiciary say 10 years, they are putting the best face on it. You are talking about 20 years and 25 years that people are waiting on their justice.

And I think what the Government should be working on really is this bottlenecking that you have where people have to be sitting wherever, in these cramped facilities and waiting on justice whenever it comes. I think the resources because the police budget was cut by maybe 30 or more per cent in the last period of budgeting and whatever money that is allocated, well it should be spent in fixing the system. So asking the police to do more without the resources really is a case in futility. I cannot see it. I mean, I wish the Attorney General well but I cannot see if it is you are in a paper-based system, things are not working well now, how it is going to be working better with what we are being asked to approve here.

Madam President, I am moving over to section 12Y of the Bill, kind of skipping a few, where they are asking in 12Y, it says:

> "(1) A video or audio recording of the whole or part of a witness statement shall be admissible as evidence.
>
> (2) Where a video or audio recording is admitted as evidence pursuant to subsection (1)…"

And in subsection (4), that is 12Y:

> "Where direct oral testimony referred to under subsection (3) is given, the witness shall not be asked to address any issue…"

I believe that this disqualifies this Evidence (Amdt.) Bill immediately and really and truly, this needs a special majority because I cannot understand how one can just ask a witness to give evidence in whatever circumstances and then say that:

> "Where a direct oral testimony referred to under subsection (3) is given, the witness shall not be asked to address any issue in examination-in-chief,

cross-examination or re-examination that in the estimation of the Court has already been adequately addressed in a recording under subsection (1)."

Madam President, prior to coming here, I saw where Sen. Welch had submitted his amendments and he actually recommended that this subsection be struck out, be just eliminated and I think that is very good advice quite frankly. Because if it is that you are relying—let me back track. I suppose when our Sen. Lutchmedial saw this, that is what she thought was ad hominem, which was disproved by Sen. Sagramsingh-Sooklal. But it appears as if, and the Attorney General in the *Hansard*, I looked at it again, speaking about complex matters before the court, as if the dice is loaded. You get the impression that the Government is legislating in the way I did Maths in school where I would look in the back "ah the textbook" and see the answer and then I work it out. You know I was not good at Maths as our goodly Sen. Lutchmedial. She is an island scholar. Got a one in Maths. I had to look for the answer and then I will work to suit. So I get the sense that this is what is being done here.

Because I cannot understand that, I mean, it is still the case of course that you are innocent until you are proven guilty and you have a right to a fair trial. So if it is the Attorney General wants this to be law in Trinidad and Tobago, I believe strongly that this particular section needs a special majority because this is really infringing the rights of people that somebody can go and sit down and be a witness somewhere in some rarefied environment and then this is just placed and projected in a court of law that is just and fair and a decision is made about somebody's liberty or lack of liberty on the basis of that. You see, it has no alternative facts as opposed in law.

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

Sen. J. John: Thank you, Madam President. As Sen. Sagramsingh-Sooklal had

made the point, she said, you know, she will be in a conference with the clients and then they will be good and talking, they are okay but some senior counsel will come and "mash dem up". Well that is her words "mash dem up" but that is what cross-examination is about because you have to probe and that is why one that has to go to the court and face their accused because who alleges must prove. And if it is as is being done on some political platform, all kinds of allegation and so on and this Government decides who is innocent and who is guilty, I want to refer them to a very famous case in the State of California v O.J. Simpson where a famous attorney said if the glove do not fit, you have to acquit. It is as simple as that. You cannot have alternative factors and if it is not working out, you will decide that you will put a man on a videotape who you cannot cross-examine for whatever reason, I am not sure that I saw it, why he cannot be cross-examined. Maybe if we gone on, there is another section where you talk about special measures and so on for vulnerable people and one could understand some bit of that, of vulnerable people, they can be a witness via video link, et cetera.

But if nothing is wrong with this person and let us suppose as was listed in the Judiciary's response, they take 10 years or 20 years and this witness unfortunately dies, what happens then? You are there with this videotape and he is there safe in the arms of Jesus and it is you to catch, you know. So I do not understand that, Madam President, and I do not think this is something that we can agree with.

And I do not know if I have any time. There is another, I think it is 12AI where:

> "The Minister…"—meaning I think the Minister of National Security—"in consultation with the Director of Public Prosecutions and the Commissioner of Police may make Regulations—"

Madam President, I do not know where the Government is going with this. It means we come here and if this Bill is passed, then what happens? The hon. Minister of National Security, et cetera, et cetera, goes off and they made their regulations and—which never comes back to this Parliament and we see what is happening with the Public Health Ordinance where every Monday morning, you will see a new thing coming out. Even here when we came to debate the amendment, the following morning, the Government had to change it again because one did not bring the regulations with the legislation. So I am urging the Government should this piece of legislation be passed, that they bring the regulations to the Parliament for the scrutiny of Parliament because, you know, we have to be sure that this deck is not stacked one way or the other.

So, Madam President, sometimes change is slow. I agree, sometimes too slow based on what the Government wants but in this week of the celebration of the hon. Martin Luther King who said:

"The arc of the moral universe is long, but it bends towards justice."

It means real justice. It is not a stacked deck where you believe that you can put somebody in a videotape in some Hollywood production and come and persecute a citizen of this country. Madam President, it is wrong and the Opposition cannot and will not agree with that. Madam President, I thank you for the opportunity. [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Madam President. As this is my first contribution in the House for this year 2021, I bring New Year greetings to all my colleagues in the Senate and to you, Madam President, and to the entire nation of Trinidad and Tobago. It is a new year and I anticipate that it will be a difficult year but I trust that we will all make every effort to do our best in this august Chamber. Madam President, thank you for allowing me to contribute to this Evidence

(Amdt.) Bill, 2020. I first want to commend the legislators for embarking on this journey to a more technological approach of collecting evidence. This is a timely move given the changing times and would require updated and more effective procedures.

Madam President, my contribution today will be brief and crafted on two overriding concerns. The first would be the effect that the Bill would have on the wider population and it is keeping in some of the contributions that have already been made and the second is the availability of resources within the arm of the police service to carry out the changes that are going to be required as a result of this Bill.

I was incredibly pleased to see that so many stakeholders passionately contributed to the development of the document here. The Attorney General would have mentioned in the Special Select Committee the number of persons that were involved in the discussions and I did listen to some of them. The piece of legislation would result in significant change in the way our lawmakers operate. I implore the Attorney General that we continue to look carefully during the committee stage at the recommendations submitted on this Bill to make sure that any ambiguity or loopholes or unfairness is avoided in the processes that are going to be put in place.

It is my understanding based on the research conducted and from listening to the stakeholders that some of the amendments are consistent with the common law principles and general practice and procedure. In that regard, the amendments will create an even more uniformed and standard approach. Nevertheless, as I said before, there may be areas for change, and as Sen. John just noted, already some amendments have been put forward and in his presentation, the Attorney General did say that he had some amendments to put forward because this is going to be a

Bill that will have far-reaching impact on how justice is carried out.

There were two recommendations made by the Law Association in their document captioned "Comments by the Law Association of Trinidad and Tobago on the Evidence (Amendment) Bill 2020" that was circulated to us. One of the recommendations was related to section 12G and the question is asked as to what happens if you have two suspects of similar appearance, the number of moving images, they ask that it not be reduced to six as was done in section 12J in the Bill before us. The Association went further to explain that the purpose of showing at least nine photographs before identifying a suspect was to ensure accuracy of identification as the more persons the eyewitness is shown and eliminates the more likely the one who is fingered as the perpetrator, it will be more likely that that person would be the correct person. The rationales apply similarly for identification parades in 12K where the same reduction was made for two suspects of similar appearance. As such, if a greater number ensures greater accuracy, the question is: What is the rationale for reducing the number of persons if you have two suspects that are similar? That is one question I would like the Attorney General to deal with in section 12J.

The second is in reference to the process of involving the use of photographs to be recorded by video and that a Justice of the Peace be present. This will assist in dismissing any suspicion as to whether the person making the identification was forced or coerced to selecting a photograph or whether there were any unusual eventualities. For example, if a person making the identification was asked: "Are you sure it was not this person?", when viewing a particular photo. So therefore, the recommendation is that there should be a video recording of this identification procedure so that it is clear that there is no coercion.

I want to highlight that it was stated in one of the legal advisory's

submissions that failure of a suspect to provide representation within a certain time can be detrimental to them since the State can select a Justice of the Peace to represent their interest. There is a great responsibility in addition to others such as the one suggested in the foregoing recommendation. Therefore, the question—I want to make mention of the call made by the President of the Justices of the Peace Association of Trinidad and Tobago, Mr. Don Asgarali, to discuss the training needed by members of this association with the Attorney General. He did mention that the justices of peace would require training and this is something that the Attorney General should make sure that is done.

Madam President, if we have persons who are expected to participate in processes that we are legislating for but are not briefed substantively or sufficiently to understand why and how the processes work, we are inviting errors and we are inviting injustice to the people. Sen. Vieira, in his contribution, hinted towards the training in the criminal procedure and practice in the third public meeting and I endorse this as an earnest consideration for the relevant parties.

Madam President, I do not wish to be labour the concerns raised by some of these stakeholders in the public meetings held on this Bill but I must state that I am wholeheartedly in agreement with one of the recommendations made by the senior counsel of the Legal Aid Advisory, that is Mr. Gilbert Peterson, particularly recommendation made for the defence to be allowed as part of the disclosure regime to view photos used in the ID process at a fixed time, either at the police station or the DPP's office. This will ensure fairness to the defence and also confirm that there was adherence to the requirement stipulated for the nature of the photos to be viewed. Therefore, I endorse that this is a matter for further consideration in the provision under section 12B.

The second concern I have is about the operationalization of the provisions.

Madam President, the first point I wish to highlight under this head is regarding the storage of evidence collected. I seek clarification on the place and procedure of storage of evidence. We cannot pretend that evidence does not go missing and we want to ensure that particularly given the fact that this is a new way of collecting evidence, we want to make sure that the evidence is also not only stored properly that it would not be tampered with and also evidence would not be leaked. In discussing possible leakage of such information, some may say that since the people are suspects in a particular investigation, they are guilty, but we cannot assume that because the law says that you are innocent until proven guilty.

I do appreciate that there was consideration in section 12Z that:

"(1) Any person without lawful authority—"

who—

"(a) possesses, plays or offers to supply a recording of an interview under this Division to any person; or"

who—

"(b) copies, tampers with, modifies, erases or publishes a recording of interviews under this Division."

—that there would be a fine. However, before we can delve into the details of this penalty, we need to discuss appropriate provisions for proper storage with sufficient checks and balances to ensure that there is not tampering of such evidence while in custody or that it can be taken out of custody and land in the wrong hands. Such tampering will no doubt taint the principle of fairness and will result in injustice. In a similar vein, when looking at the construction of the penalty drafted in 12Z, I must ask for a bit of clarity as to the circumstances in which lawful authority be granted to copy, tamper with, modify, erase or publish a

recording of an interview under this division. Because it was said that permission could be given by, I think, the Commissioner of Police. Under what circumstances I am asking.

The second point under this heading deals with the availability and allocation of resources to operationalize the provision of the Bill. Sen. John just made a strong point about that and I think others would have done previously in their contributions. Issues related to ensuring that within the police force, there are enough resources. We must ensure that there are enough video recording devices, not just in terms of numbers but in terms of where they are placed and in other words, in each division, that there must be sufficient police stations where the recordings are done and that the persons who are doing it must have appropriate technological qualifications to support the processes where the video technology is employed or required to be tested for authenticity. So training of the police officers is important.

Madam President, this Bill seeks to bring us into the modern world regarding the admission of evidence and it is to be commended. We must ensure, however, that the final product is capable of execution and is in the best interest of the people. I thank you. [*Desk thumping*]

Sen. David Nakhid: Madam President, thank you for the opportunity to join this debate on this Bill entitled the Evidence (Amdt.) Bill, 2020. Madam President, I have used my one-week hiatus to do some reading and I compared this version of the Bill with the version that was laid in the Parliament in 2018. Having made the comparison, I would like to ask the most obvious question. Outside of the provisions dealing with witness and anonymity, what has changed between this Bill and the last version of it?

2.40 p.m.

The last time this Bill was introduced, if I am not mistaken, a special majority was required. So apart from witness anonymity, what has been removed from the last Bill that would make this Bill no longer require that special majority?

Madam President, let me point to one of the reasons why a special majority is required for this Bill. This Bill is basically mirrored on the English Police and Criminal Evidence Act, or PACE. When PACE was introduced in the United Kingdom, the idea was to have it replace the Judges' Rules, whilst at the same time codifying much of the jurisprudence on the issue of treatment of suspects in police custody, identification procedures and the taking of interviews and confessions.

But in doing so, Madam President, the UK had a section 76, which dealt with the test for admitting confession evidence; a section 78, which dealt with exclusion of other types of evidence and also included exclusion of confessions, which could not be excluded under section 76; and to preserve rights and safeguards developed over the years under the Judges' Rules. They passed a section 82(3) to expressly preserve those aspects of the common law not caught by PACE. So there were safeguards.

This Bill before us does not make specific provision for the admissibility of confession but has an omnibus clause with the only criteria being fairness. And of greater concern, is that we do not have anything resembling section 82(3) of PACE to preserve the common law. So in the absence of any clause in this Bill to expressly preserve the protections developed by the Judges' Rules by the common law through the years, then it is obvious that it is subject to implied repeal.

So all of the safeguards developed by the judges over the years used in the Judges' Rules will be lost. All of the due process rights and safeguards to ensure fairness will be lost, gone. So if we are taking away those protections which ensure a fair trial, then how do we not need a special majority to do so, since what we

would be doing is abrogating rights, which is inimical to the Constitution?

Madam President, I have had no in-depth legal training but when I look at this Bill before us, I am in similar company it seems. I have identified quite a few clauses for concern with this Bill. And although they are on the face of it, what might at first glance appear as a handful of improvements, these apparent improvements distract from measures contained in this Bill, which are open to abuse.

Madam President, I was able to do, quite fortunately, in my last semester at university in Washington, D.C., an internship at an all-female lawyers firm, and it allowed me to gain some perspectives on due process and fair trial rights and the importance of constitutional safeguards. As a result, it must be a cause for grave concern that there is a trend, which started in 2016, and which continues to this day, a trend whereby we are bypassing the Constitution and the safeguards that exist in the Constitution. It started with the amendment to the SSA Act, then the Marriage Act, most recently the Procurement Act and now this Bill.

Madam President, before I get into those aspects of the Bill, which causes concern, for good measure, allow me to say that I have very little concern with that part of the Bill which deals with ID evidence, identification evidence. In that regard, the work of the Special Select Committee must be commended. I think a good job was done. My major concern with respect to identification evidence is similar to that expressed by preceding speakers, whether we have the resources to make this work and in that regard, allow me to express my deep concern with what I read recently about scholarship winners not able to find work.

Madam, we can use this opportunity to make use of our valuable human resources. So I am perplexed to hear on the one hand that we have too many lawyers to the point that some are driving taxis and then hearing that the Office of

the Attorney General and the Office of the DPP are short staffed. So by way of suggestion for the hon. Attorney General and to kill two birds with one stone, if we have these scholarship workers working with the Criminal Investigations Department in every division, we might see greater compliance with rules and regulations, which might turn or translate into more convictions, helping the poor conviction rate that we have.

You see, Madam President, I have come to realize that we have been passing a lot of laws in this Parliament. And while we have the legal framework in theory, the reality, as so many of our former speakers stated, is a very different story. By way of example, when I watched the contribution of the Attorney General, I heard him make reference to a national forensic DNA databank and I have to ask the Attorney General whether he is aware that there has been no DNA analysis taking place at that Forensic Science Centre since January 2018.

Madam President, I would not call the name of the case in Parliament, for obvious reasons, but I will pass a note across the aisle so that the Attorney General would have the evidence of what I am saying. We heard about a virtual court hearing and heard a Chief Magistrate express a total shock when the analyst who came to give evidence told the court that the machinery has been out of compliance since January2018. So this is not a hearsay story, Madam President. This is direct evidence that while we would like things to be different, in reality they are not. And this not an isolated occurrence. It is apparently endemic across the entire criminal justice system and beyond. So that is why I was a bit disturbed when I heard the hon. AG say that there are provisions for partial proclamation of this Bill when it becomes law. Because we had electronic monitoring legislation and it took more than five years to operationalize, and I am still not certain that it is being used.

So I would like the Attorney General, when he is wrapping up the Bill, to tell us which parts of the Bill would be partially proclaimed and how soon thereafter would other aspects of the Bill be proclaimed. I am particularly interested to hear whether that part of the Bill, which deals with the videotaping of the both ID parades and confessions when people came first, and if not how soon can we expect these parts of the law to become a reality since these are the things that affect the common man on both sides, as my hon. colleague Jearlean John said before.

Because it has come to my attention that audio and audiovisual interviews of suspects have been used in evidence before, without the need for this legislation. So that it means the police should already have the equipment up and running, from minute one, ready to go. I understand that video recorded ID parades have also been admitted into evidence in court, right here in Trinidad. So that I hope we can again hit the ground running. And I cite the case of the DPP versus Shervon Toussaint. But again, Madam President, even if the police have all of the equipment, there is no guarantee, in my mind at least, they will use it. Because there are no real sanctions if they do not.

In fact, Madam President, I am quite disturbed by the proposed section 12Q of the Bill dealing with interviews and oral admissions. Section 12Q(2) gives the police an opportunity to avoid the strictures of the Act, and it reads:

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

Madam President, why would it not be reasonably practicable to record a confession or interview a suspect? This allows the police an excuse to not bring what is the best evidence, which may be detrimental to the accused and result in unfairness. The police shall have no excuse. They should be provided with the

equipment and not be given any opportunity to depart from what is best practice.

In fact, I am even more disturbed by section 12Q(6) which states that the interview is to be taken in writing if it is not reasonably practicable to be recorded by video or audio. This allows the police to come into court and give any number of reasons why they could not record an interview or confession, either by video or audio. So we are back to square one.

In fact, Madam President, I am told that a homicide bureau of the police service has been equipped micro cassette recorder since 2001, and only in one case, the State versus Daniel Agard, has audio recording been used. So what really is the sanction for not making use of what we are going to enact? The possibility of the evidence being excluded is not an effective sanction in my mind. It is like throwing the baby out with the bath water, Madam President.

So again, I have a light concern with section 12T(2) which is open to abuse and it can result in unfairness to the accused. You know, where the interviewee, he objects to the video and the audio recording and then the interviewer turns off everything and writes the rest of the interview. It is just too loose, Madam President, it is just too loose.

I can speak, to be honest, to my experience in Lebanon, when I advocated for African players I was brought in on a case of sedition almost, and they tried to write it down in Arabic, and you know in Arabic, as the hon. Attorney General would know, one character can make a difference, one character, and they tried to do that. So if I was not alert to it, the writing down of these things can be very, very detrimental to a defendant.

Similarly in section 12A(h), can the Attorney General advise as to the justification for removing the judicial discretion in this instance? The use of the word "shall" is mandatory as we know in interpretation. And "may" gives judicial

power a bit more latitude, and this is important. The police are equipped with body cams but they outright refuse to use them. This equipment is for the protection of both the police and the citizen, but we continue to have police involved in shootings and have to rely on footage from private citizens. So unless we add or strengthen existing sanctions to ensure that these measures work, then we are blowing smoke in the air, Madam President. We will have the law in place, the equipment in place and they may end up as useless as the procurement office.

Madam President, with respect to that part of the Bill, which deals with confession evidence, I have some concerns which I will share with you very briefly, since I would like to get into some weightier matters if time permits.

I know that we are replacing the Judges' Rules and all of the jurisprudence that goes with it. And I understand that Judges' Rules are somewhat anachronistic and change is welcome, but here is my concern. The taking of a confession is being governed by statute. What happens when there is a breach of that statute, when the dictates of that statute are not strictly complied with? So I sought the advice of a few trial lawyers and I am told that there are several avenues for exclusion of confession evidence, some of which also applies to ID evidence and other types of evidence. I find it a bit awkward that we might be faced with a solution where the police might be in breach of a statutory requirement and the judge having to say: Well, in spite of the police not following the law, or put another way, the police actually breaking the law, but the judge would like to still admit the evidence. In my mind that places the judge in a rather invidious position.

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

Sen. D. Nakhid: Thank you, Madam President. I am also concerned that the prosecution would seemingly be able to rely on the video recording as evidence and the accused does not get the chance to cross-examine the persons who played a

part in obtaining that confession. And there is the notorious case of the Central Park Five in New York. They had video recorded confessions, although DNA evidence later showed that they did not commit the crime. They were induced and coerced to do so.

So this shows why, in my view, it is important to have all witnesses who played a part in the taking of the confession available for cross-examination, because no one knows what transpired before the confession was taken or the treatment of the accused prior to taking that confession, either by way of threat, of unpleasant consequences, or inducement.

Madam President, since I am left with little time—Madam President, I am concerned about removing judicial discretion, as I see in 12Q (11) and 12C(5), parts of the legislation being expressed in mandatory language. When we say the evidence shall be admissible, it is clear that the discretion of the judge is removed. Should we not use language which recognizes and preserves judicial discretion? So I will move—Madam President, really and truly, I have to put on record that 20 minutes is not enough for us to discuss this. But anyway, I close by pointing out in brief, Madam President, the judges have been using the common law and their inherent jurisdiction to ensure fairness without the need for many of these proposed amendments, without being restricted by the four corners of a statute.

Let me itemize briefly for the Attorney General, what the courts have used without the need for statute. In a matter of CCTV, we have the State versus Robert Leacock. Special measures, we have State versus Apollos Alexander, 2014 trial, and Barry Alfonse in the 2011 trial. Video recorded ID parade, we have the State versus Shervon Toussaint. We have in the audio recorded, for confession evidence, the State versus Daniel Agard.

I make this point in closing, because as I understand it the judges true

inherent jurisdiction have employed all of the measures that I just outlined without the need for legislation. So I have to ask since we have no evidence of abuse or misuse brought by the Attorney General, what is the justification for enacting a statute which can have the effect of tying the hands of judicial officers who, up to this time have succeeded in making use of many of the measures we now seek to enact?

Madam President, in my view, the language is too loose, it actually places our judges at a disadvantage and as my hon. colleague, Sen. Jearlean John said, we absolutely reject this. I thank you very much.

Sen. Dr. Varma Deyalsingh: Thank you, Madam President.

Madam President: Sen. Deyalsingh, before you—okay sure.

Sen. Dr. V. Deyalsingh: Thank you, Madam President. Madam President, I realize that crime continues to plague our nation, despite the best efforts of the Minister of National Security and our Commissioner of Police. And to deal with crime this piece of legislation would help us in a certain degree, but then we also need to tackle the social causes of crime too: poverty, teenage pregnancy, drug use, unsupervised youth. So, with the COVID economy and with the fact that that the allocation to the police service was also diminished, we see any sort of fight against crime is a little more challenging.

I think, Madam President, the Minister of Social Development and Family Services has a greater part to play in this regard, of preventing a new generation of criminals. You see, every generation is getting younger, more vicious. I see little skinny teenagers carrying guns heavier than themselves. So we have a society who have nurtured, pampered and created some of these criminals. So we now have to put legislation in place, put programmes in place to help the new criminal element from coming; the younger ones coming to the forefront.

Also we need to set examples for the present criminals, and I see this piece of legislation would help us to set some examples to those persons who are looking on; the youths who see gang leaders who are flaunting their bling, their chains, their money, the youths who see that gang members, a few gang members wreaking havoc in our nation, you know even meeting, as they say previous Prime Ministers and even the Commissioner of Police. So this Bill will hopefully, if we have the evidence that could be presented in a way, this Bill could hopefully send a message to the youth there that we are now serious about getting you in jail where you belong. We are now serious about getting the criminal activity which seems to be the only industry thriving.

Madam President, there are new commodities in our land now. High grade marijuana still entering the land. Where are people getting the US dollars to bring these in, the guns, the crystal meth? So I am happy to see recently, the assets of a deceased drug person seized by the court. So kudos to the Attorney General and the previous Attorney General Ramesh Maharaj who first introduced legislation to that. Therefore, I hope the fact that we are dealing with this evidence here, admissibility of evidence, we are looking at certain factors where police procedures in supply, police procedures are set out in law, video evidence is put in a way that evidence, what could we use, what we cannot use. And even we are looking at the eyewitness; the whole idea about the eyewitness.

But Madam President, I am not too impressed with the whole eyewitness scenario. I want to just quote, if you permit me. There is the Innocence Project, which, in the United States actually looked at cases where people were exonerated. Since 1989, there was what we call the DNA exoneration, where you had eyewitness accounts actually showed that persons were in jail but when they reviewed the DNA evidence, 367 DNA-based exonerations were found that went

against the eyewitness.

So therefore, when you look at those persons and the average number of years served, it is 14 years most persons served and it affected about 140 persons. So definitely, this report looked at the miscarriages of justice. They mentioned eyewitness misidentification as one, also forensic science not being properly done or unvalidated, also false confessions at admissions, government misconduct, informants, inadequate defense. So it begs the question that even though we are concentrating on the eyewitness report, we may have to rely more on the DNA evidence. And as Sen. Nakhid did mention, we need to actually get this DNA legislation going.

And Madam, what I may say is that the section looking at video evidence and the CCTV cameras, I think is much needed. Because you know, if you look at the level of crime we have, if you look at social media, you would be seeing individuals going into places and committing crimes, committing robberies. You know, some of those, when you look at those, it is difficult to identify them. So even though this piece of legislation looks at eyewitness, looks at identifying, even looks at the CCTV cameras, most of those bandits now are more masked up than the persons who attended Tyrico or even Queen's Hall. Those bandits are coming with masks. So how are we going to identify them now? Because the eyewitness would just be seeing a hat and a mask. So we have to depend on other evidence.

Most of them however, and it is a suggestion, I am hoping that the Minister of National Security would look at. The bandits would go. They have on their masks, so it is difficult to visually identify them if you are an eyewitness there or even from the cameras. But they go, most of them go without gloves. So the fingerprint experts need to be there. The DNA evidence there, they may be dropping certain things, needs to be there.

Plus, I must say I was happy that the CCTV—evidence could now be brought into court, but you see we also need a wide spectrum of camera surveillance in Trinidad and Tobago. The eyes have to be all over.

Madam President: So, Sen. Deyalsingh, if I could just give you a little guidance. The Bill is very specific about certain interventions and you are talking a little outside of the remit of the Bill. So I would ask you to direct your contribution to the Bill itself please. Okay?

Sen. Dr. V. Deyalsingh: Thank you, Madam President, for your guidance. But Madam President, I just wanted to bring the idea that even though the Bill has looking at eyewitness, it is not that reliable and we may need to go a little further in this aspect of looking at the reliability. If we have to put a dent in crime, we have to say yes this legislation is needed but we need other things also.

So I must say that, Madam President, when I looked at the Bill and I heard the contribution of other persons, I was very happy when I heard the contribution of Sen. Hazel Thompson-Ahye when she gave a real-life experience where her lawn mower was stolen and her husband actually went after it. But I may also, if you permit me to talk about a real-life experience please. Around December my wife was shopping. I was in Valpark and she got an ATM machine and she put it in her trunk in a brown bag and in five minutes when she went to the grocery somebody actually broke into her car, and got the machine, thinking it was probably money. Now the thing there, police responded quickly. We had the camera footage but the persons had on masks. They were able to trace the car but it was an identification plate that was false. So even though we had video footage, even though you had the ability to look at those individuals, we still fell short because we did not have that parameter outside to follow these individuals in the car.

So when I looked at the Bill and I see the Bill has 12 clauses, and looking at the identification of suspects, the electronic recordings of interview of suspects, provision of special measures to allow testimony to vulnerable witness. And I am very happy that that aspect of the Bill was there because you find that sometimes victims, you know, are re-traumatized when they have to face their perpetrator in court and this especially happens in cases like rape cases and what not. And we have already seen that, in cases dealing with children, the law is already there to assist children for not facing certain abusers. So it is not to say it is new or novel legislation we are getting. We are getting pieces of legislation that have already existed. And I looked at the amalgamation of existing legislation of the identification.

Looking at the legislative framework given to the powers of the police from the Judges' Rules, which was produced in the context since September1994, and I remember the late Aeneas Wills and my father Lennox Deyalsingh talking about Judges' Rules. They were Assize Court Judges then. But here you have now the police are able to look at the Judges' Rules, Code D of the Revised Code of Practice of Identification of Police, like the PACE Act from the United Kingdom and also Blackstone Criminal Justice Act, the Turnbull guidelines. All these guidelines are now put in one place and I support it. Because what it means now, the police officers would have guidelines that I think they could now go at. And also I am hoping that when those police officers are doing their training, they could be trained adequately in the proper identification process. Because remember those were issues where court cases would have fallen short, because of the identification processes.

What I might say, Madam, the different divisions that I have seen here, I have looked to see, here we are trying to protect the eyewitness in certain

instances, which is good because I am thinking you have vulnerable witnesses, you have the fact that, you know, some persons may be scared to come to the courts and you have that protection given to the witnesses.

3.10 p.m.

You also have protection in terms of the separation of the identification officer and investigation officer which I think is in a good direction, because you see, mischief was sometimes created before. I remember a case where an investigation officer went after his wife's boyfriend and he was the investigating officer, and he was also the identification officer. So the parameters for the identification parade as, you know, set out with different priorities, I think it is very welcome to go from one to the other. The fact that you have—I mentioned the identification officer being different.

And I am saying, Madam President, we may have to reach a level where we have a team of identification officers who just do that, go to different police stations doing just the identification. So they are experts in putting their witnesses, they are experts in actually having the photographs, they are experts in that field, because sometimes you may have another officer in a station making mistakes. So we would have to reach that level where we would have that.

So, I also looked with this COVID situation, and I realize it is sometimes difficult for an ID parade. If you have 12 members of the public standing next to each other, it is against the COVID Regulations. So I am thinking this whole idea of having the video identification is needed in this time. And I could sometime envisage a world, an e-world, where sometime there are no more missing diaries. Because you know, missing diaries, missing pages, was something that, you know, we had or still probably may occur, I am not too sure. But you know, a drug don could pay someone to even put a virus in our computer system. So, as mentioned

by Sen. Dillon-Remy, we have to ensure that we have hard copies of whatever computer documents we have. Protection that, you know, it would not be able to be wiped out, because that is now how the evidence would tend to be in the future.

I also looked at, Madam President, the fact that clause 9 of the—you know, dealt with the consequential amendments necessary in the light of modification of section 40, which computer admissibility of evidence for civil matters decide support because we know a lot of crimes of fraud actually deal with a lot of computer evidence. So, I think we are keeping up with times with this Bill.

Clause 12 deals with the introduction of the FIU Unit and it actually helps the law in that part, and I know the Attorney General is at pains to try to get the FIU moving and following the money and I think this again, works in with this.

Section 12G(3), Madam President, looked at a minimum of nine hours' notice to be given for someone when they are to deal with the, you know, when they are given notification for the conduct in terms of the identification procedure. I am thinking we may need more time with that because you see, if somebody is held four o'clock they are given a notification that we are going to do a line up tomorrow; four o'clock you may not be able to get your lawyer's office open at that time, and if nine hours is lapsed, I think now it will be a disadvantage. I say it is more reality 24 hours as I am saying we could give the time for the individuals.

I am saying, Madam President, if we have a country where you have station diaries pages disappearing to thin air from police stations, and also you know, we have to ensure that if we are giving video evidence, I am wondering what is the possibility of individuals having their phone and being able to, since money is a problem most police officers have phones, what is the practicality of telling them now we could probably use your phone to videotape the whole process and then, you could put it into the computer to at least save it on a hard drive.

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

Because I am saying with these economic times we may not have the ability—

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

Sen. Dr. V. Deyalsingh: Thank you, yes, thank you. We may not have the ability to have video machinery at different stations.

And I have had persons coming to me, you know, members of the public saying that, you know, they are traumatized when they have to go to court. Members of the public sometimes come to me trying to get an exemption from jury service when they figure that they have to go to court, they may be dealing with some criminal element which may—who may somehow reach to them. And you find that sometimes we may have to think of a system where we also have to protect members of the jury, not just the eye witness, but probably we may have to look in the future where we have the juries screened by the attorneys and remain anonymous throughout the proceedings. And you know, just name it, "jury one, jury two", where they are not being seen or known to the public. This is something if we are looking at this legislation to protect eyewitness, if we are looking at this legislation to protect others, you know, we have to think about the jury also. And as I said, I welcome this, I see the whole idea of video footage—car-cams now could be helped in car accidents.

Section 12Z creates the offence of a person who disseminates copies modifies or erases recordings in the interview. This actually takes into account that "ay", if diaries could disappear, it punishes those individuals who will interfere with the evidence. And I see at least you know, the fines are there, heavy fines, that you know, at least the AG understands our culture. You know, some diaries could go missing or some evidence could fall into the wrong hands.

So, I must say that this legislation is something I would support and I think

that in this COVID time we need it. In the times of the criminal having the upper hand I think more than ever we need to put in the mechanism in place that we could deal with the crime. But I am also suggesting that we may have to look at other things like the DNA to at least get a holistic approach, you know, to deal with what we are dealing with in terms of the criminal element having the upper hand. I thank you, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President: Sen. Lyder.

Sen. Damien Lyder: Thank you, Mr. Vice-President, for the opportunity to contribute to the Evidence (Amdt.) Bill, 2020. And Mr. Vice-President, I would have had the opportunity last week to listen to my colleagues Sen. Mark, our lawyers, Sen. Lutchmedial, and our temporary Sen. Rambhajan, not "Rambachan", dissect this Bill and show many of the shortcomings, the challenges, and the lacunas in the Bill. And Mr. Vice-President, I listened to my colleagues today continue showing these shortfalls, but for me, Mr. Vice-President, I come here today to contribute to a Bill that once again tramples on our democracy.

You see, Mr. Vice-President, it is very disturbing that this Government repeatedly tries to circumvent the three-fifths majority for passing of parliamentary Bills in matters which affect the constitutional rights of individuals and citizens of Trinidad and Tobago. And Mr. Vice-President, while we appreciate the fact that the Government is eager to pass these Bills without any opposition, there is the reason why a three-fifths majority is required. You see, Mr. Vice-President, constitutional rights of individuals as enshrined in the Constitution are rights that are sacrosanct, or that are the highest rights or laws of an individual in the country.

Mr. Vice-President, the people who framed the Constitution were of the view that there be a majority in the Parliament voting on any issue that interfered with your rights, and that is why Bills such as these, the Evidence (Amdt.) Bill,

2020, which interferes with those rights and privileges requires a special majority. So, Mr. Vice-President, whether we are here talking about the right to congregate, the right to religion, the right to movement, the right to equality before the law, equality of treatment, these all require special majorities. And a Bill of this nature which goes to the root of an individual's freedom, equality of treatment, rights to just treatment of the law, rights to legal counsel of your own choice, rights to due process, all require three-fifths majority.

But, Mr. Vice-President, in a typical fashion the Government has found what they think is a clever way to find a loophole to bypass this special majority. And they think that bypassing it, they think they have cleverly succeeded in avoiding the Opposition, or not having to get our consent. Effectively, what they are doing is they are taking away the safeguards of the Constitution which were designed to protect the citizens of this country. And if the Government, Mr. Vice-President, is intent in passing laws that require three-fifths majority and circumvent it by using a special majority, then what is the purpose of the Opposition contributing here today? Is it simply merely for the fact of putting a rejection on Opposition on *Hansard*? Is that why we are here? But, Mr. Vice-President, the Opposition being the watchdogs of democracy are here to protect the rights of the citizens, and it is our duty to expose the Bill, as an act on behalf of this Government to undermine the rights of individuals of Trinidad and Tobago. And especially when we look at the amendments proposed in clause 4, which amends section 12 of the Act. It is very worrying for the Opposition to see an attempt to erode the rights and the privileges of people that were enshrined in our Constitution.

And, Mr. Vice-President, let us get this clear. While the Opposition is very concerned about crime, and while it is our intent to always support good legislation that seeks the interest of our citizens, this Opposition is often vilified for not

having participated in supporting badly drafted legislation because, Mr. Vice-President, if the *Hansard* is to demonstrate who the Opposition is, then it would show that the Opposition is a body of persons who have stuck to their Oath, in ensuring that only good legislation is passed, and we do not simply pass legislation as a plaster for a sore. Because interfering with the rights of citizens is not a simple matter, Mr. Vice-President, it is a matter of grave concern. It is not a matter of convenience, and it is specially not just about how many laws we could pass and beat "meh" chest as to how much we could pass, there is no *Guinness Book of World Records* here. But, Mr. Vice-President, it is our duty to contribute and I will raise a few issues.

So, Mr. Vice-President, when we look at the new section 12B to be inserted, this section makes reference to photographs for the purposes of identifications of suspects. Now, Mr. Vice-President, this is all well and good but how do they propose to implement it? There is no definition or explanation in the Act to outline how they intend to use photographs. In other words, what is going to be the database? Even when we reviewed the draft regulations that were given to us less than 24 hours before last week's sitting on Tuesday, which are very vague, we still do not see it there. Is it going to be comprised—are all these things going to be comprised of up-to-date photographs? Is there going to be just anyone being put in this database? Are they going to put a picture of my good friend, the Minister of Agriculture, Land and Fisheries who is coming up next, gearing up, are they going to put a picture of him there? Or any other line Minster or an Opposition Member or some Independent Senator? Are they going to use photographs from the Facebook? What photographs are they going to use? What happens if they put a picture of our beloved President of the Senate inside of there?

Mr. Vice-President: You may have known this but we do not use the President of

the Senate in a debate.

Sen. D. Lyder: I am guided accordingly, Mr. Vice-President. A beautiful picture of a beautiful lady or any other person being put there, would that person agree with that? Or what if, again, coming back to my good friend the Minister of Agriculture, Land and Fisheries, what if his picture appears and someone says, "Ay! Dat is de person dat robbing me." What is going to happen? "Dat is de person robbing me every night. He does eat doubles on de corner, he robbing we every night." Is my good friend going to be accused, possibly accused of a crime without him even knowing his picture is there, that would warrant some sort of an investigation? So there must be some semblance of an understanding as to how does the photograph first make it to the database being used because, Mr. Vice-President, it creates dangerous precedent of random photographs being used. And there is no explanation in the system, and I think that this is an important factor that must be reviewed.

You see, Mr. Vice-President, there is a difference between what is proposed in section 12 and what obtains in present in an identification parade. You have to voluntarily agree to go into an identification parade. So if a policeman sees me at the side of the road and says, "Mr. Lyder, Sen. Lyder, you know, we would like you to come in an identification parade", and I agree to do so, I would be doing so and submitting to that on my own will. But in this particular instance we are not seeing where the person agrees to put their photos inside of there.

Now, Mr. Vice-President, I am not trying to be facetious when I bring up "meh padna, meh good friend" the Minister of Agriculture, Land and Fisheries' name or anyone else in this conversation. But it is the Government and the Ministers here that are going to vote for this today, you know, so I have to bring it down to their level and bring it home to them. So I am simply asking, what is the

criteria to be used for photographs? How are they going to compile the photographs? Will people be notified of photographs being on the system? And lastly, if they use photographs for comparison purposes. Because part of the process is that they use comparative photos to show people of similar like and such. Are they doing it in such a way that the suspect or the defendant will be given disclosure? Will the suspect or defendant be provided with information as to which photos they use? Or will it all be a secret veiled?

But, Mr. Vice-President, photos is one matter. But when we look at video recordings, when we look at section 12J and beyond, in terms of video recordings we see we are going to have video ID parades, videotaping of interviews. But the big issue here is where are they going to buy these video recording machines? And how is it going to be properly accredited? Are they going to go down to Courts, they will go down by Detour Tech, they are going to order it off of Amazon, some guy in a trench coat "go sell it at de side ah de Parliament"? I do not know. Who determines the integrity of the system, Mr. Vice-President? That it is not subject to being tampered with, it is not subject to interference, not subject to manipulation. We see how easy it is to manipulate video recordings today.

This Bill provides no explanation as to what would be the source of the equipment that would be used to handle the recording of these recording devices, because, Mr. Vice-President, if these recording devices are going to be used for the interview process, a process that could determine the innocence or guilt of any person, and there is nothing in place to determine the integrity of the system, to ensure that no one can manipulate or interfere with it, with the recording in any way, no voice manipulation or anything that can undermine someone's interview, then there is serious problem at hand, Mr. Vice-President, and it has to be addressed. So where is the equipment coming from? The man on the side of the

road? What is the process in terms of safeguarding these recordings? Where are they going to be kept? In the age of technology, Mr. Vice-President, these are all risks and concerns.

And Mr. Vice-President, while there is a provision in section 12K(10) for:

"A copy of the original recording...be supplied on request, to the suspect or his representative within seven days."

The history of how things work in this country, Mr. Vice-President, has shown that although disclosure is meant to take place, very often the police do not disclose. And, Mr. Vice-President, what is the consequence of not disclosing in a timely manner? Mr. Vice-President, you know, we also look, you know—the Government will direct us also to a section 12V where the Commissioner has the responsibility:

"…to ensure that all master copies are kept securely…"

But there is no provision for several aspects of the storage, namely, what is the system? If they are misplaced, what is the mechanism to ensure the integrity is protected? You see, this is critical for prosecution, Mr. Vice-President. This glosses over how you secure the recordings and the responsibility of the Commissioner. But we need to know a little bit more before we could speak further on that.

So, Mr. Vice-President, this is not a simple case of buying a gun, or a pair of boots. Yes, they are all tools to fight crime, but if you are interviewing me and my rights are likely to be infringed on by the process, a process that could determine my innocence or guilt, you should make every effort to ensure the integrity of the process that there can be very limited room for error. There is however no reference to auditing mechanisms, vague reference to the safeguarding of the interviewing record, no procurement procedure that will verify that to ensure that there will be zero manipulation.

You see, Mr. Vice-President, while devices are indeed being used internationally, there are safeguards that are put in place in other jurisdictions. And so, we see that the Government has somewhat mirrored the UK 1984 law, the PACE legislation, but Britain has very stringent measures in place. Such that even the best lawyer cannot penetrate these types of recordings. But if you leave it open without defining it, every lawyer will start to challenge the system. They will say things like, you know, what is the recording? Where did you obtain that? Who you got it from? These are issues that will undermine the process, and Mr. Vice-President, in my research on the UK PACE system there was actually a company that worked very closely with the UK Government to assist them in forming the legislation as it pertained to video recordings. And to put the specs of the equipment required in keeping with the integrity of the interview.

So this particular piece of audiovisual equipment would have a burnt timestamp of the interview on to three DVDs. And once the interview was completed the three DVDs would be timestamped and you could not record over it. I did not hear that here. One disk would be given to the Magistrate, one would be given to the defendant, and the other would be given to the prosecutor. Here, I am only hearing about the Commissioner of Police.

And, Mr. Vice-President, I believe if I am not mistaken, I heard my Senator colleague Nakhid speak about these machines being used. I think it was even about ten years ago that the Government of Trinidad and Tobago had actually procured 12 of these machines and it was being used at national security in the time, but they had not passed the legislation at that point in time to be able to use it as evidence in court. But now, these 12 machines have disappeared, from my understanding. And we understand that the TTPS is indeed interested in purchasing more of these similar machines.

[MADAM PRESIDENT *in the Chair*]

And welcome back, Madam President. And Madam President, due to budgetary constraints they could not do it under this Government. Madam President, we heard of a cut of over $300 million.

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

Sen. D. Lyder: Thank you, Madam President. And we heard a budget cut of over $300 million to the TTPS. So, I understand the Commissioner is struggling to pay last year's bills. We all know that the police service is underfunded, they are lacking resources. This type of equipment requires a system with integrity. It is an expensive system. It is a system that requires service level agreements, training, upgrading. This is not a camcorder. Is it that the Government is going to allow the weakness of the legislation coupled with the lack of funding with the TTPS, to allow substandard equipment to enter the police service where people's rights can possibly be infringed?

Again, it is not a gun, it is not a pair of boots that we are buying. This is something that could make or break a person's innocence or guilt. There is a famous saying, Madam President, "it is better to let 10 guilty men go than to have one innocent man convicted". And Madam President, we cannot forget that there is currently mistrust by citizens in some of the TTPS. And, Madam President, despite the valiant efforts of the Commissioner of Police who vowed to clean up the rogue elements in the police service and, Madam President, he has done a fantastic job doing it. But even he will admit that his job is not yet complete, and there are still rogue elements, but we are confident he will get there. But until such time people can still be "set up" by rogue elements. Madam President, in another place there was a Minister who claimed that certain police reported to him, but I will not bring that here. I will not go there with that, Madam President.

So here we have something that can be manipulated if you do not put measures in place to ensure the best type of equipment is going to be used. If that is allowed to happen, you are going to have citizens whose rights will be infringed. Then you will have defence lawyers insisting that clients should not submit to these video interviews. Then this Bill goes nowhere. So if the Government is going to give lawyers the opportunity to direct their defendants not to submit to the interview process, this whole law just adds up to a rubber stamp exercise of failed legislation, achieves nothing except to say that you passed the law. Another piece of flawed legislation that has been passed and goes up on the shelf without achieving anything.

So, Madam President, I also listened to Sen. Nakhid and Sen. Deyalsingh speak about DNA evidence and they made reference to that there. And I bring reference here to that as well too because that too is an important piece of evidence to be used, that is science, that is what every country in the world is using now to convict persons.

And I want to clear up something for Sen. Nakhid. It was indeed three years ago that that DNA lab was completed and ready to go. They had to be accredited by international agency. They were accredited three years ago and my understanding, it was only two weeks ago that the Minister of National Security actually approved it. I understand it is still awaiting the AG's signature. I understand it is still awaiting a Cabinet Note to be approved in Cabinet. Why is that DNA lab not opened? We are hurrying this Bill but we are not looking at other avenues to convict criminals, Madam President. So madam President, as I conclude, this legislation is consistent with the rushing of pieces of legislation that are rubber-stamped and not thought through properly.

One thing that this Government is consistent with is passing bad law. This is

why the Opposition continues to object. This is not a personal attack against legislation or the law, it is about passing bad law. We continue to see the Government passing legislation that erodes the constitutional rights of our citizens, and when we oppose them they say we are unpatriotic. But if the Government wants to be patriotic, some of the Members on the side of the PNM have to agree to not pass this type of bad law too. They need to take their own people to task, because in the words of Theodore Roosevelt who said, if you really want to be a patriot of your country:

> "Patriotism means to stand by the country. It does not mean to stand by the president..."

And in our case, it does not mean "yuh have tuh" stand by the Prime Minister and his four horsemen.

So at the end of the day, Madam President, the rights of citizens are paramount. The constitutional rights of citizens are of most importance when you are in government, and as such, Madam President, on this side, the Opposition will not support this Bill in the manner in which it is. I thank you, Madam President.

Madam President: Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

3.40 p.m.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, now that Sen. Lyder has declared our friendship, I take the opportunity to offer some friendly advice in possibly reshaping that quote from Theodore Roosevelt. I would say if you want to be patriotic, you have to speak the truth, because speaker after speaker from the Opposition bench has this habit of talking about passing failed law without a shred of evidence. Madam President, when I read the newspaper, I feel a sense of pride and accomplishment when I see the work of this Parliament and it is not just this Parliament, the

Parliament backed by the people who work here on the work product produced by the hon. Attorney General's Office and his team, backed by public servants across the country and experts around the world.

When I saw the first judge without jury case completed, I felt we had done our job. I saw the sexual offences legislation put to work, the amendment. Remember us discussing for a very long time, this issue of a parent or a person in a position of trust, failing to report and we settled on making it an offence and I was very pleased to see someone charged under that legislation. We had a lot of debate about the marriage amendment, child marriage, and I felt very happy recently, to see a father charged, having fathered three children with his daughter while she was a minor. And in that story the young lady was being interviewed and she talked about how her life was lost, in particular, her education prospects.

Bail and anti-terrorism, the refinement of the FIU and numerous legislation. Yes, we have made errors in some and we come back to the Parliament but itis absolutely no evidence of this litany of flawed legislation by this Government.

Madam President, I thank you very much for the opportunity to speak on this Bill and very quickly I want to address three areas:

1. The architecture of the Bill.

2. The background to amendments, some of the history, and;

3. The work of the select committee.

And reflecting on some of what was said before, I want to say to Sen. John that I am sure the AG will address—since he has more time than I have—the issue of the bottle-necking. But I can say with certainty, particularly, the work done to remove preliminary inquiries to expand the courts, the availability of court, the staffing, numerous—the amount of things that have been done to deal with this backlog and this bottle-necking, I am sure the AG will get to it.

Sen. Nakhid, the issue of special majority and safeguards being lost, it just does not arise, it just does not arise and towards the end of your contribution you did in fact say that the work—the Judges' Rules are by and large preserved in this legislation.

Sen. Deyalsingh, I could assure you that the DNA legislation is in place and in this Parliament we have dealt with the DNA databank and the Regulations.

And, Madam President, I want to talk about the architecture first, because we could get very, very sidetracked and get lost in what this Bill is about. This Bill has 12 clauses and the first three are of course, procedural but 4, clause 4 is really where the meat of the matter is. And clause 4 addresses four major areas. One is the area of identification procedures and that is in 12A to P.

And, Madam President, I heard Sen. Lyder talk about photographs as though it was something new. Well, my mother follows the Parliament and it is the first time she will be hearing this story. But when I was still a schoolboy I accompanied a colleague to the police station on Harris Promenade in San Fernando, he had gotten himself in a little skirmish—not the hon. Attorney General, he was a good guy. And the young man had to go through this binder and we were young, so it looked like 20feet tall, this massive binder of black and white photos. And after about five minutes everybody started to look the same. I do not want to get into stereotypes but it really struck me then that—that is one fear that is correct, Sen. Lyder, that in selection of photographs you really have to be careful but it was a binder of almost like the same person over and over, and we must have looked at about 200 photos where I persuaded my friend to abandon, because there was no way, no way you could use this.

So photographs have been around for a long time and for those of us who passed through law school, the Turnbull guidelines was something that haunted us,

because we always felt that you could be placed in that position with this fleeting glance so I am sure Sen. Roberts, for example, would hate to be mistaken in a video or in a photograph or something or a scenario and nobody wants to be mistaken. So that what 12A to P does and the AG has been very good to include in the package the regulations; we do not normally—we are not always in a position to provide the draft regulations but in this case the draft regulations of the ID procedures have been circulated. And that, Sen. Lyder, contains the level of detail that will guide the process, but the ID procedures are really meant to do two things. One is to make for a successful identification of a potential criminal but also throughout, balancing the rights and ensuring that the safeguards are in place. And in every jurisdiction, the decisions of the court, the written decisions are replete with cases in which errors are made because you are dealing with human beings, you are dealing with active crime scenes and moving parts, and you are moving with different levels of understanding of the law and the procedure and so on. But by and large, and of course in criminal procedure, there is always this tussle to specify and to be prescriptive, but to also leave room for what happens in the actual investigation and the actual procedure. It is sometimes dangerous to be prescriptive but I am confident that what the AG is attempting to do is to finally place into statutes supported by regulations, what essentially had been practised in the courts for a long time.

The second area deals with the interviews and oral admissions and of course, if you want to read the criminal law cases, you would find that this area, interviews and in the handling of disclosures and admissions tend to be the point in which prosecutions fail. And it is something that the introduction of video and audio recording should help us. And I understand Sen. Lyder's lament about equipment and so on. But this is not a procurement Bill. I always say that as legislators we

have to do our job, this is framework legislation that is going to be supported by regulations and it is going to filter down through the administrative and the bureaucratic process. We ought not to worry ourselves about whether the camera is going to be working. We have to put the horse in place first, we have to put the horse in place first. We have to get the machinery going, before we start—leave it for somebody else to work out, to manage the procurement, there are rules related to the procurement, we cannot, for example, if we were doing a Bill related to the health sector here, we cannot be inspecting MRI machines and so on. That is not what we do here.

And the third area, Madam President, deals with the special measures and those are 12AA to 12AG, and the missing one compared to the Bill that was laid in 2019, the missing element of that is, of course, witness anonymity that I personally and professionally would have liked to see in our legislation because of the time and because of the state of the country, but we have decided to exclude that in this form of the Bill and I will speak about that when I speak about the select committee report.

And then the fourth area, the thing that attracts me the most, of course, is a provision in 12AH that finally—and you know, I do not know why it has been so complicated and why it has taken so long to simply address this issue of admissibility of CCTV evidence in criminal matters and I am happy to see it at 12AH.

So that essentially is the architecture, Madam President, and I want to talk about the history of the amendments because I listened very carefully to Sen. Lyder, but because he spoke a week ago we may have forgotten the tone and content of Sen. Mark's contribution and the usual package we get from Sen. Mark to which I would refer. But I want to say, Madam President, it has been more than

20 years we have been at work on this Evidence (Amdt.) Bill. The amendment in 1999 was simply enough to include "forensic document examiner" and "forensic biologist" and so on.

But in 2006 is where we really went into the significant amendments and in 2006 in that Bill that was passed in March 2007, it addressed the issue of written statements made by a person and in criminal proceedings and the admissibility of written statements, where the person is not present for the trial because—they are unable to be present because of physical issue or mental issue, or because, Madam President, they have been kept away from a trial because of threats. And it is in 2006, we really tried to address this issue of persons who are under threat or persons who are dead and the evidence needs to be brought into a trial. But I go back to 2006, Madam President, to really get to my colleague Sen. Mark and his contribution in this debate, and if I go back to his contribution in 2007, to make the point, on Tuesday, February 06, 2007, and I quote, Sen. Mark saying:

> "I have been in Parliament for a number of years in this honourable Senate…"—for over 17 years—"…and this Bill…is one
> of the most dangerous pieces of legislation I have ever seen during
> my 17 years…"—in the Parliament.

And, Madam President, that is what is in 2007; 14 years after we come and we hear the same thing because in that contribution Sen. Mark talked about the usurpation of fundamental rights, trespass into the functions of the DPP, the AG giving himself power to deal with criminal matters.

There were pages and pages of interventions from both sides during this contribution. He talked about the far-reaching nature of the legislation; his newest reference, the Law Association, not being consulted; the Criminal Bar Association not been consulted; and more and more pages of interventions and back and forth.

You see, it is easy. You have the stature of Sen. Mark, and he is now in his 31st year in this Parliament—stature, and you make these broad, sweeping and baseless statements and accusations, and there are members of the public who will really believe this. But when you look at that has been the pattern and it has been the pattern of the Opposition in dealing with this issue of evidence and amendments to the Evidence Act.

If you go back, if you go through the four or five key periods, especially under the PNM, the four or five key periods when we had attempted to address this issue of video recording, audio recording and the bringing into statute what already exists in police procedures and in practice, we have always encountered this resistance from our colleagues in the Opposition.

Madam President: Minister, you have five more minutes.

Sen. The Hon. C. Rambharat: And you know, it is funny that in all Sen. Mark's contributions on the various Evidence amendments legislation, that is, the one in 2006, the one in 2009, the one in 2010; in every one, he was followed on every occasion by then Senator, Independent Sen. Dana Seetahal SC who is no longer with us. On every occasion and it was almost like it was divine, that he would be followed and for example, in 2007, it is Sen. Seetahal who followed Sen. Mark and said, and I quote:

> "I think this is a good piece of legislation. This is something that Parliament must pass because it would prevent the elimination of witnesses..."

After his contribution in 2009, on the amendment it is Sen. Seetahal who came after and she said, and I quote:

> "…previous inconsistent statements. So I support the provision. I think it is desirable given the current reality we live in."

She also said in relation to the entire Bill, I quote:

> "…I think that this Bill is necessary for effective prosecution in this country at this time."

And I have done that, Madam President, to demonstrate that Sen. Mark comes to this Parliament with a format, and the format is to open with allegations that the Government is stripping citizens' rights. He follows with lack of consultation. He then suggests some names who should have been consulted. He repeats about the infringement of rights. He talks about inadequate notice to the Government. He talks about contempt of the Government. And then he goes into his usual rant about this is draconian, dangerous, far-reaching; his sledgehammer to kill a fly. But that is just scare tactics because he does not wish and the Opposition does not wish to descend into the facts and into the truth.

3.55 p.m.

And the truth of this matter, on every occasion, except that moment in 2010 when you came into Government and within a few weeks, July 2010, you brought PNM legislation that had been passed in one House, but lapsed—you brought that back—and it is the only time, it is the only time that you have been on record as supporting amendments to the Evidence Act, particularly, those relating to the use of technology. So whatever you come here to try to hoodwink the country, your record does not support that.

And as I close, Madam President, I want to say the select committee did some excellent work. I had the opportunity to chair the Committee. Sen. Vieira was also a member of the Committee, Sen. de Freitas, Sen. Saddam Hosein and Sen. Donna Cox, and we were able to, in two meetings, to meet and have the appropriate consultations. I want to say, Madam President, when the report was laid, at Appendix 5, we had a consolidated version of the Bill, which was the Bill that was

laid in the Parliament, and the Bill that through the work of the select committee, we recommended amendments, and there were 83 recommendations made by the select committee. The consolidated version, at Appendix 4, shows the 83 and I am very pleased to say, Madam President, that of the 83 proposed by the select committee and included in this draft, I believe 82, Sen. Vieira, have found their way into the version that is before us, and I could be wrong, but at 12D, the amendment to 12D, where the Committee suggested the insertion of the word "other", I do not see it in this version, so the AG will look for it at that time when we get to that. But this work of the select committee appointed, has found its way into the version of the Bill that is before us. And, Madam President, I fully support, and I know we have a lot of support in this country for legislation like this that deals with criminals in this country. [*Desk thumping*]

Sen. Anil Roberts: Thank you, Madam President, and thank you to the hon. Minister of Agriculture, Land and Fisheries for being the witness, the best witness against the PNM to show that Sen. Mark has been here 31 years, and every time the PNM is in Government, he has given us evidence that Sen. Mark has maintained a consistent analysis of the PNM's inappropriate manner of legislating and trying to attack criminal elements.

What the Minister of Agriculture, Land and Fisheries has stated, shows that no matter what, the faces may change in the PNM, but the PNM remains the same for decades, coming to trample on the rights and abuse the Constitution of Trinidad and Tobago as we are here, again, today, so to do. This is a critical debate, yet I do not see the zeal from hon. Senators to debate. In fact, I am shocked that I am here so early. I planned to talk maybe at seven o'clock, and there is a reason for that, and I am also part of it here in the Senate.

I look around and I see lawyers and doctors, PhDs and professors. I see

business people. I see all sorts of intelligent people, but I do not see the people who will be mostly impacted by this Bill. I do not see the people who, if you take a little jaunt, a lil walk down the street by the Magistrates' Court, I do not see those people. So I do not think that we are getting a representation of those who may not have lawyers on speed dial. I, too, I have lawyers on speed dial—father, brother, sister, son, everybody—but the people who are going to be affected by this most important Bill are not represented here in the Upper House. We are in the Upper House as we have described, and we have certain abilities and certain opportunities that other citizens may not. So we need to spend and spare a thought for them because it is their lives that would be impacted by this Bill.

The Senator, the hon. Renuka Sagramsingh-Sooklal last week said ina powerful, passionate and I dare say, loud contribution—I think she was louder than me—but she was brilliant. But she said you need this Bill to give the police teeth. But, unfortunately, in Trinidad and Tobago, many police teeth are rotten and "dem" need dentures. The Constitution is the toothpaste, the dental floss and the mouthwash to protect the citizens from the decay.

Yet I come here and I hold two Bills in my hand, one from 2019 brought by the very PNM and this one here today, 2020. But the Explanatory Note, in 2019 said:

> "This Bill seeks to amend the Evidence Act, Chap. 7:02 to provide for the use of different identification procedures, interviews and oral admissions, special measures, the taking of evidence by video link and witness anonymity orders. The Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the members of each House."

But then I come here, a year later, and the same Attorney General, in the same

government, bringing basically the same Bill with even more draconian measures to impact the rights of citizens; that is eliminated.

Then we begin in 2020, the Evidence (Amdt.) Bill:

"This Bill seeks to amend the Evidence Act, Chap. 7:02 to provide for the use of different identification procedures..."—et cetera, but simply eliminates the constitutional majority.

And we come here to debate this. And my hon. colleague, the Minister of Agriculture, Land and Fisheries, speaks en passant that we are just to make laws up in the sky, in the cloud of the Upper House but not worry about how it impacts people down there. That is the problem with the PNM because you only worry about what you have to do and what affects you. [*Desk thumping*] We have to worry about all the citizens out there. Georg Jellinek, one of the greatest constitutional experts, wrote the essence of this Constitution, and this Constitution, Minister of Agriculture, Land and Fisheries, while you are eating your local doubles, you should read it and study it, then you will make more impassioned contributions that I could listen to. He said:

"…legal precepts are incapable of actually mastering the distribution of power within the state…"

In Trinidad and Tobago, we are seeing a massacre of the distribution of power. We are seeing the haves going higher and the have-nots going lower. We are seeing those in business rising and enjoying while others are suffering, and we come here today to widen the gap once again.

He said:

"…actual political forces move according to their own laws, which operate independent of any legal form."

We will get into more detail with that. And thirdly he said the:

"…problem…between the 'ought' and the 'is'…"

The "ought" is the Constitution, the basis, the law. We ought to be here making laws to deal with the criminal element properly, while respecting everyone's constitutional right. One is innocent until proven guilty, and you cannot just create shortcuts because the job is difficult. You may put an innocent human being in jail because you need a shortcut. A shortcut is for traffic, not for laws.

In 2021, under the PNM, the "ought" is a long-forgotten dream and the "is" is incompetence, dictatorship, disdain and very dangerous. And according to the President of the Republic of Trinidad and Tobago, and I quote, "dotish". The Constitution is the legal order of a state or the life through which the State has the reality. This Constitution, which some of us seem to just discard, throw away, this is the supreme law of our land, and everything we do here must uphold this, but we just eliminate it and come here with two cases, same argument all the time and eliminating rights of citizens.

Yet today, once again, we enter the hallowed halls of the Senate, created and maintained by the Constitution to continue the diabolical policy of this PNM Government to desecrate, demean and devour the very essence of that which makes us who we are. Number one, the:

"…legal precepts are incapable of actually mastering the distribution of power within the state…"

What does this mean? In this Evidence Bill, for example, we look at the entire essence of what they are doing, and we ask the question: What has prompted these measures? Is there a zeal to throw out tried and tested legislative safeguards for an attempt at optics and microwave justice? Why are we taking shortcuts? They tried and tested. The court and the judiciary system is there to protect citizens to make sure and ensure that those who are guilty are punished.

Our Constitution, in the preamble, section (b) states, and let me read it because we are here making laws "an like we forget it":

> "(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited"—Roget—"or forced by economic necessity to operate…"

Madam President: Sen. Roberts, Sen. Roberts, you are reading a lot, but now you are getting irrelevant. You are not linking what you are reading to what is before us. So I am going to ask you, please, to try and be a little more relevant to the Bill at hand.

Sen. A. Roberts: Madam President, I cannot say that my Constitution of the Republic would ever be irrelevant, but I am saying—

Madam President: Sen. Roberts, please, just take my advice and move on.

Sen. A. Roberts: Thank you for your advice, your timely advice, Madam President. The Evidence Bill is here and is creating a divide between the haves and the have-nots and it is ironic that a bunch of haves in the Upper House are making laws for the have-nots. [*Desk thumping*] There is a difference in Trinidad and Tobago between "zessers" and "wessers", how the law is applied. We see that daily. We see recusal twins getting rentals, recusing themselves, and their families receiving millions of dollars but—

Madam President: Sen. Roberts, Sen. Roberts, please, you are being completely irrelevant to the matter at hand. Please confine yourself to the remit of the Bill.

Sen. A. Roberts: Thank you, Madam President. Let me get back to the Bill. In this Bill, the Evidence Bill, we see that the proponents of this Bill must be careful, very

careful, that they are not hoisted by their own petard. You do not pass fast and convenient law because you think you are in power. You must pass law that can withstand scrutiny of generations, can withstand the imposition of menaces in office. We have been provided with no meaningful suggestion or rationale as to why the wholesale changes have been made.

There is tinkering with the justice system at the behest of the Attorney General, an Attorney General who holds political office and whose political fortunes lies therein. Yet we see in section 12AA of this Bill, for example, a witness anonymity order, this:

> "…would provide that where there are reasonable grounds to believe that the identity of a witness should be concealed from an accused person and the public so as to protect the witness, any of his relatives or any other person, the Court may grant a Witness Anonymity Order."

Such a provision in this country? The most—

Sen. Mitchell: Madam President, 46(1) please. I think he is reading from the wrong Bill.

Madam President: Sen. Roberts, I think you need to refer to the clause, because I, too, I am having a lil difficulty understanding which part of the Bill you are dealing with.

Sen. A. Roberts: I am comparing the 2019 Bill with the 2020 Bill, at section 12A, but that is all right. I will move on. The problem with this Bill is that the "ought" and the "is" are separate and that this Bill is a shortcut to getting convictions or getting people to be arrested, indicted, charged and convicted. Shortcuts have dangers and citizens will suffer if we do not carefully analyze some of these laws.

This Government is suffering from a low detection rate and needs to make political moves to say that they are attacking crime. They have already stated here

in this Senate that they have attacked crime under COVID-19 lockdown for 11 months. They brought the anti-gang Bill and it failed dramatically. We saw no increase in convictions but we saw a diminution of the rights of citizens. This Government is a government of shortcuts. It was too difficult to test, for example, in COVID-19, to test and contact trace, they took shortcuts without testing. Now we come here to bring legislation that brings shortcuts in a critical area of the Judiciary. In section 12N(1):

> "(1) An identification in a public place"—for example—"under this section may be conducted without the consent of the suspect…
>
> (2) Where the identification procedure under this section is to be done without the consent or co-operation of the suspect, the identification officer shall ensure that the procedure is carried out in the presence of a Justice of the Peace.
>
> (3) The conduct of an identification procedure under this section without the consent of the suspect, may only be conducted where—
>
> (a) the suspect is not in custody; or
>
> (b) the suspect has refused to give his consent to the conduct of a procedure under section 12M or it is impossible or impractical to obtain the consent…"

In a practical sense, in Trinidad and Tobago, how will this be done in public without the suspect knowing some Justice of the Peace is required to be present? This seems farcical and very dangerous. Have the powers that be considered this in a practical fashion as to how this will be done? Or the cynic will say, once they check the boxes of the requirements, the suspect could be identified in public with him or her knowing.

One reads the papers with many confessions having been thrown out of the

court despite confession being supposedly witnessed by a Justice of the Peace. This is very critical to evidence. Just coming here, last week, for example, I was speaking to a police officer and having a full conversation. And he said, "But Senator, what are you doing here"? "We got notice that you would not be here." Then I realized he thought I was Sen. Nakhid. This is a very serious situation with identification. Today, coming into the Senate, I walked in. I did not go to get my temperature. I came back to a police officer to say, "Please, check my temperature". She said, "But I checked your temperature". You were certain—

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

Sen. A. Roberts: Thank you. She was certain that she had checked my temperature. I said, "No ma'am, check it for me again, please". Now, she did not do that with malice, but witnesses are sometimes mistaken, and by making shortcuts, bringing a Bill here that does not allow for the rights of citizens, especially under cross-examination or to have their attorneys present, and settles for Justices of the Peace or video recordings that cannot be checked is very dangerous. Witnesses do not have to be malicious. They could be mistaken, like today, coming in here.

I recall a case, a very serious case in Trinidad and Tobago, where two PNM Ministers were accused of doing wrong. Had this Bill been in place back then, they may have been in another place. But under cross-examination, when evidence was given that somebody was collecting money by Smokey and Bunty, $13,000 and so on, when the witness went into court, the lawyer under cross-examination was able to prove that one of the Ministers, PNM Ministers, was not even in the country. In fact, was in Nigeria at the said time that the witness said he had given him certain amounts of money, and that cross-examination freed an innocent PNM politician and another one who is here today in the Senate, because of the laws of natural

justice, which this Bill here is trying to eliminate. If this Bill was the law back then, we may not have the Minister of Energy here today—

Madam President: Sen. Roberts, Sen. Roberts, you have three more minutes. Can I ask you please to lower your voice? Okay?

Sen. A. Roberts: I thought I was trying to match Sen. Renuka Sagramsingh but I am sorry, I will talk softer.

Madam President: Sen. Roberts.

Sen. A. Roberts: Yes, Ma'am, what Standing Order, please?

Madam President: Sen. Roberts, Sen. Roberts, you have three more minutes—

Sen. A. Roberts: Thank you.

Madam President: No, Sen. Roberts, I am sorry, your time is up. Attorney General. [*Desk thumping*]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President, for this opportunity. Thank you, Madam President, for the opportunity to bring conclusion to this debate. May I thank hon. Senators for their contributions on the previous occasion of this debate, and also on today's hearing as well as. Madam President, the submissions have gone from the very useful to the somewhat challenged. I have to say that I actually thoroughly enjoyed the level of preparation brought by Sen. Nakhid this afternoon on the Opposition Bench. I was genuinely taken aback by the level of detail and case law that went in to that contribution. Congratulations, hon. Senator. I certainly very much appreciate, if I could be so bold to single out Sen. Welch today, for having taken time to crystallize his submissions in material which has been circulated already.

The Government certainly intends on proposing considerations for amendment to the legislation before us. Certainly, a lot of this has come out of the public consultation, the special select committee, the further opportunity for

consultation which the Law Association itself requested back in December 2020, and then also as the result of the several days of debate that we have had.

I must apologize, I had just sat with the technical staff to ask them to reduce some of our suggestions into writing. I thought that we had a little bit more debate left in us this afternoon, so we may be just a little bit late. Hopefully by the time I am finished with this wrap up, we could have those circulated.

Madam President, there are a few general issues that I can refer to immediately, and the general issues start off with the familiar chorus of the Opposition that the law requires a three-fifths majority. Indeed, Sen. Nakhid referred to previous laws where there had been changes from Bills initially introduced as special majority Bills, then modified and then reduced to simple majority. Permit me to say, for the record, that the Bill that was presented in the work of the last Parliament that came before the Special Select Committee was, indeed, a three-fifths majority Bill, and that is specifically so as it proposed, something which I am a very strong advocate of, something which all of the persons attending before the special committee agreed should be part of the Bill, and that is the provisions of anonymous witness evidence measures.

Unfortunately, the Opposition does not support that provision. For us, in the Government, we believe that that is a nuclear device to be deployed and we say that that is most respectfully so, not only because the rest of the Commonwealth has agreed with that position, including the European Court of Human Rights, everywhere else in the world believes that witnesses should be given a fighting chance. And, therefore, I want to put it squarely onto the record the reason for the special majority considerations was squarely pegged to the witness anonymity provisions. Having removed those provisions from the legislation, from the Bill that was there in the last Parliament we, therefore, had the opportunity to remove

the special majority, and let me put it quite simply. You do not have to introduce a special majority unless there is a requirement to do it.

The Constitution says if you are going to abrogate section 4 or section 5 rights in such a fashion as to affect what we consider within the meaning of section 13 of the Constitution to be a society that respects democracy such as ours does, then you have to consider that. Now, Sen. Lutchmedial put it quite comically and quite correctly onto the record, "I wonder which of the two cases" we would go for, whether we are looking at Northern Construction or Suratt, and it is just quite simply the fact that those are the cases that are of record and of note—Suratt in the case of the Privy Council's determination, in particular, by Baroness Hale and therefore there is nothing to stop the fact that when one looks at proportionality, you have to look to see whether the intrusion is of a type such that you are affecting the law within the meaning of the Constitution.

The Barry Francis decision is of course of important note. Chief Justice Archie, in the minority in that particular decision, gave a very interesting look at the law of proportionality but, unfortunately, that is a minority view and that minority view has not been accepted by the Privy Council and therefore the law stands as it does that there is a concept of due process and fairness that is required. This legislation, when you look at it in the round, is squarely designed with due process and with fair trial provisions in mind.

What we are proposing in the legislation is effectively to take the embodiment of our Standing Orders, of the Judges Rules of the common law requirements and to codify them into the primary law. Why do we wish to do that? There was a genuine question put, both by Sen. Welch and Sen. Lutchmedial saying well, look, normally the Government is an advocate of framework legislation, normally governments are advocates of staying away from prescriptive

law. But, on this occasion, let me put onto the record, it was in 2013, that the Ministry of Justice, under the Opposition, then government, went to work at looking at the evidence laws. And, if I am not mistaken, four Ministers of Justice later and seven Ministers of National Security, including junior Ministers in that government, went into this exercise of a policy of taking the prescriptive work and putting it into parent law. It would have been reckless of a government coming into the equation, not to take a look at provisions. We certainly agree that on this occasion the prescriptive approach is to be applied. And why do we say that? We are insistent on doing two things: one, carrying the IT improvements as they have been brought to life in the current judicial climate into effect in law; that is one. And, secondly, and very importantly, to create a standard for the Trinidad and Tobago Police Service to operate under. It is not acceptable that there are varying degrees. The law is capable of being templated and formatted and, in those circumstances, we believe it imperative that we apply the use of technology into our law and, secondly, the templating to protect the rights of the accused.

Now, I want to say that this comes in the context of a process of reform. We stand in Trinidad and Tobago today, and I can tell you that the interview room project that we have deployed across the police stations, demonstrates that we have 19 new interview rooms: Piarco, Arima, Moruga, Maloney, Cumuto, Oropouche, Maracas, St. Joseph, Belmont, La Brea, Brasso, Sangre Grande, the ACIB Unit, Riverside Plaza times three, Gasparillo, the Financial Investigation Branch, Maraval, Arouca. We have record devices to Special Branch, we have Shirvan Road and, Madam President that is now being expanded into the Police Complaints Authority and into the courts. We are now in a world where we have already applied the benefit of technology in virtual appearances in our Rules of Court, in our FTR as it is referred to in the courts, where the Magistracy is now with audio

and video recording equipment for the first time in the history of Trinidad and Tobago.

When I became Attorney General in 2015, I can tell you, the Magistracy was on a manual record system. We were looking at no full judicial immunity for magistrates. We were looking at 12 Divisions of Court. There were no virtual appearances. There were no Criminal Procedure Rules, no amended Family Proceedings Rules, no Children Rules and no electronic filing mechanisms. Today we stand with upward of 25 Masters now about to come to life with a Criminal Division, a Family Division. We have a Probate Division. We are coming with a small claims division and, therefore, we have taken justice really into a different form of management.

You would have heard me say, time and again, plant and machinery, people, processes and then the law. And that is why I can say with certainty, as the build-out of the civil court at the Waterfront is fast nearing conclusion, that with the addition of 129 new courtrooms, not including the Princes Town courts which are due to be open shortly, not including the rapid pace of the San Fernando Magistrates' Court which is fast apace now, not including the Family Court in San Fernando, that we are finally headed into the realm where technology meets with the reality.

4.25 p.m.

Madam President, a feature of the debate across us was the caution, quite correctly, that we have resources. Those resources are now a matter of record with over 1,000 jobs created in the Judiciary with specialist provisions having been added to the Trinidad and Tobago Police Service, cybercrime, interview stations, records. We are in a different place today, Madam President. Now, I heard somebody mention—two hon. Senators mentioned whether this law was ad

hominem and whether this law was designed to take care of certain matters involving white collar allegations, et cetera, and I would like to put that to bed. This matter does not conclude in making a submission such as that. This is not directed at any one matter in Trinidad and Tobago.

Is it lost upon us, Madam President, that there are serious matters of complex fraud that are now going on 20 years in the courts or that there are matters 11 years and hundreds of millions of dollars, if not close to $1 billion in expenses in white collar and complicated matters? We cannot be watching a system such as section 14B of the Evidence Act which this Bill amends, or section 40 of the Evidence Act which this Bill amends, knowing that the admissibility by paper evidence will come upon us when we are looking at hundreds of thousands of documents in complex fashion. We have to be anticipatory of the rapidity of justice and to watch the cultural change in our society.

Madam President, have we noticed by way of application of resources that because of the amendments to the law in the simple matter of decriminalization of motor vehicle and traffic offences, we are now watching Trinidad and Tobago rush to check tint on a car? That was a thing that did not happen in this country, obeying the speed limit, making sure you do not offend for demerit points. People now have a level of conscious reflection because of improvements in the law and this Bill is certainly no exception to that factor. Madam President, I would like to thank the members of the Law Association, the subcommittee that submitted comments to us most recently, and in particular to the work of the hon. Senators in this House, and I would like to say that we certainly agree that we need some clarification.

We do agree that section 12, the new proposed section 12A, we proposed that that in fact be amended. We are looking at amendments being proposed on our

side to join with those proposed by Sen. Welch to proposed section 12A, as in Alpha, subsections (1), (4) and (b), because the truth is that you can in fact move away from "the investigating officer" and "the identification officer" and to apply the general rule so that you are on first description met with somebody who has the capacity to do it as opposed to a defined individual. We agree with Sen. Welch's submissions in that regard. We propose that we, in light of those recommendations, remove doubt in further sections of proposed section 12A by amending the cross references in subsections (5) and (6).

We propose, Madam President, that with respect to a proposed section 12B, subsection (3), that again with the use of "an officer" as opposed to "the officer" that there is a need for amending, again taking up Sen. Welch's recommendations which accord with the Government's proposals as well. We believe, Madam President, that proposed section 12C, subsections (2), (5), (c) and (d), also be amended. We believe that there is an improvement to be had again in the flexibility of the officer's approach, not as a defined individual, and that we improve the references to witness to be what we intended, which is "eye-witness" as opposed to "witness" in general. We also believe that there is merit in Sen. Welch's consideration for sections 12C, subsections (4) and (5), and we propose to address that in committee stage.

Madam President, one of the underwriting points, one of the backing elements of the law as it comes to the use of video technology, that is a core principle point which the stakeholders in the submissions that we received and there were significant submissions received, we believe that the use of video evidence is something that we have to encourage. We are very mindful of the fact that we can only proclaim this law if the technology is there side-by-side for utilization. There will be training. There will be Practice Directions. We do have

the regulations in circulation, draft regulations for the benefit of hon. Senators. It is very rare that governments come with draft regulations even before they are finished. We are waiting for the Commissioner of Police and for the Director of Public Prosecutions to come back to us. We have been waiting since November of last year but we are giving a reasonable opportunity for consultation on those regulations.

We do believe in that context then that 12E, as in Echo, really ought to be with a priority for video evidence. Sen. Welch, perhaps we will discuss this in better detail at the committee stage with his proposals, the hon. Senator's proposals that we go to writing first and then have the other points. I think that the philosophy behind that can be ventilated in committee stage so we understand a little bit better, the submissions. Madam President, we also believe in section 12G, as in Golf, that the "may" for "shall" should be changed. That we "shall" use a Justice of the Peace when the rights of the accused are going to be potentially affected. That is very welcome amendment coming from Sen. Welch which we propose be added into the law.

We believe that amendments ought to be factored to sections 12R, as in Romeo, subsection (2); 12X, subsection (1) and 12Y, subsection (1). We have to discuss, and I would welcome views at committee stage, this concept of one suspect versus two. We went with the UK approach of two suspects at the same time which also met with Standing Order 29 in our police structures. So we went with what we consider to be the existing law. Sen. Welch has made a proposal that we only do one witness, one suspect at a time and I think that that is something we can have a look at. We prefer to keep with the practice of Standing Order 29 in our structure which accords with the UK structure as well, but perhaps we can understand a little bit better, the concerns that hon. Sen. Welch had.

Madam President, I think that there is an improvement to be made as proposed by Sen. Welch with respect to section 12K, as in Kilo, with the utilization of "one-way mirror" as opposed to "screen". It was reflected in subsection (8) there and therefore we can harmonize that by changing the word "screen" to "one-way mirror". The concept of proposed amendments to section 12Q, subsections (1), (2) and (6), again this is a philosophy and a policy that we would have to touch at committee stage when we are looking at the concept of putting it "in writing" per se. Madam President, the recommendation came from Sen. Welch that we delete the register of interviews, that for the Government is a policy point that we consider to be very fundamental to the legislation. We believe that there must be a register of interviews because far too often justice is thrown away, so to speak, on the basis that you cannot find a station diary or a book, or there is some confusion in respect of the evidence that is given.

We think that a harmonized register, much like we have done for the domestic violence register, the reporting of domestic violence matters; what we are dealing now with sexual harassment, which will come shortly, and children's matters, we propose that there is a unified system so that when you wish to have access from remote locations that the database is properly matched. That goes in line with the amendments that we have brought into the Judiciary and now in the Director of Public Prosecutions office, as well as the Public Defenders Division. Permit me to stick a pin on that point. I have heard hon. Members question whether law will work, and I have heard hon. Members on the Opposition Bench asked that question and indeed cast some doubt, if not pour scorn upon the ability to cause amendments and to see the effects of it.

I would like to remind, at every stage that the Government has brought amendments in the last Parliament and this we were met with disbelief on

Members, on the bench of Members opposite in the Opposition Benches. And I would like to say, when you look at the success that we have found as a country in judge-only trials, the success in plea bargaining, the 97 per cent addressing of the Motor Vehicles and Road Traffic amendments—let me put that into context, when as a country your annual magistrates load is 146,000 cases a year and a Government is able to stand up and say, "Listen, as a result of amendments to the law 104,000 cases a year have been removed"; out of 146,000 cases, that is no small feat, Madam President. When you say to a country that as a result of decriminalizing marijuana 8,500 cases have disappeared from the 146,000, that is no small feat.

When you are able to say that with the abolition of preliminary enquiries, which is imminent, that you will be able to manage 26,000 cases per year in a different fashion, that is no small feat, and therefore the use of technology underwritten in the amendments before us in the identification route, in the use of consistent standards with fair trial in mind where a judge always has the discretion as to admissibility of evidence, that is the ultimate sanction. It is not that the law needed to criminalize a failure to observe the standards set out in this Bill. The risk comes to the inconsistency, removing the admissibility of the evidence and therefore the preservation of fair trial and due process maintains the paramount standards required to protect the rights of the individual, hence the submission that this law is entirely proportional, is entirely in the best interest of the citizens of Trinidad and Tobago.

Madam President, we certainly do believe that an improvement to section 12U, as proposed by Sen. Welch, should be entertained and that you shall be given statements. When we look to 12X, again the concept of practicability, we agree with Sen. Welch's amendments proposed there, but when we get to section 12Y,

again there is a philosophical position that perhaps we ought to consider at committee stage. But 12Y is where we treat with what the Government considers to be a very fundamental concept of video recording and admissibility. We agree that the word "shall" can perhaps be viewed to be an undue interference in the separation of powers principle and therefore the word "shall" ought to be changed to "may", and certainly we agree with that submission so that we leave it to the discretion of the judicial officer as to admissibility of evidence.

Madam President, we are headed to a better place as a country. Whether people in this country believe it or not at the end of the day I am genuinely warmed to see throngs of people worried if their tint is too dark, to see throngs of people worried that they may be caught for a demerit point system because this is back to what was once viewed to be the broken windows theory or the putting justice into place. Madam President, the CCTV evidence and the admissibility of it which this law provides is directly tied into significant amendments to our country. What do I mean? The deploying and implementation of a programme of something called eyes everywhere, cameras that capture facial recognition, number plate recognition, RF tag IDs on license plates. That is where you get to police your roads, to have people comply with the law, and therefore taking the concept of CCTV evidence is apposite to witness protection.

We all remember that terrible case of CCTV evidence of a car rolling over somebody who had had an epileptic fit; twice, two cars rolled over. If you can discover the evidence and it is admissible it avoids people being worried as to stepping forward to give evidence. Left up to me today the work of the Special Select Committee which approved Anonymous Witness Orders to give witnesses a fighting chance would see the light of day. Unfortunately, the UNC led by Mrs. Persad-Bissessar does not agree with that. They are entitled to that position, I

cannot condemn them for their point of view, other than to say, I think that that is keeping back our country from its best effort and its best intent. But that is what democracy is about. This Government does not have a special majority in the House of Representatives and therefore we cannot pass that law and therefore we must adjust our cloth to make the approach that we do. Five minutes?

Madam President: Yes.

Hon. F. Al-Rawi: Much obliged, Ma'am.

So, Madam President, I genuinely commend hon. Members for the level of preparation that they have engaged in, in approaching this debate. I thank you for the submissions that have been received. I wish to say to the Special Select Committee, thank you. The committee was chaired by Sen. Rambharat who gave an exceptional delivery today in recounting the history of this law and how it is we have come to this point. The vast majority of work that we have taken on board in this new Bill comes from the work of the Special Select Committee. I would like to thank the drafters at the Attorney General's Office, Mr. Rana Parasan, Ms. Veronica Sahadeo and the CPC for the work that was conducted—the CPC's team for the work that was conducted in supporting the work of the Special Select Committee.

As Attorney General I can say, Madam President, we have spent years producing this work, it did not come in any form or fashion other than by a significant amount of scrutiny, ample room for digestion, comment, review, amendment, review, amendment and then tabling. Madam President, we propose to circulate amendments for consideration at committee stage, and I beg to move. [*Desk thumping*]

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators, I know that we are awaiting the amendments to be circulated on behalf of the Attorney General, so I propose at this stage to suspend the deliberations of the committee for—we would return at 10 minutes past 5.00.

Sen. Mark: AG, these amendments that are being proposed, I find it a bit—I will need your guidance. We have all completed our contributions and the Attorney General is now going to circulate amendments and I would like to get your ruling on this matter, because would we now be given an opportunity in committee given the nature of these amendments as to whether we are going to get extra time to debate these things?—because I do not know what these amendments are.

Madam Chairman: Sen. Mark, this is not the first time that this has been done in committee. And also when we have amendments circulated at the committee stage there is vigorous interrogation of the issues and leeway is given for persons to raise issues that arise from the amendments. Hon. Senators, we will resume the deliberations of the committee at 10 past 5.00.

4.45 p.m.: *Committee suspended.*

5.10 p.m.: *Committee resumed.*

Madam Chairman: Everyone has the amendments? All right. So we will begin.

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

Clause 4.

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

Madam Chairman: Is Sen. Welch here? [*Crosstalk*] Thank you. Attorney General, you have also proposed amendments.

Mr. Al-Rawi: Yes, Madam Chair, which amendments incorporate those proposed by Sen. Welch.

Madam Chairman: All right. Attorney General, let us deal with your proposed amendment, 12. We will have to deal with clause 4—

Mr. Al-Rawi: With each proposed section.

Madam Chairman:—systematically because there are several subsets of clause 4. Okay?

Mr. Al-Rawi: Yes, Madam Chair. Well, there is no debate on the new proposed section 12 if you wanted to as opposed to 12A.

Madam Chairman: Yes. Correct. So let us move on to 12A. Attorney General.

A. In the proposed section 12A.-

(a) In subclause (1), by deleting the words "the investigating officer" and substituting the words "an investigating officer";

(b) In subclause (4)(b), by inserting the words "where practicable," before the words "have a video";

(c) In subclause (5), by deleting the words "under subsection (3),"; and

(d) In subclause (6), by deleting the words "under subsection (3),".

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, the Law Association pointed out, as did Sen. Welch, that when we were looking at the issue of first description and we were looking at the concept of identification procedure being undertaken by the person who is doing the first description and that is the investigating officer, that the use of the definite article "the" was problematic because it confined it to just one person and because the concept of "the investigating officer" is defined in the section on definitions, and you would see that in section 12 which comes in the pages just earlier. With that in mind, and bearing in mind what Sen. Welch proposed to us as well, that is that the first description can be done by "any officer", we proposed the deletion of the word "the" effectively and using "and" so that it could be any investigating officer which

catches the categories suggested by Sen. Welch in his proposed amendments as well.

So we agree with the amendments proposed both by the Law Association in submissions coming in December 2020, as echoed in part in a different way by Sen. Welch, and therefore we propose in the proposed section 12A that we cause the amendments to "the investigating officer" to read "an investigating officer". And in the second part of that you would see in proposed section 12A, subsection (4)(b), that we introduce "where practicable" as a concept. This comes from a suggestion coming from the Law Association in their written recommendations in December, 2020. And if you see that at page 10 of the Bill, Madam President, it is specifically to cause an adjustment to proposed section 12A, subsection (4)(b), and that would take care of what is identified at A, subsection (b), on the circulated amendments.

In subsections—in paragraphs (c) and (d), as circulated by me, this would take care of eliminating the cross reference to under subsection (3) in both places. That is subsection (5) and subsection (6) because there is no need to tie it back to "the investigating officer" as identified. So in summary the proposed amendments to section 12A are that we move away from the defined entity of "the investigating officer", we take "an investigating officer" which would catch the submissions coming, as I understood them from Sen. Welch in the debate, but specifically catch the recommendations coming from the Law Association. And we introduce the concept of "where practicable" because the Law Association pointed out in subsection (4) that it was difficult with the conjunction "and" within A and B to have a video or audio recording if it was not practicable to do so, and therefore we have taken on board their suggestion. And then in paragraphs (c) and (d), we propose to delete the cross references which would have applied because we are no

longer slaved or confined to "the investigating officer".

Do you want me to traverse 12B?

Madam Chairman: No. Let us deal with 12A first.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: Any questions or comments?

Sen. Thompson-Ahye: In (4)(b)—

Madam Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: In (4)(b), is there, after "recording", is there an "of" supposed to be there?

Mr. Al-Rawi: Madam Chair, (4)(b), as we propose it to read, after the words "where practicable", "have a video". So let us read that in context. So the chapeau, "the investigating officer shall, (a), and, and then (b) have a video or audio recording" and then we—one second here—(b) insert after words, "where practicable" "have a video"—yes.

Sen. Thompson-Ahye: All right.

Madam Chairman: That is after (b)?

Mr. Al-Rawi: Yeah.

Sen. Thompson-Ahye: All right.

Mr. Al-Rawi: So it will start with, "where practicable have a video or audio recording". Your question is whether the word "of" should be there?

Sen. Thompson-Ahye: No. I was wondering if it is a verb there you meant or the physical.

Mr. Al-Rawi: Yeah.

Sen. Thompson-Ahye: The investigating officer shall—

Mr. Al-Rawi: Yeah, it should be "of".

Sen. Thompson-Ahye:—where predictable have a video or audio recording—"the

eye-witness" or you want to have "of the eyewitness"? So I am trying to figure out if it is a noun or a verb or what.

5.20 p.m.

Mr. Al-Rawi: So, Madam Chair, the word "of" is missing. Thank you, hon. Senator, for picking that up. Let us just double-check it. So, "where practicable have a video or audio recording..."—a word is missing—"the eyewitness giving the first description."

Sen. Thompson-Ahye: Both could work, it depends on the meaning.

Mr. Al-Rawi: So, Madam Chair, in the amendments as circulated in paragraph C, in (4)(b) we have it there correct, in subparagraph (4)(b), by inserting the words: "where practicable" before the words "have a video", and inserting the word "of" after the word "recording".

Madam Chairman: Yes, Sen. Vieira.

Sen. Vieira: Thank you, Chair. Hon. AG, Sen. Welch had talked about being overly prescriptive with all the things, to include under 12A(2)(c). Are we keeping those or—?

Mr. Al-Rawi: Sorry, this is not in that which he has circulated, it is in his oral submission?

Sen. Vieira: In his oral submission.

Mr. Al-Rawi: Would you expand on that for me please? With your leave, Madam Chair.

Sen. Vieira: My understanding was that he felt that by putting this in a statute, omitting any one of those things could actually be counterproductive, because it is almost as though it is—it is overly prescriptive. I was wondering if we are comfortable with leaving it as it is or leaving it open?

Madam Chairman: Sen. Vieira, Attorney General, could you clarify when you

say leaving it as it is, exactly what you are referring to in the particular? We are dealing with clause 4, 12A.

Sen. Vieira: Yes.

Mr. Al-Rawi: Madam Chair, I understand what Sen. Vieira is pointing me to. He is pointing me to 12A subparagraph (2)(c).

Sen. Vieira: (c), correct.

Mr. Al-Rawi: And my answer is that I am comfortable because firstly of the use of the word "include", and then when you get down to (viii), "such other particulars that may be relevant"; so that it continues to speak.

Sen. Vieira: Thank you.

Madam Chairman: So, hon. Senators, the question is that clause 4 be amended—[*Interruption*] it is too early to put the amendment, Attorney General. So let me leave it and we will go on to B now.

Mr. Al-Rawi: Madam Chair, just for your direction.

Madam Chairman: Yes. Just one second. Let me ask Sen. Welch.

Mr. Al-Rawi: Yes, that is what I was going to ask.

Madam Chairman: Sen. Welch, you had proposed an amendment to clause 4 at 12A?

Sen. Welch: I had proposed the words, "or any police officer acting in an official capacity".

Madam Chairman: Correct.

Sen. Welch: I note the Attorney General has sought to deal with that by changing, "the investigating officer" to "an investigating officer". However, it may well be that in actual practice—

Madam Chairman: Sen. Welch, may I ask you to just turn your mike on.

Sen. Welch: It is not on, I am sorry.

Madam Chairman: Thank you.

Sen. Welch: It may well be that in actual practice what occurs in the heat of the commission of an offence and its reporting, that the first person to whom a description is given, if we take "first description" by its literal meaning, is that first police officer you would encounter when you enter into the police station, the one who is taking the report, or the first police officer who reports to be on the scene.

Now, strictly speaking that might not be an investigating officer because it may not be that a formal investigation has been launched or anything as such, as yet. This is why I have suggested "a police officer acting in an official capacity", to capture any police officer who might be like a first responder so to speak, but who may not strictly qualify as an investigating officer, as defined in the provisions as they are. Because the provisions, as they are, speak to an investigating officer, being an officer involved in the investigation, which suggests some sort of intricate involvement.

Sen. Welch: And as Sen. Lutchmedial just pointed out to me, sometimes your first responder could be the highway patrol person on the scene getting the details of that first description. So subject to your views, Attorney General, I would prefer the wider, "or any police officer acting in an official capacity".

Mr. Al-Rawi: I understand the mischief that the recommendation is intended to address. The use of the "acting in official capacity" causes me a little pause, because then a debate as to whether you are official or not official ensues. We agree that—the Law Association had captured it in a very precise way by saying that "the investigating officer" will always tie you back to somebody who is actually nominated for that purpose, and it presupposes only one individual. So we thought that there was merit in their submission on that. So we thought to address both purposes, we went to "an", but let us look at the definition:

"'investigating officer' means a police officer involved in a criminal investigation;"

I think that the caution that was just put there was whether that person has to be assigned to that particular matter. But I thought that the language is wide enough for it to be any police officer at the scene or receiving the first report. I look at it in the context of Division 2:

"Identification Procedures

12A(1) Before any identification procedure takes place, a record shall be taken by the investigating officer of the first description..."

That is a rather formal process, and then we go into the particulars of record, et cetera, et cetera, and we put it in. So we felt that from a drafting perspective, removing "the" to "an" would have given us the flexibility for an officer charged with that first description responsibility, catching it and formalizing that approach.

Sen. Welch: But, AG, just finally on this point, what did you say was the difficulty with the formula of "a police officer"?

Mr. Al-Rawi: So, "or any police officer acting in an official capacity"—

Sen. Welch: I mentioned that because that is what might actually have happened in practice. That is in keeping with the reality of the situation. That was to reflect the reality of what occurs.

Mr. Al-Rawi: I do understand, Madam Chair, if I may engage in this, yes. Look at it in context of subsection (3):

"The investigating officer shall ensure that the first description of the suspect given by the eye-witness has been recorded in the approved form before..."

So there is a routine that they are going to be put into now, other than just by way of a casual interaction. It certainly would not be the investigating officer—sorry, the identification officer. For the investigating officer the format would have

to be: the form is delivered, the first description would have to be then obtained, et cetera. We have now said that that does not have to be one individual. It could be any individual performing that function of capturing the forms, fill out, et cetera.

So we do genuinely believe we have caught the mischief from the Law Association's point of view, and as painted by you, hon. Senator, when we read it in conjunction with subsection (3).

Sen. Welch: All right. So subsection (3) says, "he shall ensure". It does not literally mean that he himself must do it, or an investigating officer must do it.

Mr. Al-Rawi: Yes.

Sen. Welch: So he can ensure that by having someone else assigned to do it. Okay, I think that is perhaps fair enough.

Madam Chairman: Sen. Welch, there is a second part to your proposed amendment.

Sen. Welch: Yes, which is in subsection (4), by deleting subparagraph (b). Madam Chair, that is what you are referring to?

Madam Chairman: I am, yes.

Mr. Al-Rawi: The deletion of video or audio recording.

Sen. Welch: Yes. That perhaps should have read, "where practicable", because those are the words I propose.

Madam Chairman: Sen. Welch, the Attorney General in his amendment has proposed the insertion of the words, "where practicable" before the words "have a video".

Sen. Welch: Yes, that would take care of that, because I do not think it is always practicable to have—

Mr. Al-Rawi: To mandatorily require it.

Sen. Welch: It would be unrealistic to expect a video recording to be made, to

have a video in place to take a first description, a spontaneous first description given by a witness.

Madam Chairman: So in light of that, Sen. Welch, are you still pursuing your amendments to 12A?

Sen. Welch: Well, my amendment to 12A is consistent with what the Attorney General now has here. We have "practicable", the insertion of those words.

Madam Chairman: And therefore are you pursuing it or will you now withdraw it, having seen the Attorney General's amendment?

Sen. Welch: Yes, having seen the Attorney General's amendment I will withdraw.

Amendment withdrawn.

Madam Chairman: Okay. Can we deal with, Attorney General, your B?

Mr. Al-Rawi: Yes please, Madam Chair. Consequent upon the amendments that we proposed to 12A, we propose that we take on board the same concept of "an investigating officer", versus "the investigating officer", to make it specific now, because we are distinguishing between any general person and then the assigned and defined person. That therefore flows from the amendments that we proposed in A as circulated.

Madam Chairman: Any questions or comments? So we move on to 12C. Sen. Welch.

Sen. Welch: Yes. With respect to 12C, I had proposed the insertion of the words, "the investigating officer or identification officer determines that". Inserting those words after the word "where". So it would be 12C(4)(a).

Madam Chairman: Members, we go to page 14 of the Bill, as we are dealing with the amendment proposed by Sen. Welch.

Mr. Al-Rawi: May I, Madam Chair?

Madam Chairman: Yes.

Mr. Al-Rawi: I thank Sen. Welch for this recommendation. I understand what Sen. Welch is driving at in the capitalized "A", to 12C that he is putting at is, who is the person to make that determination. He was narrowing it down so that an identification procedure need not be conducted, (a), where it is not practicable to hold so, and I understood his recommendation to mean, well who would decide that. But I would just like to refer the hon. Senator to subsection (2), which is on page 13, which says:

> "Subject to subsection (3), an identification procedure may also be conducted where the investigating officer in charge...considers that it would be…"— useful.

So it flows, reading the clause as a whole, the section as a whole, that (a) would be the discretion of the investigating officer, and therefore we do not believe that we need to add it in because it is addressed by subsection (2).

Sen. Welch: That is the change made by subsection (2) where you have replaced "the" with "an"?

Mr. Al-Rawi: No, so we are looking at 12C. The recommendation that is coming at us is amend (4)(a) to say who is going to say so.

Sen. Welch: Yes.

Mr. Al-Rawi: And what I am pointing out is that if you look at 12C subparagraph (2), the person is described there. It is the investigating officer who makes that decision. So (4) must be read with subsection (2). Subsection (4) must be read with subsection (2). Because it is the investigating officer in charge of the criminal investigation who would consider it useful or not, or practicable or not. So we respectfully believe that the concern is addressed by reading it with subsection (2).

Sen. Welch: Okay. I was just thinking that by being a little more specific it would remove any doubt on the issue.

Mr. Al-Rawi: I catch the concern, Madam Chair, I will just like to point out that because this concept of who exercises the function is throughout the section 12C, having put it at (2), we did not want to distinguish between two different categories of persons. We want that person to be the man in charge and liable at all points, as either the person with discretion or with responsibility. And subsection (5) also says an investigating officer may also conduct an identification, so we have kept it consistent.

Madam Chairman: Sen. Welch, can we move on to the B part of your amendment in subsection (5), deleting the word "not"? Can you just talk to those amendments?

Sen. Welch: Yes. Subsection (5):

> "An investigating officer may also conduct an identification procedure where..."

Now the investigating officer under normal police practice, it is not best practice for the investigating officer to conduct identification procedures, but in certain circumstances it is accepted that it can be done. And one of those circumstances is where the suspect and the witness are well known to each other and neither party disputes this. But the language of 12(5)(c) as it is, says he may do so where the suspect and witness are not well known to each other. And so my suggestion is whether the drafter really intended to put "not" there—my suspicion is that the drafter did not intend to have "not" there. So I have suggested that it be deleted, because where they are not well known to each other, the investigating officer should not be carrying out an identification procedure in those circumstances. So I submit that "not" should be deleted.

Mr. Al-Rawi: So, Madam Chair, if I may. What happened was, at the Special Select Committee the DPP gave us specific recommendations, and we took that, as

a committee we took it on board. Specifically, the DPP had recommended that 12C(5) be inserted. That came from his written comments, which are circulated in the report dated the 17th May, 2019, that the DPP raised at the committee the case of Ronald James v The State 2009, UK Privy Council 12. It was a Trinidad and Tobago case. So we had taken it carefully from the DPP's recommendations. I do not have the report with me now, but I had taken a note of where it came from.

Sen. Welch: I see.

Mr. Al-Rawi: But in any event, if you look at the conjoint effects of subparagraph (c) and (d)—so (c) is, the suspect and the witnesses are not well known to each other, and neither party disputes this. We have (a), suspect is known and available, suspect admits; (b), suspect is in custody, eyewitness with previous knowledge saw; (c) suspect and witness are not well known to each other and neither disputes, or the witness claims to know the suspect, but the suspect denies this. The question is only whether one needs to condescend to both parties knowing each other and not disputing, but I think that that is caught between the operation of (c) and (d).

Madam Chairman: Sen. Vieira.

Sen. Vieira: I have the DPP's recommendation here.

Mr. Al-Rawi: Thank you.

Sen. Vieira: First Description:

> "On the issue of information contained in the record of the first description at the proposed section 12A(2)(c) it is recommended that other specifically required areas to probe the eye-witness, (i) whether, and if they have, how many times they had seen the person who committed the offence before, and (ii) whether there was anything impeding the view of the witness as is required by the case of *La Vende v The State*...("Tab A") at pages 467 to 469, a decision of our Court of Appeal which adopted the English decision

of *Turnbull*."

So that is what he said. [*Interruption*]

Mr. Al-Rawi: Madam Chair, in the submission that came from the DPP, specifically in reference to the case of *Mark France and Rupert Vassel v The Queen 2012 UKPC*, the DPP quoted for us paragraph 28 coming from Lord Carr, saying it is now well-settled that an identification parade should be held where it would serve a useful purpose. We have adopted that.

In John v The State, which is the case that I referred to a while ago, 2009 UKPC, addressing the question of how to assess whether an identification parade would serve any useful purpose, Lord Browne considered three possible situations. The first where a suspect is in custody and a witness with no previous knowledge of the suspect claims to be able to identify the perpetrator of the crime. We have that.

The second, where the witness and the suspect are well known to each other and neither disputes this. Stick a pin on that one. And the third where the witness claims to know the suspect but later denies this. The first of these instances, an identification parade would obviously serve a useful purpose, in the second it would not.

So the caution now is, the paragraph here, the second where the witness and the suspect are well known to each other and neither disputes. Let us crosscheck that.

Sen. Welch: What we have here is not—

Mr. Al-Rawi: I am on. I am going from first principle to make sure we got it right, so I am thanking you for your observation, and I have now found where it came from. The suspect and the witness are—yes, the word "not" should in fact be removed from this section, because it now accords with the case of John v The

State, as per Lord Carr.

So the recommendation coming from Sen. Welch is welcomed and correct, and we have a chance to check the Special Select Committee's specific report.

Madam Chairman: Sen. Welch, you also have a D.

Sen. Welch: Yes. The D, again, is because this subsection (5) is really not so much concerned with whether the identification procedure should be adopted or not, but whether the investigating officer involved in the investigation should be the one conducting it. What I am saying is that is normally regarded as bad practice, except for certain exceptional circumstances. The exceptional circumstances is where the two parties know each other very well, and they acknowledge knowing each other, and there is no dispute. So it is okay in those circumstances for the investigating officer to be involved in the identification procedure. But anytime there is a dispute, the suspect says I do not know this witness. Even if the witness claims that he knows the suspect, but the suspect raises that as a dispute, then in those circumstances you have the neutral person, which is the identification officer who is a neutral person under this legislation, who is not involved in the investigation. He is the one to conduct it.

Mr. Al-Rawi: Understood.

Sen. Welch: But if you look at the present paragraph (d). It says: "The investigating officer..."—

Mr. Al-Rawi: I got you; it is a bifurcation. So argument number one, the exceptional circumstance would be permitted in certain cases. You have identified the two, the first of which we have captured by the deletion of the word "not", in subparagraph (c). So it accords with Lord Carr's description.

Sen. Welch: Yes.

Mr. Al-Rawi: The second aspect is you are cautioning that we would run afoul of

this position because we have got the wrong person. It is not the investigating officer who should be there, it should be another person. So your recommendation is to delete subparagraph (d), because you have got the wrong person exercising that function.

Sen. Welch: Yes.

Mr. Al-Rawi: So I would only refer now to the third aspect set out by Lord Car in Mark France, and that is the third, where the witness claims to know the suspect, but the latter denies this.

Sen. Welch: Right.

Mr. Al-Rawi: The witness claims to know the suspect, but the suspect denies this.

Sen. Welch: Right.

Mr. Al-Rawi: So that is where we had caught (d) from.

Sen. Welch: So in those circumstances an identification procedure should be adopted, but it should not be by the investigating officer who is involved in the investigation. So that is why I submit that "the" should be deleted under (v) which states the circumstances in which the investigating officer may be involved.

Mr. Al-Rawi: The investigating officer may do it. So you are saying had I put "the" with the other person, not the investigating officer, I would not be tripping it?

Sen. Welch: Yes.

Mr. Al-Rawi: Madam Chair, I thank you for allowing us this ventilation. Would you permit me a moment to just discuss this?

Madam Chairman: Yes.

Sen. Welch: If (d) is deleted then I think it would be understood by implication that it would to be the identification officer doing it.

Mr. Al-Rawi: That is what we are shopping for right now; just to be sure.

Sen. Welch: So there is perhaps no need to try to amend it, (d), but to delete it

instead. [*Interruption*]

Mr. Al-Rawi: Madam Chair, first of all if I could thank you for facilitating the exchange of ideas and submissions. Paragraph B of Sen. Welch's—I think paragraph A of what Sen. Welch recommended is caught by the proposals that we have. When we come to that, we can perhaps convince you of that. But paragraph B is certainly welcomed. That is, by deleting the word "not" in subparagraph (c) of subsection (5) and by deleting subparagraph (d).

Madam Chairman: Attorney General, perhaps you can advise Sen. Welch as to your amendment to 12C, that would treat with the A part of his amendment?

Mr. Al-Rawi: Yes, Madam Chair, thank you. So, in the circulated list of proposed amendments on the AG's part, paragraph C on page 1, subparagraph (a), would take us into the formula we just used in 12A. So I am submitting that it would take care of the Law Association's recommendations and also be in harmony with the submissions coming from Sen. Welch with respect to A under clause 12C, that is the second box.

Madam Chair, the submission in respect of subsection (5), there is a further addition to that, that Sen. Welch has suggested, and that would be to add the word "eye" to witness. This is something that came from the Law Association's submissions in December. They felt that we should make that we were targeting the eyewitness, which was the intent of the legislation. So we are proposing in subparagraph (c) that we add the word "eye" before "witness", so that it is the eyewitness we are referring to.

We agree that Sen. Welch's submissions as it relates to the word "not" in subparagraph (c) are correct, and that subparagraph (d) should be deleted. If I could suggest as follows: In the circulated amendments of the Attorney General I am proposing that we accept, subject to consideration, as it relates to paragraph C,

that we accept A, we accept—

5.50 p.m.

Madam Chairman: Well, Attorney General, let us—I think I know how we can treat with it.

Mr. Al-Rawi: Right.

Madam Chairman: Okay? So because we can accept—Sen. Welch, having heard what the Attorney General has said with respect to A, which is your A part of your 12C amendment, are you still going to proceed with that aspect of it? Part B has been accepted.

Sen. Welch: Okay. That is 12—

Mr. Al-Rawi: Your—

Sen. Welch: 12(4) A?

Mr. Al-Rawi: Your 12C A which deals with the investigating officer or identification officer, we had proposed a formula which we accepted in 12A, the amendment we just did, so we are proposing to maintain that where we go with "an investigating officer" as opposed to "the" which would respectfully lead me to requesting whether you would be minded to withdraw your A amendment in light of the proposals that we make. I was going to adopt your sub B into my own submission because I do not know if you wanted to cleave the two, Madam Chair.

Sen. Welch: I see. So we are past (c) and (d) that is—

Mr. Al-Rawi: We agree with you. We agree with you with your (c) and (d) wholeheartedly.

Sen. Welch: Right.

Mr. Al-Rawi: So I was proposing to adopt those, take them into AG's which would, if you were minded, allow you to withdraw your amendments so that is it neater up for the record.

Sen. Welch: Oh, I see. I see. So once you have—the procedure is, once you have accepted it and accepted the amendment, then I would formally withdraw the suggestion.

Mr. Al-Rawi: If you are minded to. Yes.

Sen. Welch: Okay. Yes, well if it is accepted—if your having accepted it—

Mr. Al-Rawi: Yes.

Sen. Welch:—then I would formally withdraw it.

Amendments withdrawn.

Mr. Al-Rawi: And I thank you.

Madam Chairman: Thank you very much, Sen. Welch. So your amendments are withdrawn. Attorney General, we will just include now—

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman:—in your C.

Mr. Al-Rawi: Yes. So, Madam Chair, so that our text reads correctly in the circulated amendments.

Madam Chairman: Yeah.

Mr. Al-Rawi: C (a) would stand.

Madam Chairman: Yes.

Mr. Al-Rawi: C (b) in subsection (5)(i).

Madam Chairman: Yes.

Mr. Al-Rawi:—in subsection (c) by deleting the word "witness" and substituting the word "eye-witness".

Madam Chairman: That is fine.

Mr. Al-Rawi: Now we have to put a (ii). Actually, no. We could say and, just after the word "eye-witness" we would add in by deleting the word "not". So that takes care of what Sen. Welch had put by deleting the word "not". And then, Madam

Chair, in (ii) on the next page we would delete what we have here and we would say, instead of—in subparagraph (d) by deleting, we would say, by deleting subparagraph (d)—

Madam Chairman: Yeah.

Mr. Al-Rawi:—borrowing, taking exactly what Sen. Welch had proposed in (i) and (ii).

Madam Chairman: Sen. Vieira.

Sen. Vieira: And just to tie it together, so between (b) and (c) you would have to put having done so "; or". And at the end of (c) ".".

Mr. Al-Rawi: That is correct, Madam Chair. So in (b) we would have to, subparagraph (5). Right. So in subparagraph (5), the first (i) should be, Madam Chair, at paragraph (b) delete ";" and insert "; or".

So if you look at the list of circulated amendments, Madam Chair, because we are deleting (d) we have to adjust the "or" as it appears. So in my circulated amendments where you see in the chapeau in subsection (5)—if you put (i) in subparagraph (b) in subparagraph (d) delete ";" delete—can you do that? Normally I see them delete and then do it. Right? I understand but normally I see you all say delete the ";" and put "; or". Delete the word ";" and put—[*AG confers with technocrats*] by deleting the word (;)

Madam Chairman: Attorney General—

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: You have to be very careful—

Mr. Al-Rawi: Yes.

Madam Chairman:—with how we are drafting these amendments, because I have to read it out.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: Let us go back to your C.

Mr. Al-Rawi: Okay.

Madam Chairman: So we have in the proposed section 12C—

Mr. Al-Rawi: Yes.

Madam Chairman: We have (a) which we are leaving.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: And then we have (b).

Mr. Al-Rawi: Yes. So from the chapeau of (b)—

Madam Chairman: Yeah.

Mr. Al-Rawi:—in subsection (5)—

Madam Chairman: Yes.

Mr. Al-Rawi:—new (i). Just above here, new (i). In subparagraph (b) delete the word ";" and insert the words " ; or"

Madam Chairman: No. Sorry, Attorney General. In sub (1), in subparagraph (b) delete the word—

Mr. Al-Rawi: Open quotations—

Madam Chairman: Yes.

Mr. Al-Rawi: ";" and insert the words "; or". So putting in the word "or" in.

Madam Chairman: Yeah.

Mr. Al-Rawi: Then (i) is renumbered to (ii). So (i) as set out there in subparagraph (c) by deleting, that becomes (ii).

Madam Chairman: Yes.

Mr. Al-Rawi: And we would have to at the end of that because we had gone—so the new (ii) would be in (c) by deleting the word "witness" and substituting the word "eye-witness".

Madam Chairman: Correct.

Mr. Al-Rawi: And by deleting the word "not" and as inelegant as that sounds, inserting the word—do you want to delete and then say it? So we did "or". By deleting the word ";".

Madam Chairman: Again, by deleting the word "not"—

Mr. Al-Rawi: In quotations. Right.

Madam Chairman: Yes.

Mr. Al-Rawi: By deleting the word "not"—

Madam Chairman: Yes.

Mr. Al-Rawi:—and deleting the word ";" and replacing with the word "." And I thank Sen. Vieira for that.

Madam Chairman: Attorney General, can we move onto 12D?

Mr. Al-Rawi: Yes, Madam Chair. Madam Chair, we propose in 12—not D, Madam Chair, E as in Echo is our next one.

Madam Chairman: Yes. But it is—sorry. It is listed as D.

Mr. Al-Rawi: Oh, so 4 D.

Madam Chairman: 4 D. Yes.

Mr. Al-Rawi: Sorry. I was looking at 12D.

Madam Chairman: Yes.

Mr. Al-Rawi: So in 4 D, we are proposing an amendment to section 12E by inserting after subsection (3) that which is circulated which would read:

> "An identification officer conducting an identification by verification under subclause (1)(f) shall ensure where practicable, that the procedure is recorded by video recording."

This comes from submissions coming from the Law Commission in December 2020, and we accepted their recommendation. It is to keep it in harmony with the practicability of recording any statement as opposed to the mandatory use of it but

also to make sure that other methods of identification were equally caught with the video recording where practicable.

Madam Chairman: Any questions or comments? So can we move onto the clause 4 E? Sen. Welch, you have an amendment to E?

Sen. Welch: Yes, Madam Chair. With respect to the present paragraph (b), it really has to do with the order of priorities on which 12E(1). There is a paragraph (b) which I am submitting should be moved down and should become paragraph (d). So it is presently (b) and it should be moved to (d). So what is presently (c) and (d) would move up to (b) and (c) respectively.

Mr. Al-Rawi: So, Madam Chair, it is to put video as number four in the ranking of priorities as opposed to number two, just putting it quite simply.

Madam Chairman: Yes.

Sen. Welch: Yes.

Mr. Al-Rawi: Madam Chair, if I may. This was the subject of a significant amount of debate at the Special Select Committee, in fact, we spent days discussing this. And the consensus coming from the multiple stakeholders, DPP, Judiciary, Legal Aid, Criminal Bar, Law Association fell with video coming in at number two. So we went with the preponderance of submissions for the ranking of priorities, and because we have had so much consultation on the issue, I regret that I would urge you to keep with what is proposed here, because we had had the benefit of a lot of time in discussing this particular issue. But I wish to remind that subsection (2) prevails as well.

> "Notwithstanding the order of priorities established under…(1),"—which is what we are looking at—"where it is impractical or circumstances are unsuitable to conduct an identification procedure in the order of priority, the identification officer shall offer the next identification procedure in

order…"—et cetera.

So there is a degree of flexibility in this position depending upon practicability or circumstances.

Sen. Welch: I see. Perhaps, Attorney General, I could perhaps say, I have heard what you have said and I recognize the flexibility you referred to in respect of subsection (2). But perhaps I can still articulate why I made the recommendation, because my concern was that, with respect to the video medium, there is another provision which makes it very clear that when you are using this measure of identification, the suspect is not present to witness it or is totally unaware of it.

Mr. Al-Rawi: Yes.

Sen. Welch: He is not involved in that process at all.

Mr. Al-Rawi: Yes, that is correct. Yes.

Sen. Welch: Whereas with (c) and (d), the suspect is in the public place and is part of the process and can be immediately advised that X has taken place, you have been pointed out, et cetera. My concern was that we should have the participation on something as important as the suspect being pointed out. We should have the participation of the suspect as much as possible, and in priority to a procedure where video images are taking place and in a room somewhere, he is totally unaware of it or not familiar.

Mr. Al-Rawi: Madam Chair—

Sen. Welch: So—

Mr. Al-Rawi:—if I could jump in and I know that perhaps you would join or re-join.

Madam Chairman: Yes.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, I recognize the care and caution that Sen. Welch is pointing us to, that is the knowledge and consent of

somebody whose rights are potentially going to be affected by a process to follow. The technocratic team with me referred me to the regulations which say that, you would be shown the photographs, et cetera, et cetera, beforehand. But I might point out to my own team that yes, but that subsidiary legislation, this is primary and therefore you would have to read the subsidiary as subsidiary and that therefore there is merit in looking at the traditional mechanisms. I could always with a witness who was afraid or who demonstrated circumstances that best led us towards video and moving images, we could go through the priority there.

So I would welcome the views of the larger Senate on this particular issue of priority because I can see merit both ways. I know the regulations albeit subsidiary would have the effect of alerting the representatives of the accused that the exercise in the back room was doing on with their knowledge of the photographs, et cetera, but I can also recognize that that is subsidiary legislation as opposed to primary. So could I ask for further consideration on the floor? I would like to hear the views of Senators.

Madam Chairman: Well, I cannot force a Senator to make a comment.

Mr. Al-Rawi: But if so—

Madam Chairman: Sen. Welch has indicated his position. I do not know if anyone else has a question or comment to make? Sen. Vieira.

Sen. Vieira: Just to echo what the hon. Attorney General said. This was an area that was particularly thorny, we had a lot of debate on it. I believe the police also made some strong recommendations on this particular subject if I may quote from them. They said, 12E, the order of priority should be rearranged. They were talking about the original Bill—to place identification parade in accordance with 12K as the first priority.

Mr. Al-Rawi: We did.

Sen. Vieira: Identification in a public place with consent in accordance with section 12M as the second order of priority while video medium drops to third order of priority and identification in a public place without consent, and identification by confrontation retained a fourth and fifth respective rankings. I personally am comfortable with the Bill as it is cast. But, you know, everybody has their own sense of where the priority should lie and—

Sen. Welch: So it appears to some extent that this particular stakeholder which is—

Mr. Al-Rawi: The TTPS.

Sen. Welch: The police officers, to some extent suggested a rearrangement.

Mr. Al-Rawi: Their difference would only be that the "without consent" comes after the video—

Sen. Welch: Right.

Mr. Al-Rawi:—which would make sense if you look at it that way. Again, my general reluctance in touching it is that we had a significant amount of consultation on the issue but I can see the merit of the case being put either way, and obviously I would like us to get this right. Perhaps it is if we were to move paragraph B down to third in line as opposed to fourth that we could perhaps see the logic of that because without consent would be better and by far better than putting somebody off into the crowd and they do not know about it because that would mean that the video and the crowd without consent would be sort of *pari passu*.

Sen. Welch: I see your point but without consent does not necessarily mean the suspect is unaware.

Mr. Al-Rawi: Without knowledge.

Sen. Welch: That the suspect does not know—

Mr. Al-Rawi: True.

Sen. Welch:—what is happening, you know.

Mr. Al-Rawi: True.

Sen. Welch: It means he knows what is happening but it is without his consent. He is invited in a public place but he is still in a better position even though it is without his consent, he is still in a better position. I will just hold on for the AG as he is consulting.

Mr. Al-Rawi: So, Madam Chair, I know you are being very indulgent with us this afternoon. The difficulty that I have, I can see the merit. Not only did we have the consultation and the result of this but the urge was really to push us towards technology. Obviously one has to be very careful in saying that. Technology ought not to trump rights and positions. I mean, certainly the weight of the evidence falls into issue when you are looking at it in court to say, well look this happened in the back room with moving images where the person did not even know. I know that there would be a story to that. But—

Sen. Welch: Because, you see, if I may interject, AG. Even let us say with the identification parade with the one-way mirror situation, although the suspect is not seeing the witness—

Mr. Al-Rawi: He knows it is going on.

Sen. Welch:—he knows what is going on, and it is done in a manner which according to the practice and guidelines, the audio must be clear so that he is aware of what is happening. But, you see, my concern as well is that we are introducing technology and we are giving it a priority over what currently exists. And the practice that currently exists is one in which the suspect is aware of what is happening.

Mr. Al-Rawi: Madam Chair, if I could say that having had discussion on this issue, that we would be willing to adjust the order of priority as suggested by Sen.

Welch. I wish you were at the Special Select Committee but I welcome you here in the committee of the whole.

So, Madam Chair, the proposal at 12E as circulated by Sen. Welch which is:

"A In subsection (1), by renumbering subparagraph (b) to…(d); and"

—then—"…renumbering…"

We would be prepared to accept this submission wholly.

Sen. Welch: Thank you, Attorney General.

Mr. Al-Rawi: No, thank you.

Madam Chairman: So in this particular instance I will now put the amendment of Sen. Welch. We will deal with it right now.

Mr. Al-Rawi: Sure.

Madam Chairman: Okay?

Question, on amendment, [*Sen. Welch*] *put and agreed to.*

Madam Chairman: So we move on. So we now move, Attorney General, we have dealt with your 12E as well, so we now move on to 12G. Sen. Welch.

Sen. Welch: With respect to the present Bill 12G(4)(b), my submission is that "may" be shall be replaced by "shall". And it relates to the situation where the representative of the suspect is unable to attend the identification procedure within the prescribed time. Currently as it is, the Bill says, the identification officer may appoint a Justice of the Peace to protect that interest of the suspect. Where the—and I am submitting that where the representatives is unable to be there—

Mr. Al-Rawi: Madam Chair, we agree wholeheartedly.

Sen. Welch: Oh, very well.

Mr. Al-Rawi: Yes.

Question, on amendment, [*Sen. Welch*] *put and agreed to.*

Madam Chairman: Attorney General, you have an amendment to 12G as well?

Mr. Al-Rawi: Yes, please, Madam Chair. Madam Chair, in keeping with the need to clarify who this identification officer is and what form and function, we propose that we amend the chapeau to 12G(1). You will see it at page 20 of your Bill, just after—instead of the words "he shall be", we now specify that shall be as circulated. The identification officer shall ensure that the suspect is. This brings some clarity to the legislation as recommended by the Law Association in their December 2020 submissions.

Madam Chairman: Any questions or comments on the amendment as proposed by the Attorney General? I am not putting these—

Mr. Al-Rawi: Understood.

Madam Chairman:—to the vote—

Mr. Al-Rawi:—until the end. Yes, Madam Chair.

Madam Chairman: Yeah. We move on. No. Attorney General, you have a 12G(4).

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: Yeah.

Mr. Al-Rawi: This is where we were agreeing with Sen. Welch that we change the word "may" to "shall". So I can withdraw this F, if you will.

Madam Chairman: So is withdrawn.

Mr. Al-Rawi: Yes, Madam Chair.

Amendment withdrawn.

Madam Chairman: We move on to Sen. Welch's J, 12J.

Sen. Welch: Yes. Madam Chair, 12J is concerned with the identification procedure using video medium where there is an eye-witness and one suspect, as well as where there is an eye-witness and two suspects. In the case of 12J(1)(b), it

stipulates that where there is one suspect, nine images have to be shown before an identification is made. But under (c) where there are two suspects they are both placed on the same moving images procedure, and the number of persons is increased to 12. So where you have one suspect, it is eight persons. Where you have two, it is increased to 12 rather than, let us say, 16.

My view is, I heard the Attorney General say that this is the current practice in England and also it is reflected in our Standing Orders. I am of view however, that for the protection of the suspect and to make the process fair, one should have one suspect at a time. Notwithstanding the practice in England, one should have one suspect at a time even on the identification procedure. Even though you have two suspects, they should be dealt with on two separate identification procedures, and they should maintain the number of persons that would normally be dealt with when you have one suspect, that is eight persons.

I see no reason for having two suspects on the same identification procedure and lesser persons per capita making up the rest of the line up, so to say speak. So because of that I have suggested in the amendments:

"in circumstances where there are two suspects by–showing the…"

Present paragraph be replaced by the following paragraph.

> "in circumstances where there are two suspects by–showing an eye-witness moving images of one suspect at a time with similar images of at least eight other persons who resemble the suspects; and ensuring that the eye-witness is shown at least nine images before an identification is made."

So where you have two suspects, you treat them individually just as would be the case where you have one suspect, otherwise it would mean when you have two, their rights to some extent are being compromised or the fairness in the procedure. And there is no logical reason for that, and I do not consider the fact

that that is the practice in England to be a feasible explanation or justification.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. Thank you to the hon. Senator for his submissions. Madam Chair, we specifically went in this direction based upon the Law Association's written recommendations of 10 April, 2019, where they asked us to consider in their written recommendation it should be made clear that only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance in which case they may be paraded together with at least 12 other people. So that is point one.

6.20 p.m.

Point two is that the police Standing Orders 29(8) provides and I read here now:

> If there is one suspect there shall be not less than eight persons inclusive of the suspect on parade. However, if there are two suspects, there should be not less than 14 persons inclusive of the suspects.

So, the position is that the recommendations in the Bill come not only from PACE D, but they come specifically from our local jurisprudence in the police Standing Orders 29(8), which have been with us for quite some time.

We also found some comfort in that all of the stakeholders had taken this particular approach. I am reluctant in the context of disturbing what has been agreed in the Special Select Committee, and with the benefit of all of this position coming from the multiple stakeholders to touch this concern. And then I draw the caution that if we touch this in J as in Jupiter, we will have to look at it in K as in Kilo, and again there were no recommendations from any of the stakeholders that we should disaggregate the suspects one at a time.

In fact, the evidence and practice in Trinidad is that you can treat with

multiple suspects, two suspects at the same time provided the parameters are brought in. What is useful for consideration coming from Sen. Welch, is ensuring that the eye witness is shown at least nine images before an identification is made. How that gels with the 12 in the multiple suspects in J and K is therefore to be factored. So ensuing that the eye witness is shown at least 14 images before an identification be made. So we are at the higher level at 14. So, if I could respectfully on the basis of the level of consultation that we engaged in and the written recommendations coming from the DPP, the Judiciary, the public defender, Law Association and also the Legal Aid Authority, all of whom supported this particular approach, if I could humbly request the hon. Senator to reconsider the position.

Sen. Welch: Let me say that I have heard what you said as to what the stakeholders have commented. But, in my experience which is—let me try to be modest—

Mr. Al-Rawi: [*Laughter*] We accept that it is profound, Senator.

Sen. Welch: It is somewhat vast. I have never encountered an identification parade. We are, in practice, where two suspects are placed on the same parade. I actually recall cases in which there have been more than one accused, and there have been separate identification parades. So, notwithstanding what perhaps is stated here, I can tell you the practice that I have encountered right here in Trinidad is that it is one suspect on a parade at a time, and in other jurisdictions where I have appeared, not as defence counsel but as prosecutor, it has also been the same thing. Even though they may have had provisions which say otherwise.

Mr. Al-Rawi: Yes. Yes.

Sen. Welch: So, this is the actual practice. I am afraid if it presently exists in the Standing Orders but they depart from that practice, they probably do so because

they recognize that what they do in practice is far more fair than what is catered for. However, I am afraid that if this is now legislated for—because this is the effect of this. This is no longer a guideline. This is being put into a parent statute—

Mr. Al-Rawi: No, I catch you loud and clear, you know. I have got you.

Sen. Welch: They may very well change their practice to suite this amendment to the evidence. So, I think in those circumstances I may have to adhere to my suggested amendment. Madam Chairman, again—

Madam Chairman: Just one second, I think he is conferring with them.

Sen. Welch: Oh, sorry.

[*AG confers with technocrats*]

Mr. Al-Rawi: Madam Chair, I had a chance to discuss with my team, so if I put it on the record, I agree that we need to be careful. We are not dealing with a code and we are not dealing with Standing Orders and subsidiary which are at best persuasive because their lack of consequences. I would be lacking in responsibility if I did not take note of considerable experience that the hon. Senator brings to this bench, and I thank him sincerely for sharing it with us. I think that we ought to err on the side of caution, and the caution would take us into cleaving the identification as proposed by Sen. Welch. In other words then, I agree with you, that I ought not to go with a code and practice which has been sustained in that subsidiary level when I am looking at primary legislation, particularly because we are looking at codifying this thing into the primary law. So, Madam Chair, in those circumstances I wish to accept the proposed amendments to section 12J as proposed by Sen. Welch.

Sen. Welch: Thank you.

Madam Chairman: Hon. Senators, the question is that clause 4 at 12J be amended as circulated by Sen. Welch.

Question, on amendment, [*Sen. E. Welch*] *put and agreed to.*

Mr. Al-Rawi: Madam Chair, would you permit me to just say this for the record. Sen. Welch would not be aware, but I have a record in the Parliament of when I give an undertaking I keep it, including reserving on matters and then coming back to amend it if further consultation brings necessary. Other Members who have been with me for a while know that if I say I will come back to X, I do. I am just noting, prior to proclamation I usually go to all the stakeholders again to double check. If the result of the stakeholder commentary comes back that we need to have another look, I may very well come back to the Parliament to ask for another look, but at least I would be vouched with reasons this time. So just putting it on the record, with no disrespect, that in the course of consultation for proclamation we may very well have another look at a few things that are before us now. Thank you for allowing me that.

Sen. Welch: Yes, that is appreciated. And Attorney General, what I should mention as well before we close off on this, is that it was just brought to my attention by Sen. Deonarine, that the latest stakeholder comment from the Law Association, which is dated December 2020, actually supports the measure I have just adopted. So it appears that they have departed from the earlier one which you referred to.

Mr. Al-Rawi: Thank you. Thank you.

Sen. Welch: And this was just brought to my attention.

Mr. Al-Rawi: Appreciated. Thank you so much.

A. In subsection (1) by deleting the word "screen" and substituting the words "one-way mirror";

B. In subsection (2) by deleting subparagraph (b) and substituting the following subparagraph:

"(b) where there are two suspects, each suspect should be placed on separate identification parades.";

C. By deleting subsection (8); and

D. In subsection (10) by deleting the words "on request".

Madam Chairman: We move on to 12K. There are amendments proposed by the Attorney General and by Sen. Welch. Attorney General, are—

Sen. Welch: And, Madam Chairman, with respect to 12K(1), there is reference to the identification parade taking place in a room equipped with a screen, permitting the eyewitness to view the suspect without himself being seen. However, in later paragraphs, it is referred to as a one-way mirror.

Madam Chairman: So, if I could just interrupt one second. [*Interruption*] Just one second, Sen. Welch. Attorney General, Sen. Welch, you both have amendments, and I think I am seeing or understanding that Sen. Welch's A and D mirrored some of your amendments, Attorney General?

Mr. Al-Rawi: Yes, Madam Chair. We recognized and we thank Sen. Welch for pointing out the inconsistency between the use of screen twice and the use of one-way mirror once. What we have done is we have harmonized all to "one-way mirror". So the amendments as we have sought to capture it in that circulated on my behalf at G in 12, is a proposed amendment to subsections (1), (6) and (10) so that we in (1) and (6) remove "screen" and use "one-way mirror", which would appear in subsection (8), so we match up with what Sen. Welch is saying. We had proposed also to remove the offending words "on request" in subsection (10), so that you are automatically provided with the information as opposed to having to ask for it. Because the general rules of disclosure would have required that anyway.

Madam Chairman: So that the only—Sen. Welch, you have an amendment at B

and C, so can you speak to that, please?

Sen. Welch: Yes. Madam Chairman, just bear with me one second. Yes. With respect to 12K(2)(b), I would be consistent with the amendment that we spoke of earlier, that is one person at a time on an—but in this case it is with respect to an identification parade. Earlier we had addressed it—

Mr. Al-Rawi: We agreed. It would be inconsonant to the amendments accepted earlier. Yes.

Madam Chairman: And then can we speak to C. Your C, Sen. Welch.

Sen. Welch: Yes. In sub C I deleted the words "on request".

Sen. Vieira: You have already deleted "on request" already.

Sen. Welch: I believe the hon. Attorney General has accepted that.

Sen. Vieira: It is done already.

Madam Chairman: No, C is different.

Mr. Al-Rawi: C is different. C is the walking behind where the one-way mirror is not used.

Madam Chairman: C is at page 28 subsection (8).

Mr. Al-Rawi: So you had asked for it to be deleted, that is the:

> "Where a one-way mirror is not used and the eye witness wishes to walk along the back of the…parade…"

That was a recommendation that came specifically from the DPP. He was very strident about that inclusion. Your recommendation is to delete that.

Sen. Welch: Yes. My concern with it is that—my concern with it is that it catered for where a one-way mirror is not used on an identification parade. But, my concern is that this is somewhat inconsistent with the rest of the provisions which dictate that a one-way mirror must be used. The provision we have already looked at speaks to the use of a one-way mirror in compulsory terms for an identification

parade.

Mr. Al-Rawi: Not as it relates to 12K(1). So:

> "An identification parade shall be conducted in a police station or other building under control…in the normal conduct…in a room equipped with a screen…"—all right, so we are going,—"one-way mirror permitted".

Right. So, yes, you are correct that we are in the zone of identification with one-way mirror. The question is whether there ought to be a carve out to that, which is, if there is an identification parade but there is no one-way mirror but you are all facing forward, whether you could be allowed to traverse the back of the parade?

Sen. Welch: Right. Well, what I suggest, because practically that would be difficult if you are using a one-way mirror. Because under the legislation, if 12K(1) already stipulates that a one-way mirror must be used, then you cannot be speaking in 12K(8) of circumstances where one is not used. So, I suggest we replace 12K(8), because 12K(8) seems to be aimed at a situation where a witness wishes to look at the back of the persons on the line up.

Mr. Al-Rawi: Sorry, Madam Chairman, I am just refreshing my memory as to why the DPP had suggested this. Apologies, I am just going to look for it quickly, because this particular subsection—

Sen. Welch: I could perhaps, before you look at it, suggest a solution.

Mr. Al-Rawi: Yeah.

Sen. Welch: It can be amended in a way to suggest the one-way mirror continues to be used, but the witness has the right to ask for the men to turn around and see their backs, but again using the one-way mirror, through the one-way mirror.

Mr. Al-Rawi: Forgive me, I—

Sen. Welch: Because I think this is what (8) wishes to do. It wants to deal with a situation where a witness wishes to look at the back of the men as well.

Mr. Al-Rawi: Forgive my ignorance on identification parades. But do you have the right to ask the witnesses to turn around if you are using a one-way? I would assume you do.

Sen. Welch: Generally, a witness can ask, can they remove their—if they have on hats, can all persons remove their hats? If the witness asks for a particular person to remove his hat, the identification officer will request them all to remove their hats. A witness can ask for someone to speak and say certain words. A witness can—

Mr. Al-Rawi: Generally?

Sen. Welch: Yeah, generally speaking. A witness can even go to the back of the line and move around. But in order to facilitate that we do not need to use the one-way mirror. One can have the one-way mirror and make a request that the line-up turn around.

Mr. Al-Rawi: Madam Chair, out of an abundance of caution I do agree that we can, at this stage, delete it. If the consultation with the DPP gives me a cogent reason otherwise, I can always come back to the House and Senate and ask for it to be included with reasons attached. So, I propose that we agree to the deletion of subsection (8), and obviously the consequential renumbering which would flow from that, and we have accepted the deletion in D proposed by Sen. Welch. So, we accept B, C, D and A.

Madam Chairman: Perhaps, Attorney General, I will put Sen. Welch's amendment to the vote—

Mr. Al-Rawi: Yeah.

Madam Chairman:—and perhaps you can withdraw yours, because his goes one step further than yours. Yeah?

Mr. Al-Rawi: No, I go one step further in my G(b). So I would withdraw G(a) and

G(c). Sen. Welch did not pick up the use of the word "screen" in subsection (6). [*Interruption*] Yes, we know, he should have.

Madam Chairman: So, hon. Senators, the question is, that clause 4, 12K be amended as circulated by Sen. Welch

Question, on amendment, [*Sen. E. Welch*] *put and agreed to.*

Mr. Al-Rawi: And, Madam Chair, for the record, if I could withdraw the amendments I propose at G on page 2 of the circulated amendments. I withdraw G(a) and (c), but I keep (b).

Madam Chairman: All right. So, hon Senators, the question is that clause 4, 12K be amended in subsection (6) as circulated by the Attorney General.

Question, on amendment, [*Hon. F. Al-Rawi*] *put and agreed to.*

Madam Chairman: We move on to 12Q as circulated by—Sen. Vieira.

Sen. Vieira: Thank you, Chair. Just to point out, AG, that if we are deleting (8) you will have to renumber the paragraphs.

Mr. Al-Rawi: I had put that on the record, and we will renumber accordingly. Yes? Thank you.

Madam Chairman: So, we move on to 12Q as circulated by Sen. Welch. Sen. Welch.

12Q. A. In subsection (1) by inserting the words "in writing" after the word "record";

B. In subsection (2) by inserting the word "also" after the word "shall"; and

C. Delete subsection (6).

Sen. Welch: Yes. Madam Chairman, with respect to 12Q, if I may just say something about the provisions overall and then tackle each to suggest the reason for the amendment. The effect of these provisions is that an interview must be—a

video recording shall be made of the interview, and secondly, and if the video recording is impractical, then an audio recording must be made of it, and if a video recording and an audio recording are impractical then the interview shall be recorded in writing. So essentially, the present practice is for an interview to be recorded in writing. What this proposed section seeks to do, is eliminate the recording of an interview verbatim in writing and replace it with a video recording of the interview followed by an audio recording. So, writing comes last. And what this proposes is that having eliminated the written record of interview as we know it, the video recording mechanism, whatever it is recorded on is what is put into evidence.

My concern with that is that, I think the traditional recording of an interview in writing should be maintained, and what can be done to accommodate this change is a provision which says that the interview shall also be video recorded, so that both can be tendered in evidence in a court, the video record of the interview as well as the written record, as opposed to the video recording only. And I say that because it would create a nightmarish situation if the police following these provisions do not have a written verbatim record of an interview, as we know it, and rely solely on video. Because when you present a video as evidence in court, each time you wish to make reference to that interview you have to bring video equipment and set it up. If a jury retires and needs to look at an interview, you would have to set up video equipment in the jury room. In the course of a trial, on several occasions, sometimes very sporadic, you need to go back to an interview, whether it is the accused testifying, whether it is cross-examination and so on, and you would have to be playing a video each time.

Now, the present practice is—because I have been involved in cases where a video recording has been made of a written interview, so you have both. The

present practice is, you play that video record once and you have your written record to back it up. And subsequent to the playing of that video recording, all future references can be made to the written record throughout the trial, which is a much simpler, easier and practical process. Of course, the video record would always be there in case there is need to make some reference to it. So, I maintain that we should continue to have interviews in writing. They should not be replaced exclusively by video recording. And, what should be provided for is that the interview should be both in writing and video recorded, and they both be tendered in evidence. And the difficulty as well with the elimination, if I may point out, the elimination of the written record of the interview has given rise to a number of alternative measures to deal with its elimination, which are somewhat impractical. For instance, you now have to have a Register of Interviews, and how I see it, is that that Register of Interviews now has to come only because of the elimination of the written record of interviews. And according to that Register of Interviews, the Register of Interviews must have the reference number of the interview, the name of the interviewee, the number/rank of the officer, date and place of interview, time of commencement, et cetera, et cetera, whether a break was taken and so on, and so on. Now, when you have a written interview it contains all these matters.

Madam Chairman: Thank you, Sen. Welch.

Sen. Welch: It contains all these matters, and it not only contains all these matters but it shows the context in which a break has been taken, at what stage of the interview, what is happening, et cetera. Now, when you just take a register and you just put certain categories of information from the interview in that register, it does not explain the context.

Madam Chairman: Sen. Welch.

Sen. Welch: It does not explain what was happening when the person asked for a

break or any such thing.

Madam Chairman: Thank you very much, Sen. Welch. Sen. Vieira.

Sen. Vieira: Thank you. If I could echo Sen. Welch and put it perhaps this way. Instead of doing a recording and then writing up a transcript as two separate and sequential situations, what I think the Senator is suggesting is, as the interview is being recorded in writing, it is also being recorded in film. So that would ensure the integrity of what is written. And from an evidential point of view, instead of having to go back to the film, the written document has already been authenticated and could be referred to throughout the course of the trial.

Sen. Welch: Yeah. And one other difficulty if I may—

Mr. Al-Rawi: Put quite simply, is I saw you do it. It was not beaten out of you, it was not coerced out of you, you had several shots, et cetera. I catch the point. Madam Chairman, all of the submissions that came back, including the Law Association, was in full support of the law as drafted. The question is whether everybody missed the mark of removing writing. But that is not necessarily the case when you read the hierarchy of positions, video, audio, where not practicable, written, which is what Sen. Welch very helpfully took us through in terms of priority. If I draw the example of what we are doing here right now, we are being videoed and audio, and it is being transcribed. In the courts right now, the FTR technology, which we have taken the backlog down to zero on, we have no more backlog of transcripts, et cetera, because we use mask transcription services. However, all of those things are materially different, one could argue. Because a statement, or a confession, or an admission being given on an audio and a video without in writing, not only is a departure from where writing is at present, but it is very different from how the weight of the evidence is going to be viewed in the round. So I catch the submission. I genuinely do.

Sen. Welch: And I think, if I may just add, Attorney General, because the writing is being eliminated, it now puts a burden on this provision. In order to make up for that it now puts a burden on the officer to record in the station diary the interview. So that would mean an officer, if an interview runs into, and I have interviews run into 20, 25 pages, you do not write it out and now you have to go and record it in a station diary, 25 pages of the interview. Whereas the present practice really is that in the station diary what is presently done is a sort of summary of the interview.

Sen. Vieira: The question is whether now how to recast it.

Sen. Welch: So, we just have them both, according to the suggestion I made here.

Sen. Vieira: Yeah, do it as one exercise, kill two birds with one stone.

Sen. Welch: Yeah.

Mr. Al-Rawi: Madam Chair, I am reminded of what happened when we were looking at treating with preliminary enquiries and paper committals, et cetera, and the steps that we took to get there. We did not go wholeheartedly with a form of amendment, and that there may be—I am mindful that notwithstanding stakeholder consultation, that the Senate is the Senate, and that this Parliament makes law as opposed to anyone else. So it is really up to all of us here seated to come up with this. Would you give me a moment just to have a quick look at this in context. I could flag right now, I still would not want to lose the Register of Interviews, but I just need a quick moment to ascertain something.

Madam Chairman: Hon. Senators, at this stage the deliberations of the committee will be suspended for 10 minutes, we will return—we are standing down deliberations on 12Q, the proposed amendment, and we will return, the committee will return and resume at 7.00 p.m.

6.50 p.m.: *Committee suspended.*

7.00 p.m.: *Committee resumed*.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you so much for affording us the opportunity a short while ago, Madam Chair, for the break. I am looking at Sen. Welch's proposal in subsection (1) inserting "in writing", yes. In subsection (2), in subsection (2) the word "also" after the word "shall". In subsection (2):

"An interview…shall also…"—right, yeah.

It is agreeable. So that is A and B. And deleting subsection (6), yes, that would make sense. And then the consequential renumbering would happen. There would be an amendment to subsection (10) which we probably—subsection (10) which we need to do. May I explain that, Madam Chair? Okay.

So, Madam Chair, we are minded to accept and we thank Sen Welch and Sen. Vieira, both of whom I have had a chat at the break as well. We are happy to accept the amendments proposed at section 12Q by Sen. Welch as it relates to paragraph A, paragraph B and paragraph C. In making those amendments we observed that subsection (10) which is at page 36 of the Bill, bottom of the page, which says:

> "An interviewing officer shall record in the approved form…"—these words—"and in the Station Diary, any interview under this section and any reason why it was not reasonably practicable to comply with any of the provisions..."

We believe that the words "any interview under this section" ought to be removed, "and"—up to the word "and". And that is because we propose to maintain keeping 12R, which is the register of interviews, subsection (4) tells you where you cannot do the video put it in the station diary the reasons why. Subsection (10) would therefore tell us all of the other reasons why you could not comply which were not caught in the further subsections. So in summary I am

saying, we propose to accept the recommendations of Sen. Welch and then I will propose a further amendment to subsection (10) which I pick up in my own amendments proposed to Q.

Madam Chairman: You do not have any amendments to Q, I do not think.

Mr. Al-Rawi: No, I do not. So I can either propose it, I could ask Sen. Welch to propose it.

Madam Chairman: Yes, let us just ask Sen. Welch if he would incorporate D, a new D in your amendments to delete the words "any interview under this section" and in subsection (10). Yes?

Sen. Welch: I will incorporate that.

Mr. Al-Rawi: Madam Chair, there is one further. In subsection (4) at the top page 36. In the third line after the word recording, we should insert the words "under subsection (2)". So that it will read just like that which is in subsection (7). So you see how we have it is being made under subsection (2). So:

> "(4) Where it is not reasonably practicable to record an interview by video recording…"—under subsection (2) the interview—"the interviewing officer shall…"—and it continues. [*Crosstalk*] Yes please.

Sen. Welch: Yes, I can incorporate that as part of my amendment if you wish as well.

Mr. Al-Rawi: Yes, please, thank you.

Madam Chairman: So, Sen. Welch, if I may be allowed to read to you your proposed amendments. At 12Q—

Sen. Welch: Madam Chair, if I could interject one matter that has just occurred to me, which is (11) at the top of page 37. I see:

> "The recording of an interview under this section which was conducted,

subject to section 12R, shall be admissible as evidence."

I am just wondering why admissibility is subject to section 12R. Because it might imply if it is not put in this register it would not be admissible and to me that would be somewhat startling.

Mr. Al-Rawi: In light of the fact that we have gone to writing now, the caution for the need of the register of interviews would disappear.

Sen. Welch: Yes.

Mr. Al-Rawi: So it stands to reason that (11) could go.

Sen. Vieira: Or just say, before you have an interview under this section shall be admissible as evidence—

Sen. Welch: Yeah, it can stay but—

Mr. Al-Rawi: I mean, sorry, that the subject to seven, sorry, forgive me I am being imprecise. The subject to 12R—

Sen. Welch: Yes.

Mr. Al-Rawi:—could go.

Sen. Welch: Yes, under this section, subject to, right. So it should just read:

The recording of an interview under this section shall be admissible as evidence.

Mr. Al-Rawi: Yes. Deleting the words "which was conducted, subject to section 12R,". The recording of an interview under this section—

Sen. Welch: So that will be it for 12Q for me.

Madam Chairman: Thank you. We now have to record everything that has been—

Sen. Welch: Very well, Madam Chairman.

Madam Chairman: Amended, further amended and further amended. Okay.

Sen. Welch: Very well, Madam Chairman.

Madam Chairman: So hon. Senators, please allow me to read the entire 12Q as proposed by Sen. Welch and I really would ask for everyone to pay attention at this stage because it is a little time consuming to have to go through this.

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

Madam Chairman: So 12Q:

A In subsection (1) by inserting the words "in writing" after the word "record".

B. In subsection (2) by inserting the word "also" after the word "shall".

I think we will take off "and"."

Mr. Al-Rawi: Yep.

Madam Chairman: C. In subsection (4) by inserting the words "under subsection (2)" after the word "recording".

D. Delete subsection (6).

E. In subsection (10) by deleting the words "any interview under this section and"; and

"F. Delete the words "which was conducted, subject to section 12R,".

Mr. Al-Rawi: That is perfectly correct.

Madam Chairman: Yeah.

Mr. Al-Rawi: Yes, Madam Chair. [*Crosstalk*]

Madam Chairman: Yes. So F will read, "In subsection (11) delete the words".

Mr. Al-Rawi: Yes.

Madam Chairman: Hon. Senators, the question is that clause 4 at 12Q be amended and as circulated by Sen. Welch and further amended as has just been outlined.

Question, on amendment, [*Sen. E. Welch*] *put and agreed to.*

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

Madam Chairman: We move on to 12R. Sen. Welch, you have amendment, Attorney General you have an amendment.

H. In the proposed section 12R(2), by deleting the words "on request,".

Mr. Al-Rawi: So, Madam Chair—

Madam Chairman: Yes.

Mr. Al-Rawi:—my amendment is to remove the words "on request" in 12R. I understand from the clause that we just, the section—the proposed section that we just finished, the rationale as to why Sen. Welch was proposing the elimination of 12R. We would still like to keep the precis if I could call it that in the register of interviews in the form set out in 12R. What we do think we need to do in 12R, subsection (2) is to remove this "on request". So:

> "An interviewee or his representative shall on request, be provided with a copy of the entry…"

We should make it mandatory that they shall be provided with the copy of the entry in relation to his interview, so that there is a record to the defence, the suspect at the same time. I am anticipating Sen. Welch's submission in respect of this sub, in respect of this section 12R, but we prefer to still keep it because we want to harmonize a register so that diaries do not go missing or things do not go missing, so that there is still at least a record of it.

Madam Chairman: Sen. Welch.

Sen. Welch: Yes. My recommendation for its removal was that once we have the statement in existence it would have all these details. But I do not see a difficulty if we continue to have the register essentially.

Madam Chairman: So that you will withdraw your amendment.

Sen. Welch: Yes, I withdraw my suggestion that it be deleted—

Madam Chairman: Thank you.

Sen. Welch:—12R be deleted completely.

Amendment withdrawn.

Madam Chairman: Attorney General so we will put your—

Mr. Al-Rawi: At the end, yes Ma'am.

Madam Chairman: At the end.

Mr. Al-Rawi: Yes, please.

Madam Chairman: Yeah. We move on to 12S, both the Attorney General and Sen. Welch. I think you have the same amendment. Am I right?

I. In the proposed section 12S(3), by deleting the word "may" and substituting the word "shall".

Sen. Welch: Yeah.

Mr. Al-Rawi: Yes, Madam Chair. "May" to "shall".

Madam Chairman: Yeah. So Sen. Welch, your amendment is the same as the Attorney General.

Sen. Welch: Yes.

Madam Chairman: Will you withdraw yours?

Sen. Welch: Yes.

Amendment withdrawn.

Madam Chairman: Thank you very much. Attorney General, we will proceed with that.

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

Madam Chairman: Yeah. Then we move to 12U.

Mr. Al-Rawi: Sorry, Madam Chair, in light of an amendment that we just took a short while ago—

Madam Chairman: Yes.

Mr. Al-Rawi:—our team has observed that we do need to make a small

amendment to—is it S? Forgive me, Madam Chair. So I would need a further consideration in 12S as in Sierra, and we are looking at subsection (8) which is on page 41. So at the top of page 41 you would see subsection (8).

Madam Chairman: Yeah.

Mr. Al-Rawi: We are proposing to delete all the words occurring after the word "re-played". So you see that word beginning "to" we are proposing to delete all of those and to insert instead the words "and re-read to the interviewee".

Madam Chairman: Okay, so Attorney General, if you could just give us some time to record.

Mr. Al-Rawi: Yes, Ma'am. So the amendment in I at my submission will be:

> In the proposed section 12S(3), by deleting the word "may" and substituting the word "shall".

That should be an A and then it should be followed by a B which would be:

> In subsection (8), by deleting—

So the B should be:

> In subsection (8), by deleting all the words occurring after the word "re-played" and inserting the words "and re-read to the interviewee".

Madam Chairman: Attorney General, Members—

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

Madam Chairman: If we can just treat with 12S. So in the proposed section 12S:

A. In subsection (3) by deleting the word "may" and substituting the word "shall"; and

B. In subsection (8) by deleting all the words occurring after the "re-played" and inserting the words "and re-read to the interviewee".

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: So that we move on now. Any questions or comments on that

proposed amendment? [*Crosstalk*] Yes, thank you. So we move on to—

Mr. Al-Rawi: Madam Chair, it is not on your list but it flows from that which we have accepted. It is 12T as in Tango on page 41. It flows from the amendments that Sen. Welch gave us.

Madam Chairman: Sure.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes, Madam Chair. So 12T as in Tango flows—this would have been where we did not contemplate the writing of an interview.

Madam Chairman: Sure. 12—

Mr. Al-Rawi: 12T(1) stands, 12T(2)—

Madam Chairman: Yes.

Mr. Al-Rawi: At the very last—at the penultimate line, I would just explain it before I dictate it. Instead of "a written record of the remainder of the interview" we put "the". So delete "a" and put "the". Just let me give you the language for that now. So it would be in proposed section 12T as in Tango, in the eighth line by deleting the words, "make a" and substitute the words "continue taking the".

Madam Chairman: Can you repeat it?

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

Madam Chairman: 12T(2)—

Mr. Al-Rawi: 12T(2)—just let me get the lines right. In the seventh line delete the words "make a" and substitute the words "continue taking the".

Madam Chairman: So 12T(2), delete the words "make a" and substitute the words "continue taking the".

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

Madam Chairman: Any comments on that proposed amendment?

Hon. Member:—that phrasing falls from the other amendment.

Madam Chairman: Sure, so it is accepted. Thank you very much. So we have done 12S, 12T, we go now to the proposed amendment 12U. Sen. Welch.

12U. By deleting subsection (3) and substituting the following:

(3) Where an interview is recorded in writing, the interviewee or his representative shall be given a copy of the written interview within seven days of the recording of the interview.

Sen. Welch: Yes. In light of the fact that the other amendments have been accepted I think it should now be rephrased to read as I have recommended in the list of amendments. Because the present 12U(3) speaks of:

"Where a transcript of the recording of an interview is made…"

That is assuming that the Bill remained as it is un-amended where you have a video recording of the interview then where a transcript of that video recording is made. But if we now have that the interview must also be recorded in writing then it follows that (3) should be deleted or rephrased to read:

Where an interview is recorded in writing, the interviewee or his representative shall be given a copy of the written interview within seven days of the recording of the interview.

The transcript assumed it was only video recorded and someone listened to the video recording sometime subsequently and transcribed it. But if we are saying that the written interview has to be recorded at the time simultaneously with the video being made then we are talking about providing a copy of the written interview.

Mr. Al-Rawi: Madam Chair, I wonder if it is not two things that we really should be doing, because a transcript in my view would be more than what we actually write. So if I use these proceedings here, our circulated amendments could be put

into one page, but the transcript of what we are saying in committee stage is different, it may be more fulsome. So I understand, notwithstanding the amendments made, I understand that the transcript may be broader than the written copy.

So there are two things on the table then, the obligation to be provided with the written statement that you give within a particular time frame and if they made a transcript of the video of you giving the written statement that transcript may be different from the written statement and I would assume that that has to be given as well.

Sen. Welch: I see. Although strictly speaking, one would think that if the written interview is being done verbatim it should reflect all what is on the video.

Mr. Al-Rawi: Yeah.

Sen. Welch: But if you wish to say if a transcript is made and if you wish to maintain transcript and written interview in that section then I do not see a difficulty.

Sen. Vieira: AG, I agree with you. Because what is written in the interview is just coming from one source, but the transcript would also record the interaction by the interrogating officer—

Mr. Al-Rawi: JP, everyone else.

Sen. Vieira:—which could be useful as well.

Mr. Al-Rawi: Yeah.

Sen. Vieira: So—

Sen. Welch: Let me just say that if a written interview—the written interview records all sources, questions and answers. Because if you just record answers and you do not know what question was—

Mr. Al-Rawi: Yes, but you see the bit about that which was observed in brackets,

you know, got up and cross the room, those sort of things—

Sen. Welch: I mean, all those things are supposed to be—all those things are recorded in a written interview in a statement. I can tell you that as a matter of practice in all the interviews I have seen, break taken, and I think it is in following Judges Rules or the Standing Orders, everything is recorded.

Mr. Al-Rawi: Got you. So the question is, well we do know that the written statement that you give and that you sign, et cetera, you get a copy of that in your disclosure. The transcript, I thought, and forgive me I do not practice in the criminal arena, but I thought that the transcript could lend itself to being different in certain circumstances and I was not sure. Even though it was relating to something else contemplated which we have now amended, right? So insofar as there may be a distinction between the transcript of the recording and the written record which you have signed and you have been given a copy, do you think—

Sen. Welch: Yeah, the only difference is that you are doing one simultaneously and the transcript—

Mr. Al-Rawi: In arrears.

Sen. Welch: May come afterwards. So it is given a different name. But what the interview itself is a transcript of what is—

Mr. Al-Rawi: I understand.

Sen. Welch:—being video recorded.

Mr. Al-Rawi: I understand. I do not know how to treat with it. I do not know if we are really differing on anything quite frankly. So yours says:

> "Where an interview is recorded in writing"—stick a pin—the "interviewee or his representative shall be given a copy of the written interview within seven days of the recording…"

Is it that—

Sen. Welch: Right. So it is recorded in writing and he is given a copy of it. You can also be providing them with the video as well, but that is already catered for.

Mr. Al-Rawi: So the question in my mind is whether you ever leave that station having given a statement without having a copy of it in your hand.

Sen. Welch: Sorry.

Mr. Al-Rawi: I said the question in my mind is, could there ever be a situation where you are given a written statement and not be given it immediately. You always get it.

Sen. Welch: The present practice is that you wait until trial and charge and disclosure. But with these provisions which are contemplating immediate disclosures then you simply would have to now make a photocopy of it and let us say a photocopy of it is not available right there and then, a photocopier, then the seven days would apply. But the written interview is really a transcript of what is on the video.

Mr. Al-Rawi: Got you. So I have asked that to discern now two concepts, one, being given the statement within seven days and not a trial, which is an improvement in the fairness of the process, et cetera. And two, if there is a transcript which for some reason may be different, I do not know, I am assuming it could be, that you get that within seven days. So do we want to amend (3) as proposed by you:

> Where an interview is recorded in writing—

That is fine.

> —or transcribed, the interviewee or his representative shall be given a copy of the written interview or transcription of the interview.

Do I want to capture two things as opposed to one is my question.

Sen. Welch: Okay, very well.

Mr. Al-Rawi: If you would just give a minute, Madam Chair.

Sen. Welch: Although I think they are basically the same, but if you want to be complete—

Hon. Senator: I would leave it.

Sen. Welch: If you put it as or. [*Crosstalk*]

Madam Chairman: Just one second, Sen. Vieira. Attorney General, I think Sen. Vieira is trying to get your attention.

Mr. Al-Rawi: Sorry. I apologize.

Mr. Vieira: No, no. I was wrestling with it because the two things basically are saying the same thing. But the reason I am inclined to go with Sen. Welch's amendment is because really the focus here is not so much on the recording, the focus here is on what is written.

Mr. Al-Rawi: The handing of the thing.

7.30 p.m.

Sen. Vieira: And so, by saying "Where the interview is recorded in writing", which is really the crux of the matter, that is what is handed rather than the focus being on the transcript of a recording.

Mr. Al-Rawi: My own position is to capture both because I do not know in certain circumstances if you may have two totally different things. There may be a habit of transcription. So right now we use mass technology, we give them the video and we have somebody transcribe it and that is produced, and it will be done with greater rapidity as we go along. I was minded to capture both just in case because I did not want them to say well you are only entitled to the written statement, and then the prosecution comes to rely upon the video which shows some inconsistency with the statement as to a nuance that may arise in the trial. I do not know, right. I mean, Sen. Welch's experience that he is sharing with us is, look,

everything is recorded in that statement and so you do not need to worry about it, but I do not know how this will evolve. That was just my thought as a legislature coming forward.

So I was looking at the same amendment Sen. Welch has and if I read with it my thought in mind. Sen. Welch has:

"Where an interview is recorded in writing…"

I would add here:

"or a transcript of the recording of an interview is made, the interviewee or his representative shall be given a copy of the written interview or transcript of the recording within seven days of the recording of the interview."

So that I would capture both.

Hon. Senator: Superfluous.

Mr. Al-Rawi: It may be superfluous, but I did not know if there is going to be a diversion at some point. I really do not know.

Sen. Vieira: I am with you. I think it is better to have than to want.

Mr. Al-Rawi: Is that agreeable, Madam Chair? Could I fashion that?

Madam Chairman: Yes. If you could just read it now. I think it is to insert some words after "interview"?

Mr. Al-Rawi: So in section 12U, as circulated, by Sen. Welch—

Madam Chairman: Yes, at sub (3)?

Mr. Al-Rawi:—at sub (3) in the bold that he has there, to insert in the appropriate place the following. So:

"Where an interview is recorded in writing or a transcript of the recording of an interview is made,"—and then it would continue—"the interviewee or his representative shall be given a copy of the written interview"—inserting here—"or the transcript of the recording of the interview"—and then it

continues—"within seven days of the recording of the interview."

Madam Chairman: So it is proposed that subsection (3) that it be as follows:

"Where an interview is recorded in writing,"—insert the words—"or a transcript of the recording of an interview is made, the interviewee or his representative shall be given a copy of written interview or the transcript of the recording of the interview within seven days of the recording of the interview."

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

Madam Chairman: Sen. Welch, you are accepting this as your amendment?

Sen. Welch: Yes.

Madam Chairman: Hon. Senators, the question is that clause 4 at 12U be amended, as circulated, by Sen. Welch and further amended as follows:

By inserting the words after "writing", "or a transcript of the recording of an interview is made," and then inserting the words after "interview", "or the transcript of the recording of the interview".

Mr. Al-Rawi: Perfect.

Question, on amendment, put and agreed to.

Madam Chairman: We move now to clause 12X. Both Sen. Welch and the Attorney General have proposed amendments. Attorney General?

Mr. Al-Rawi: Yes, Madam Chair. I have accepted Sen. Welch's amendment and incorporated it myself in addition to another one which I had proposed. So at the 12X in the chapeau I had proposed to delete "the investigating officer" and substitute "an investigating officer" which brings us in line with the amendments we made earlier. And then I in subsection (b) accepted Sen. Welch's recommendations in my own words.

Madam Chairman: So Sen. Welch, in light of what the Attorney General has

said, are you minded to withdraw your amendment—

Sen. Welch: Yes, in light if it is being accepted.

Amendment withdrawn.

Madam Chairman:—and let the Attorney General move forward?

Mr. Al-Rawi: Thank you, Senator.

Sen. Welch: That is with respect to 12X(1)(c). Correct?

Mr. Al-Rawi: Yes.

Sen. Welch: As it is?

Mr. Al-Rawi: Yes, Sir.

Madam Chairman: And is there any comment with respect to 12X(1)(a) as proposed by the Attorney General?

Sen. Welch: Yes, it is accepted.

Madam Chairman: It is accepted? Thank you very much. We will move on to 12Y. Attorney General and Sen. Welch, you both have amendments.

Sen. Welch: Yes.

By deleting clause 12Y and renumbering the clauses accordingly.

Mr. Al-Rawi: Madam Chair, consequent upon Sen. Welch's contribution, I agreed that the word "shall" as it is used in 12Y could be offensive to the separation of powers, and that there ought not to be a circumstance where evidence is automatically accepted by a court particularly this kind of evidence. And therefore, we proposed the amendment of deleting the word "shall" and inserting instead the word "may" so that it is entirely subject to the jurisdiction and discretion of the court as to whether the evidence would be admissible or not.

Sen. Welch: Madam Chairman, my suggested amendment goes further than that, in that I have suggested that 12Y be deleted completely and I can explain briefly.

Madam Chairman: Yes.

Sen. Welch: The effect of 12Y when you look at the total provisions of 12Y is that the video or audio recording of a witness statement, that is the statement given by a witness to the police, shall be admissible as evidence. Now when you look at the other sections this contemplates that the witness is a witness who may be available because 12(3) and (4) speaks of the witness coming to court for cross-examination, et cetera. So this is not a situation in which the witness is dead or something is wrong with the witness, or it is a vulnerable witness, because the later provisions regarding vulnerable witnesses already caters for the receipt of evidence of vulnerable witnesses.

This is just a provision which does not specify any circumstances, any special circumstances. It simply states that you can put the video recording of a witness statement to the police into evidence. There is nothing to prevent a prosecution in the course of a prosecution from saying, "We are relying on section 12Y and we are putting this witness police statement into evidence". Under 12Y they do not have to give any reasons, they do not have to give any circumstances. 12Y just allows it to be done. And the very 12Y contemplates that the witness may be available because it says, "The admission of the video or audio recording"—

Mr. Al-Rawi: I am sorry to interrupt to save you some time. I am minded to delete the section and I will explain why. At this point, I need I think to go back to the stakeholders on this particular point. My gut feeling tells me that perhaps the stakeholders did not appreciate the gravity of this section. I do not think it interrupts with the abolition of preliminary enquiries because sufficiency hearing versus initial hearing will take care of that. So we are not back to the dance of paper committals and cross-examining, et cetera, and the fiasco that happened in trying to improve preliminary enquiries.

This sort of runs aground in similar form to the Interception of

Communications Act which we amended recently where we put in special conditions for the admissibility of sensitive information, but we did put in the characteristics for it.

Madam Chairman: Attorney General, if I may interrupt, we have a Procedural Motion.

Mr. Al-Rawi: Procedural? My apologies. Yes, Ma'am.

Madam Chairman: Hon. Senators, the Senate will now resume.

Senate resumed.

Madam President: Leader of Government Business.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, in accordance with Standing Order 14(5), I beg to move that this Senate continue to sit until the completion of the business at hand inclusive of the matters on the adjournment.

*Question put and agreed t*o.

EVIDENCE (AMDT.) BILL, 2020

Committee resumed.

Madam Chairman: Attorney General?

Mr. Al-Rawi: Yes, Madam Chair. So sorry to have interrupted Sen. Welch, but I believe we ought to exercise some caution on this particular section. I would not want to go without the special circumstances being identified in better form. I think it is an excellent caution that we stop and take heed of that. So in those circumstances, Madam Chair, I will agree with Sen. Welch's proposal for the deletion of 12Y. I will go back to the stakeholders, look at it, see whether I need to improve with defined circumstances for admissibility and then re-approach the Senate and House if necessary.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Thank you, Ma'am. AG, just to point out that the Law Association did speak specifically to 12Y. They said it was not clear under what circumstances the statement of testimony of a witness under 12Y may be recorded and then used later on, and then they also had suggested circumstances in which it could and could not.

Madam Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: I wanted to know, through you, Madam, whether Sen. Welch is reading this to mean that it must be admissible because I am reading it to mean that it can be admissible. But if you say "shall be admissible", all you are saying that it can be and the circumstances must be examined. There must be provision for the attorney on the other side to say, "You know, I object to this or I do not object to this." It does not mean that it must be. In this case it is the "shall be" is not a mandatory "shall" at all.

Sen. Welch: Well, let me respond to it by saying, first of all the word "shall" is mandatory in nature and we are dealing with criminal evidence which criminal statutes are interpreted strictly. Then secondly, even if hon. Sen. Ahye's point is valid, I would still request the deletion of it for, one, it does not specify the circumstances; secondly, it contemplates that the witness—that is, 12Y(3) contemplates that the witness, it:

> "…shall not be…a bar to the same witness, where appropriate being allowed to come and give direct oral…"—evidence.

So 12Y(3) contemplates that this is a witness who is available. And then 12(4) also contemplates that it is a witness who is available, because it speaks to where his video recorded statement is admissible the witness can be brought to court, but he shall not be cross-examined on anything already adequately addressed in his

recording.

So this is also a violation of the rights of the accused to cross-examine a witness on something which he has said in his evidence in chief. Because after you submit that recording in evidence, 12(4) is saying if he deals sufficiently with something in that recording the court can say you cannot cross-examine him on it. Well in criminal practice that is exactly what a defence attorney wants to cross-examine a witness on, the matters which he has dealt with in his evidence in chief. So when 12Y(4) says you cannot cross-examine him on something which is in his statement which has been put in because he has already adequately dealt with it, that is a violation of criminal practice and the rights of an accused to confront a witness.

Madam Chairman: Attorney General, are you, therefore, agreeing to Sen. Welch's proposed amendment?

Mr. Al-Rawi: Yes, Ma'am. I had—

Madam Chairman: If you are, then are you—

Mr. Al-Rawi: Withdrawing mine. Yes, I got cut short of the interruption by Sen. Thompson-Ahye.

Amendment withdrawn.

Mr. Al-Rawi:. And if I could just say to underwrite, to re-enforce what Sen. Welch is saying, the special circumstances set out in section 15C of the Evidence Act would collide with this, and therefore, I must exercise caution in the submission and I thank Sen. Welch for his submission which I accept. If anything, I will go back and have a look at the collision between this proposed section and section 15C of the Act as it stands and come up with the special circumstances in the context of vulnerable witnesses, and special advocates, and other creatures which we have just recently introduced in other areas of the law. But I thank hon.

Senator for the submission.

Sen. Welch: Well, if you do not—

Madam Chairman: No. Well, I do not think we need to go any further. I think the Attorney General has accepted the amendment as proposed. So, hon. Senators, the question is that clause 4 at 12Y, be amended, as circulated, by Sen. Welch.

Question, on amendment, [*Sen. E. Welch*] *put and agreed to*.

Madam Chairman: We have therefore now reached the end of our deliberations on clause 4. I now have to put the amendments as proposed by the Attorney General, and then I will again put the amendments as proposed by Sen. Welch, and then we will put the question on the clause in its entirety.

Hon. Senators, the question is that clause 4 be amended as circulated by the Attorney General and further amended as follows:

In the proposed section 12A in subsection (4)(b) by inserting the words after "video" and by inserting the word "of" after the word recording.

In section 12C by inserting the words in subparagraph (b) by—

In subsection (5)(i) in subsection (d) by deleting the word ";" and substituting the words "; or".

In sub (2) by inserting the words after the word "witness" and by deleting the word "not" and by deleting the word ";" and substituting the word ";.".

(3) by deleting subsection (d).

In clause 12S:

(a) in subsection (3) by deleting the word "may" and substituting the word "shall"; and

(b) in subsection (8) by deleting all the words occurring after the word "re-played" and substituting the words "and re-read to the interviewee".

K:

In the proposed section 12T(2) by deleting the words "make a" and substituting the words "continue taking the".

Mr. Al-Rawi: Madam Chairman, and we have noted that I withdrew paragraph F.

Madam Chairman: Yes.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: And also in the Attorney General's amendments as circulated, it is to note that K in 12Y(1) the proposed amendment was withdrawn, and with respect to 12G(4)(b) that proposed amendment was also withdrawn.

Mr. Al-Rawi: And with respect to paragraph G, with respect to 12K—

Madam Chairman: And with respect to 12K(a) that was withdrawn, and 12K(c) was also withdrawn.

Mr. Al-Rawi: Yes, Madam Chair, that is perfectly correct.

Question put and agreed to.

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

Clauses 5 to 12 ordered to stand part of the Bill.

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

Senate resumed.

Madam President: Attorney General.

Hon. Al-Rawi: Thank you, Madam President. Madam President, I wish to report that a Bill to amend the Evidence Act, Chap. 7:02, was considered in committee of the whole and approved with amendments. I now beg to move that the Senate agree with the committee's report.

Bill reported, with amendment.

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

Sen. Mark: No. Division.

The Senate voted: Ayes 23 Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

de Freitas, N.

Sagramsingh-Sooklal, Hon. R.

Bacchus, Hon. H.

Lezama-Lee Sing, Mrs. L.

Bethelmy, Ms. Y.

Browne, Hon. Dr. A.

Mitchell, Hon. R.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Welch, E.

Singh, Hon. A.

Cox, Hon. D.

NOES

Mark W.

John, Ms. J.

Lutchmedial, Ms. J.

Nakhid, D.

Lyder, D.

Roberts, A.

Question agreed to.

Bill accordingly read the third time and passed. [*Desk thumping*]

ADJOURMENT

Madam President: Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday, the 26th of January, 2021, at 1.30 p.m. That is Private Members' Day and we plan to continue to debate on the Motion raised by Sen. Vieira on Service Commissions.

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

Poten & Partners Consultancy Report (Government's Refusal to Follow)

Sen. Wade Mark: Thank you, Madam President. Madam President, tax avoidance in this country, particularly in the energy sector is real, and the whole issue of transfer pricing is a mechanism that has been used by the energy companies to avoid taxes and to prevent Trinidad and Tobago from getting its fair share.

This, of course, was manifested when the Government held its *Spotlight on Energy* in 2018, and the Poten & Partners consultancy revealed in its report that two major energy companies had denied this company, had denied I should say this country, of revenues amounting to over US $15 billion over a period of about seven to eight years. Now, Madam President, this was reflected in the gas master plan. This revenue could have been used in a very powerful way to help stabilize this economy, and the Government gave the impression that they were committed to addressing this matter.

Madam President, the Petroleum Taxes Act dictated that the Government address this issue. The company involved obviously, Shell and BP, told this country that essentially a contract trumped the law, and the law in question was the Petroleum Taxes Act along with its Regulations.

8.00 p.m.

This situation, Madam President, turned out to be very wrong. It was not in favour of the country and the Government has not been able to properly explain to the citizens why it had foregone some US $15 billion that were owed to us. We understand that the Government simply caved in to these giants when they were told that the contract is what was guiding them. But, Madam President, the question has to be asked: Which is more superior? The contract or the Petroleum Taxes Act and its accompanying Regulations? And what authority did the Minister of Energy and Energy Industries and the Prime Minister have in bypassing in their negotiations the law that governed this very important matter?

So, Madam President, we are calling on the Government to explain to this country because all we got in return was $1 billion when we were supposed to be getting $15 billion. That is over $100 billion, Madam President. Had that money been extracted from these energy giants and put in a fund at a rate of 7 per cent

interest, we would have been extracting US $105 million per year which would have been able to deal with GATE as an issue. That money could have gone into the Heritage and Stabilisation Fund. So we need the Government to explain to this country why it backed down on really looking after the interest of our nation in this matter. They had a responsibility. There was report, Poten & Partners, indicating what they had to do. Why did the Government refuse to follow the advice of Poten & Partners? And why they allowed both Shell and BP to mamaguy and fool them at the expense of this country?

Imagine, Madam President, I read in the newspapers then where the Prime Minister said that he was literally "boufed" by an unnamed foreign energy company simply for giving an account and providing information to the country as it relates to this matter, accusing this country and its government of a breach of confidentiality. The Petroleum Taxes Act and its Regulations require all parties in the energy sector, oil and gas, to be licensed and the Minister under the law is required to keep a register of all these licences. The Ministry obviously has not been in compliance with this law because that is not available to the public.

Madam President, what happened is that the Government proceeded, as I close, to provide these companies with an extension of their licence agreement when the Government should have gotten much more from those licences that were expired, both in terms of Shell and BP. It is in the Budget Statement of 2021. So I think the time has come for the Government to level with the country. Why did we sell out the national patrimony for $1 billion when we were supposed to be entitled under the law to enjoy US $15 billion and above?

This came about, as I said, because of transfer pricing and tax avoidance. This Government promised Trinidad and Tobago that it will introduce legislation on transfer pricing. That was since in 2016, 2017, we are now in 2021 and we are

still awaiting transfer pricing and these companies continue to do their own thing at the expense of Trinidad and Tobago. It is against this background that the people are calling for answers. They want the Government to come clean and they want the Government to tell us why did we forego US $15 billion in exchange for $1 billion and why did they proceed to extend these licences which came to an end which we could have taken and really reorganize and maybe re-lease for much more than $1 billion and in one instance, Madam President, I read where it was US $250 million.

So this is a matter that I think that we need to clarify and we need to get answers once and for all from the Government. So I would like the hon. Minister to clear the air and see what Trinidad and Tobago can do at this eleventh hour to extract our moneys that we have lost as a result of their bad deals. Thank you very much, Madam President. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. The UNC is missing Kevin Ramnarine [*Laughter*] because even though he is not my favourite, he is my opponent, at least he had some semblance and knowledge of this sector.

As we speak, with all due respect to everybody here, the UNC has no individual, neither in the Upper House nor in the Lower House, who is seized of energy matters. I mean no offence to anybody. This is a complex global industry.

Sen. Mark is right. Poten & Partners did identify serious revenue leakage but what he did not say is that the $15 billion—and I will show you how Poten calculated that—was leaked from this economy over the years 2011 to 2014. The haemorrhage took place under the watch of the United National Congress. You all did not even know, you all took no cognizance of that. You all were asleep.

Because in that period, there is something called the Standing Committee of

Energy which is chaired by the Prime Minister. For five years, that committee did not meet. It was chaired by—no, sorry about that. For five years, the Prime Minister did not attend a single meeting as Chairman. It was chaired by Larry Howai with the help of Kevin Ramnarine and it was the one eye leading the blind.

So what Poten said is that—no, before we go to Poten. When Atlantic LNG was constructed, it was a major significant capital investment in this country. Trinidad was the third country in the world that went into LNG. The first was Indonesia, the second was Qatar and the third was Trinidad. It was a major, major policy shift. When Train 4 was finished construction, Train 4 was the single largest LNG train in the world. That was a significant capital investment and when capital investment of that size is taken, it must be justified with long-term contracts.

So the long-term contracts in those days were based—there was a time when the plants were young. All our LNG was exported to Boston. We supplied 80 per cent of the LNG market in the United States. Prices were high then. And what happened is that the long-term gas contracts were based on Henry Hub which is the US benchmark.

However, over time, the market changed. There are other markets. There is Henry Hub. There is JKM which is the Japan/Korea Market which is now the lucrative market in the world. There is NBP which is the European market and there is a pricing formula based on Brent crude. So with a global shift in prices, Henry Hub prices became low. The lucrative market was China, was Korea, was Japan. All Poten did was saying that if our LNG was exported to those countries, we would have been making significantly more revenue than we were but we were locked into contracts based on Henry Hub reference prices.

However, there was evidence that there was cargo switching out in the open Atlantic because these companies have global portfolios but the natural gas is not

fingerprinted, you can switch anywhere. It is not to say Trinidad natural gas has a special colour. LNG is LNG. So what Poten analysed and said, if these contracts were changed and if these contracts were based on a basket of markets, we would be able to extract more money. But all that haemorrhaging took place under the UNC. It is when we came into office, we went back and renegotiated those contracts and these contracts were not due to expire.

When we met at the headquarters of BP and Shell, these companies said we understand that Trinidad is not getting its fair share of its LNG but we want to make one thing fundamentally clear, we broke no law and we breached no contract but we are willing to sit and talk and that was the basis of negotiation mano-a-mano led by the Prime Minister, including myself and Minister Young and a party of technocrats from the Ministry of Energy and Energy Industries and then we worked out what was called the Train 1 reference price which is one-third JKM, which is Japan/Korea, one third NBP which is Europe and one-third Brent, so you spread your risk. Because one day the Japan market might fall and the very said Henry Hub we are looking down at today may go back up and vice versa. It is just as when you are trading in foreign currency, you spread your risk over a basket of currencies, you cannot take chances with one. So it makes no sense in saying you have a bad deal in a long-term contract because the markets change.

So the key points to note here, Madam President, is that the haemorrhaging did take place but it took place because of long-term gas contracts that were signed when the plant was now built. Most of the haemorrhaging took place under the watch of the United National Congress and it is this administration under Dr. Rowley and this current, if I may say so myself, the Minister of Energy and Energy Industries that went in and renegotiated these contracts with Shell and with BP so that today, we are on a firmer footing.

However, the revenue is not lucrative, not because of the contract but because of the global price. In those days, LNG was selling in Japan at US $13 per MMBtu. Right now, Henry Hub is $2.55 and even in Japan and thing, it is just above $3.00, it is only recently it had a spike. So while we have revised the formulae, the market has dropped but when the market picks back up post-COVID, Trinidad and Tobago will be in a much better state.

But to come here now and playing that we did anything wrong, far from the truth; it is we who have made the wrong right [*Desk thumping*] and it is under the United National Congress that this country was virtually ripped off of billions of US dollars because they had poor oversight. They did not have a watchful eye on the energy sector and for some strange reason, they went to sleep on the job. That is why today they are there and we are here. Thank you, Madam President. [*Desk thumping*]

Deregulation and Liberalization of the Fuel Market (Government's Policy Decision)

Sen. Wade Mark: Madam President, in the 2021 budget, the Government announced the deregulation and liberalization of the fuel market. That is, gasoline prices, diesel, premium, super, according to the Government, will now be deregulated and liberalized and that is supposed to take effect from the end of January of 2021. The Minister needs to bring us up to speed with where we are with that particular policy decision.

Madam President, after some 46 years of fuel subsidies, because of we being owners of oil and gas, that is the people of this country, this PNM Government has decided to remove fuel subsidies and allow the market literally to determine the price of fuel. So what the Government has said in essence is that there will no longer be a fuel subsidy.

Now, Madam President, we know that there is a subsidy on crude oil production and companies are supposed to be making a contribution to the Ministry and to this country towards this particular subsidy. The question that has to be asked is that with the removal of the fuel subsidy, what will happen to the subsidy that the oil companies have contributed to that particular subsidy that allowed the country and the people to pay lower prices at times for the price of fuel, whether it is diesel, whether it be super or premium. Will the Government allow the oil companies to go free and allow them to accumulate higher profits? Is the Government going to repeal the appropriate legislation so that the oil companies that normally would pay and contribute, would they now be retaining that particular subsidy? This is an issue that the Government needs to clear up.

Madam President, I am asking the hon. Minister whether the time has not come to place that subsidy, that particular subsidy that was on companies that were producing crude oil, whether that now should not go to companies that are producing, Madam President, gas. Should we not impose a subsidy on the gas producers, particularly those who are now getting higher gas prices, the up-streamers as they are called, and putting the NGC and the whole Point Lisas Industrial Estate in jeopardy? Whether the time has not come for that to take place? Because if that does not happen, what is going to take place is that the Government has already served notice that the RIC is going to move post haste in 2021 in order to increase electricity prices.

If the Government was creative, they would have transferred that subsidy onto the gas up-streamers, let them subsidize the population because that is our natural gas that they are using, they are selling and directly exporting. So I have raised this matter to get from the Government what steps are being taken to

cushion, not only gasoline prices that will increase as the economy on a global scale rebounds, so when prices increase, on the international market with the deregulation of gasoline sales and the retail outlets, as was indicated through gas stations, the privatization of gas stations, Madam President, the population will be called upon to pay higher fuel prices. And our buffer that was there before, the Government has served notice that it is going to remove that buffer. So no longer are we going to be getting that subsidy that we traditionally enjoyed for over 46 years according to the Minister of Finance.

So, Madam President, I have raised this issue to get from the Minister, to secure from the Minister, what measures are going to be put in place to ensure that the population of this country in this period of COVID and this economic crisis that we are going through, how are we going to provide them with some degree of, like a buffer in order to withstand these prices that inevitably will increase. So the Government is removing, as I said, subsidy on crude oil and in doing that, the Government is going to punish the people with higher fuel prices in the future.

So the question has to be asked: Why not place this same subsidy on the natural gas producers? It is a fact that the Government went to Houston, they renegotiated natural gas prices and those prices have now been in favour of the up-streamers at the expense of the down-streamers. So they are living high and nice whilst we in Trinidad and Tobago are experiencing grave challenges at the level of the Point Lisas Industrial Estate to be translated into higher prices in the coming period, not only for fuel but also for electricity.

So, Madam President, this is a case of energy insecurity because of the sell-out of this Government of Petrotrin and we no longer have energy security. It is now back to the plantation under this PNM Government where we are now

exporters of raw materials and no longer a producer of refined products, whether it is gasoline, premium, diesel or super, whether it is aviation. All of these fuels, Madam President, now have to be purchased abroad.

And you know, Madam President, to add insult to injury, the Government has given or has leased I should say—I understand and the Minister can correct me if I am wrong—some 600 acres of land at Brechin Castle. This land has been given to establish what is called a solar farm and it comes under the name of Lightsource, and the owners of Lightsource, again, BP and Shell. So they are supposed to be producing electricity and they are going to be selling that to obviously the national grid and that again, it will bring about a negative impact on our country.

Now, we know about the new energy thrust and the green economy. So we understand that this solar project is expected to produce 92 megawatts. I am calling on the Minister to clarify these matters and to tell us, Madam President, in closing, what steps are being taken to address the interest of the people in the face of the removal of subsidies on fuel in Trinidad and Tobago.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): "Lemme take ah deep breath", Madam President. The last time Minister Imbert piloted a Bill here, Sen. Mark said "he have Panadol in his pocket because he want to give him ah headache". Well, Sen. Mark, "lend meh the Panadol please because ah really getting ah headache".

The lack of understanding in some of these matters is bizarre. Let me start from the beginning. I take your mind back for those of you who are old enough to 1974, oil price was $6.00 a barrel and then there is something called the Arab oil embargo, the formation of OPEC and within six to eight months, oil price jumped to $36 a barrel, this is about a five- or six-fold increase in less than a year. By the

time it was 1977, Trinidad and Tobago was producing its highest crude oil production in its history which is 270,000 barrels a day largely coming from the Poui, Teak and Samaan fields.

The phenomenal increase in the price of oil obviously would have led that significant increase in fuel prices. Dr. Williams in his wisdom then introduced something called the Petroleum Production Levy and Subsidy Act which took from the oil companies—oil companies, not gas, oil because it is fuel you are going to subsidize—4 per cent of gross revenue to subsidize the fuel to the local market. That went on well. However, as production fell—so 4 per cent of 260,000 barrels is significantly different to 4 per cent on 100,000 barrels. So as production continued to slide through time and oil prices keep climbing, they reached to a stage where the curves crossed.

So much so, that when oil prices had reached $100 and $90 and what have you, over the last 14 years, the Government has had to subsidize fuel prices to the tune of $25 billion. This subsidy is in addition to the sometimes 400 million, 500 million coming from the petroleum subsidy levy. But it reached a stage where the levy was small compared to the size of the subsidy and that was the reason why the Government has to subsidize that in such a significant way. Where did the revenue come to subsidize that? Gas. It was not a direct taxation on gas to subsidize it but it came from the gas industry. So we have reached a stage where we cannot support the subsidy anymore.

And to speak about gas, when this administration imposed the royalty on natural gas of 12½ per cent, Madam President, I have said this here so many times and I will repeat it again today, the royalty on natural gas was TT 1.7 cents per MMBtu. We imposed a 12½ per cent royalty on gross revenue from natural gas.

Today, as I speak, the largest single source of revenue that this country earns is coming from the gas royalty of 12½ per cent.

That was revenue that was foregone for years by former administrations. So, we are in a position now where we have reduced the subsidy and with the liberalization we are going to have zero subsidy on liquid fuels.

8.30 p.m.

Sen. Mark raised a good point: What will happen to the petroleum levy, which is the 4 per cent that is based on oil production from the oil company? Because the Petroleum Levy Act says the levy should cover the subsidy or 4 per cent of gross revenue, whichever is less. So if 4 per cent of gross revenue is more than the subsidy, you pay the subsidy. If the subsidy is more, you pay the 4 per cent. So if there is no subsidy, what will you use the petroleum levy for? Well Sen. Mark, for years we have been subsidizing LPG. And who bore the brunt of that subsidy was not the State, was Petrotrin. That is one part of where I have a soft spot for Petrotrin. Because for decades, Petrotrin was by law supposed to sell LPG at the price of 37 cents per pound. Whereas the international market price is 96/97/$1 with reference to a place called Mont Belvieu in the Gulf coast. That subsidy was borne solely by Petrotrin.

When the refinery was shut down, NP now had to source LPG on the open market from PPGPL because they make propane, taking the liquids from the natural gas stream. But they sell at international prices, Mont Belvieu. That subsidy accounts for over $200 million a year. Quietly, nobody says anything about it, but everybody knows you can get a 20 pound cylinder of propane for $20 plus transport. That same 20 pound cylinder in Jamaica sells for the equivalent of TT $100, and Trinidadians have grown accustomed to that.

So what we have done now and the revision of the legislation will come to the Parliament in about two weeks. We will now be calculating the price of LPG referenced to the international market price of Mont Belvieu, and that now we will still continue to sell it at $20 per cylinder. But the difference will now be classified as a subsidy and that money will be taken from the petroleum levy. And our calculation shows that the petroleum levy will own a bulk of it. So the petroleum levy will not go to waste with the liberalization of the liquid fuels.

So we know what we are doing you know, but we are weaning the nation out of the dependency syndrome. The energy sector is not generating the lucrative surpluses that we have grown accustomed to. And lucrative surpluses are a function of two things, production and price. We are hurting on the production side. Production has been dropping because we are not finding new reserves at the rate in which we should find it, because you have to invest to find. You have to have good geologists to look and know where to find it. You have to have good technology, good seismic and you have to have companies with the capital to invest.

And on the price side, the international market determines the price. We are price takers. People behave as if we set the price of oil and we set the price of LNG, and we set the price of ammonia and we set the price of methanol. Nothing could be further from the truth. We are at the mercy of the market, and this administration has been using all its strength, all its wisdom, all its tact and all its international connection to keep this energy industry afloat, to keep the economy afloat. And we, in spite of all the restrictions, I think we have been doing a good job. [*Desk thumping*]

So the fuel market will be liberalized within a month's time. We will get to

the end of the subsidy line. The surplus that is generated in the petroleum levy will be used to subsidize LPG. So we are in a net even position and the country would not be hurting in any significant way from these new measures. I thank you, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.35p.m.