REPUBLIC OF TRINIDAD AND TOBAGO

Debates of the House of Representatives

4th Session – 10th Parliament (Rep.) – Volume 27 – Number 31

OFFICIAL REPORT
(HANSARD)

THE HONOURABLE WADE MARK
SPEAKER

THE HONOURABLE NELA KHAN
DEPUTY SPEAKER

Friday 6th June, 2014

CLERK OF THE HOUSE: JACQUI SAMPSON–MEIGUEL

EDITOR: LILA RODRIGUEZ–ROBERTS
Telephone: 623–4494

(TYPESET BY THE HANSARD STAFF, PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, CARONI, REPUBLIC OF TRINIDAD AND TOBAGO— 2022)

CONTENTS

THE
PARLIAMENTARY DEBATES
OFFICIAL REPORT
IN THE FOURTH SESSION OF THE TENTH PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON JUNE 18, 2010

SESSION 2013—2014 **VOLUME 27**

HOUSE OF REPRESENTATIVES

Friday, June 06, 2014

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received the following communication from the following Members: the hon. Winston Dookeran, Member of Parliament for Tunapuna, is out of the country and has asked to be excused from sittings of the House during the period May 25 to June 06, 2014; the hon. Roger Samuel, Member of Parliament for Arima, is also out of the country and has asked to be excused from sittings of the House during the period June 06—12, 2014; Mr. Chandresh Sharma, Member of Parliament for Fyzabad, is also out of the country and has asked to be excused from today's sitting of the House; the hon. Anil Roberts, Member of Parliament for D'Abadie/O'Meara and Mr. Patrick Manning, Member of Parliament for San Fernando East have asked to be excused from today's sitting of the House. The leave which the Members seek is granted.

PAPERS LAID

1. Audited Financial Statements of TAURUS Services Limited for the financial year ended September 30, 2010. [*The Minister of State in the Ministry of Finance and the Economy* (*Hon. Rudranath Indarsingh*)]

2. Audited Financial Statements of TAURUS Services Limited for the financial year ended September 30, 2011. [*Hon. R. Indarsingh*]

Papers 1 and 2 to be referred to the Public Accounts (*Enterprises*) *Committee.*

ORAL ANSWERS TO QUESTIONS

The Minister of Housing and Urban Development (Hon. Dr. Roodal Moonilal): Mr. Speaker, we have two questions on the Order Paper today for oral answer. The Minister of the Environment and Water Resources is out of the jurisdiction at this time and we would ask that this question be deferred for two weeks. The Attorney General is in the Chamber and can answer question No. 128.

The following question stood on the Order Paper in the name of Mr. Fitzgerald Jeffrey (La Brea):

Clearing of Watercourses
(Details of)

96. Could the hon. Minister of the Environment and Water Resources state when the following watercourses will be cleared of vegetation and debris, deepened, widened as well as reinforced with concrete channel walls:

i. Lake Canal in La Brea;

ii. Brea River in Vance River;

iii Lorensotte North River;

iv. Los Charos River;

v. Salazar Trace River; and

vi. Palo Seco/Erin River?

Question, by leave, deferred.

Highway Re-route Movement
(Breakdown of Legal Fees)

128. Mr. Jack Warner (*Chaguanas West*) asked the hon. Attorney General:

With respect to the High Court matter "Mr. Wayne Kublalsingh and others and the Highway Re-route Movement against the Attorney General (CV2012-03205)", could the hon. Attorney General provide a detailed breakdown of all legal fees paid and payable to each attorney employed by the State in the matter with respect to each stage of the matter at the High Court, the Court of Appeal and the Judicial Committee of the Privy Council, including but not limited to, the application by the State for the recusal of the judge in the matter?

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you very much, Mr. Speaker. A constitutional motion was filed on behalf of the Highway Re-route Movement and other citizens on August 03, 2012. An application was subsequently made for an injunction on September 18, 2013. The lawyers acting for the members of the Highway Re-route Movement and the claimants in this matter included Ramesh Lawrence Maharaj SC, Fyard Hosein SC, Anil Maharaj, Rishi Dass and Vijaya Maharaj.

The legal team for the state in this constitutional Motion was led by Mr. Russell Martineau SC, Ms. Deborah Peake SC, Mr. Kelvin Ramkissoon, Mr. Gerald Ramdeen and Mr. Shashri Roberts.

The fees paid to the state's legal team in respect of this constitutional Motion include the application for the interlocutory injunction, the application for the trial judge to recuse himself on the ground of apparent bias and the appeal and cross-appeal from the injunction. The amounts are as follows: to date in the High Court and Court of Appeal, Mr. Russell Martineau SC, $690,000; Ms. Deborah Peake SC, $862,500, $172,500 of which is still outstanding; Mr. Kelvin Ramkissoon, $711,850, $79,350 of which is outstanding for payment; Mr. Shashri Roberts, $501,550.83; Mr. Gerald Ramdeen, $450,000. In the Privy Council, Lord David Pannick QC, £75,000, and the Privy Council agents for the State, Charles Russell and Company, £10,000.

RETIRING ALLOWANCES (LEGISLATIVE SERVICE) (AMDT.) BILL, 2014

Bill to amend the Retiring Allowances (Legislative Service) Act, Chap. 2:03 [*The Minister of Housing and Urban Development*]; read the first time.

INDICTABLE OFFENCES (COMMITTAL PROCEEDINGS) BILL, 2014

Order for second reading read.

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Mr. Speaker, I beg to move:

That a Bill relating to committal proceedings in respect of indictable offences by Magistrates and for ancillary matters, be now read a second time.

Mr. Speaker, I rise to introduce this Bill, entitled the Indictable Offences (Committal Proceedings) Bill, 2014. This Bill will seek to repeal the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, which I shall refer to as the existing law and the Administration of Justice (Preliminary Enquiry) Act, No. 20 of 2011.

The Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 has been with us since 1917. We are therefore here at a very historic juncture in the evolution of our criminal justice system, a full century later almost, some 97 years later to be precise, to do away with a procedural safeguard that was there in the form of preliminary enquires that has now, by virtue of the passage of time and the development of the law that has created other procedural safeguards, we are here to abolish preliminary enquiries.

Mr. Speaker, there is no gainsaying that the criminal justice system is in dire need of reform. What we need in this country is an expeditious, efficient and effective system of criminal justice because that is in fact, not only important in terms of the fundamental rights guaranteed under the Constitution, but more so because it is a double-edged sword that cuts both ways. It allows those who are innocent to be freed by virtue of proving their innocence in court in a quick time, and it affords the state the opportunity to prosecute efficiently those who may be guilty of any infractions of the criminal code of conduct.

Mr. Speaker, the saying "justice delayed is justice denied" is one that is quite apt in the criminal justice system in Trinidad and Tobago. The Law Reform Commission has done many papers on this matter, and as far back as when I entered the legal profession some 17 years ago, I know that the abolition of preliminary enquires was a matter that was being bandied about as something that would be beneficial to us, to our legal system.

In 2011, Mr. Speaker, you may recall this Government had brought a Bill to Parliament which was unanimously passed with the support of Members opposite to abolish preliminary enquiries. That Bill was in fact based on the St. Lucian model and sought to introduce criminal masters and sufficiency hearings.

Subsequent to the passage of that Bill, it emerged that there were several problems with that legislation, and this Bill is an attempt to improve upon that by rectifying many of those procedural deficiencies that occurred in that Bill.

The use of the current system of preliminary enquires has attracted much criticism. It is said to be archaic, detrimentally mechanical, purely procedural, uses up scarce judicial resources, produces no corresponding legal benefits to the criminal justice system as a whole, and finally, that the system in fact delays the conduct of trial.

A further observation that has been made by the Judicial Committee of the Privy Council is that the preliminary enquiry does not in fact enhance in any way the concept of justice or the fairness of the trial process. What it is, is a filtering mechanism that is used at the first hurdle to weed out cases that do not make the sufficient bar in terms of the evidential threshold, such that they can go forward to be committed for a trial before the assizes before a judge and jury.

Now, in our jurisdiction, preliminary enquiries, although it has been with us for a full 97 years, the reality is, the rate of acquittal at the stage of the preliminary enquiry when an accused person is discharged is really very, very

low. It is in fact the exception rather than the norm, because one examines the evidence from the prosecution to see whether a prima facie case is made out. That means that the evidential threshold is quite low and, therefore, many cases that could have in fact been advanced to a trial in a much quicker time frame, they are stuck and mired at the stage of the preliminary enquiry and it does not in fact serve either party, be it the State or the accused.

Mr. Speaker, the judicial time and resources that we have must be deployed in a more effective and efficient manner than this. Given the current state of play and the backlog that exists, there is a need, yes, to augment the infrastructure in the Judiciary. Yes, we need more courts; yes we need more judges; yes, we need more magistrates; but that alone will not solve the problem. There is also a deep-seated conceptual model problem in terms of how we administer criminal justice in the country, and the abolition of preliminary enquires is one dynamite that you can light that will dynamite the logjam that exists currently in the criminal justice system.

It will do so without requiring any investment of additional resources by the state, but simply by eliminating a procedural step that has been found to be wanting and not, in any way, adding to the fairness of the trial process itself.

Now the 2000 Act represented a bold—[*Interruption*] Sure.

Miss Mc Donald: Mr. Speaker, let me thank the Attorney General for giving way. AG, you just said that this new system, committal proceedings, would not require the hiring, or I should say, any sort of expenses to be implemented. What about in the case—of course it would be in the Magistrates Court—will you have to hire additional magistrates?

Sen. The Hon. A. Ramlogan SC: I did in fact say before that; yes, we need more judges; yes we need more courts, yes we need more magistrates. This Bill does not in any way at all change that. I mean, we need more courts, we need more magistrates and we need more judges, that is a given, and this Bill will not significantly affect that. That is something that we require in any event. I do think that this Bill would perhaps require more resources in terms of the judges at the High Court level, but in terms of the Magistracy, it will in fact increase the capacity that exists in the Magistracy to be able to deal with the criminal cases that they deal with. Because, I mean, at least half of the magistrates' time, if not more, is spent doing preliminary enquiries, and if you eliminate it, it goes and you free up their time to do other work.

1.45 p.m.

Mr. Speaker, at that time when we brought the 2011 Bill, it was felt that the process under the existing Act which allowed for extensive cross-examination and submissions at the preliminary inquiry stage, was one that contributed to the endemic delay in the system. It has had a paralyzing and crippling effect on the criminal justice system, as evidenced by the fact that cases have been slowly meandering through the justice system, and they cannot even get to the stage of the indictment being filed, to have your day before a judge and jury, and sometimes in some cases the preliminary inquiry can last anywhere between five to 10 years.

This Bill will repeal the 2011 and the existing law and introduce a different model. The model of legislation we come to this Parliament with is not based on the St. Lucian model, but rather the simple and effective model that they have used in Antigua, which has been quite successful.

The abolition of preliminary inquiry is not a precedent-setting move by this Government. There has, in fact, been precedent in neighbouring St. Lucia and Antigua, but even our colonial mother or father, as the case may be, England, they have also done away with preliminary enquiries. New Zealand has also done away with it, and many countries have, in fact, introduced a hybrid that allows for a PI if it is the desire of the accused and the prosecution, or straight paper committal if they have no objection.

I had mentioned that when we brought the 2011 Act, there was subsequent reflection on that Act because there were many shortcomings that revealed themselves, when one started to get into the nitty-gritty of the practical administration and implementation of the law, and that is oftentimes the case. Laws that look very good on paper, that we pass in Parliament, once you start to implement them, you see what the teething problems are and you see the kind of infrastructure that is required, and problems do crop up. Permit me to highlight some of those difficulties that cropped up.

The first is you needed to hire and train masters to do the sufficiency hearings. That is a matter that will take not only a lot of time, but a lot of precious Judiciary resources, because you have the JLSC that has to be involved, and so on. But more than that, in a small country such as ours, the superimposition of yet another layer of bureaucracy, in an already overburdened bureaucratic system of criminal justice, was not going to improve it. Added to that, the duties to be performed by the masters at the sufficiency hearings, whereby they would look at the evidence

from the prosecution to see whether there is a case to go forward, is one that could be adequately done by the magistrates themselves who, in fact, are already equipped and trained, by virtue of their long years of experience in trying these matters, to do justice to the case.

The 2011 Act did not contain any provisions to address the question of resolving a dispute between the prosecution and the defence, if one party elected for a matter to be tried summarily and the other wanted it to be tried indictably.

The second problem is that it did not address where we had multiple accused and there was no agreement or no consensus from the multiple accused as to how the case should be tried, and they are all charged for the same offence arising out of the same factual matrix.

The Act was also silent on the procedure that should be followed when the indictment was filed and the accused appeared before a master, but a sufficiency hearing was not, in fact, completed in time or at all.

The admissibility of witness statements from children proved to be another sore point, as this omission could have resulted in an inability to conduct prosecutions involving indictable offences committed against a child who is a virtual complainant, as well as a successful prosecution of a case where a child was a witness. So that was clearly a lacuna in the law that had to be addressed.

It is in recognizing the gaps in this legislation I endeavoured to partner with my colleague, the honourable and distinguished Minister of Justice, and we formed a team from the Ministry of Justice and the Ministry of the Attorney General to review the legislation. I want to pay tribute to the hard-working legal officers from the Ministry of Justice and the Ministry of the Attorney General who worked on this matter. [*Desk thumping*] I also retained the services of an experienced criminal lawyer in the person of Miss Dana Seetahal SC, and the Law Reform Commission that assisted in this matter.

Mr. Speaker, long before a case of Hilroy Humphreys from Antigua & Barbuda was heard in the Privy Council and judgment delivered, as if to foreshadow that development, the hon. Chief Justice, Mr. Ivor Archie, at the opening of the law term 2008/2009, on September 16, 2008, delivered the traditional opening speech at the ceremony to mark the commencement of the law term. He said, and I quote:

> "Elimination of Preliminary Enquiries - The system…was inherited from the United Kingdom which has since abandoned it without any sacrifice of

> fairness or justice. It makes the trial of indictable matters inordinately tedious and expensive and exposes witnesses to risk for longer than is necessary. There really is no need for two bites at the cherry and fairness can be assured by a system of appropriate case management."

That is what the hon. Chief Justice said at the opening of the law term 2008/2009, on September 16.

A few months later, on December 11, 2008, the Judicial Committee of Her Majesty's Privy Council delivered judgment in the case of *Hilroy Humphreys v the Attorney General of Antigua & Barbuda* in Privy Council case Appeal No. 8 of 2008. As if by an amazing coincidence, the Judicial Committee echoed the sentiments expressed by our learned Chief Justice at the opening ceremony. Mr. Hilroy Humphreys had contended that the abolition of preliminary enquiries in Antigua, the very legislation that we have modelled ours on, was unconstitutional because it deprived him of the procedural protection of the law that the Constitution had given to him, and that it was also contrary and inimical to the concept of a fair trial. The Judicial Committee dismissed that appeal, and in so doing gave us some pearls of wisdom that are relevant to this debate.

Permit me to cite from the judgment the finding of the Judicial Committee. I quote:

> "Prospective litigants (or defendants in criminal proceedings) do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court."
>
> "…it is a mistake"—said the Privy Council—"to argue that because the old system provided a fair hearing, the change or abolition of some element of that system results in the new system being unfair…
>
> The committal proceedings are not determinative of guilt but act as a filter to enable the magistrate to screen those cases in which there appears insufficient evidence to justify a trial. They are conducted by an independent magistrate to whom both sides may submit evidence and make submissions. The restriction to written evidence applies to both prosecution and defence. The specific requirements…of the Constitution"—as it relates to a fair hearing—"are all satisfied by the composite procedure of charge, committal proceedings, indictment and trial. In particular, the accused is entitled at the trial to cross-examine the prosecution witnesses…give oral evidence…"—and make submissions.

In other words, the preliminary inquiry was really an administrative filtering process.

In fact, some criminal lawyers tell you, at the stage of the preliminary inquiry the accused is not on trial, because at that stage it is really the prosecution's case that is on trial, because you have a scrutiny and judicial review of the strength and sufficiency of the prosecution's case, to satisfy a judicial mind that it crosses the very low evidential threshold of a prima facie case or an arguable case on behalf of the prosecution. Hence the reason the number of persons who have been discharged or acquitted at that stage is relatively low. It is, by and large, the exception rather than the norm.

In Antigua, they now base the committal stage entirely on written statements, exhibits and there is no right to cross-examination. It has made for a simpler and more effective working procedural approach to the criminal justice system there.

Mr. Speaker, I take you now to the present Bill before this House. Extensive consultations were held with all relevant stakeholders in this matter. We consulted with the Judiciary. We consulted with the Criminal Bar Association, the Director of Public Prosecutions, the Ministry of Justice and Ms. Moira Mac Daid SC, who is a criminal justice consultant, Trinidad and Tobago.

The Bill before us is divided into six parts. I take you now to the Bill. Clause 1, of course, is the usual short title. Clause 2 makes it operable by virtue of a proclamation and clause 3 deals with interpretation of certain words and phrases.

Clause 4 makes it clear that Justices of the Peace are to have concurrent jurisdiction with magistrates, and there is no need for any additional layer by the imposition of a criminal master. Mr. Speaker, clause 4 exists in section 2(2) of the existing Act, but it is now put as a stand-alone provision with some minor additions in respect of requiring that where a search warrant, summons or a warrant has been issued by a magistrate, an endorsement must be put on the search warrant, summons or warrant, which will direct the person arrested to be brought before a magistrate or where a thing is seized, that the thing be brought before a magistrate. It ensures that the conduct of the police when searching and seizing the property of citizens will be one that is the subject to judicial scrutiny at the earliest available opportunity.

Clause 5 deals with compelling the appearance of an accused person. It is similar to section 3 of the existing law and it empowers the magistrate to issue a summons or a warrant, pursuant to the Act, to compel their appearance before the court. That is Part I of the Bill. I take you to Part II of the Bill.

Part II sets out the requirements for search warrants, summons and warrants and utilizes sections 5 to 11 of the existing Act, but improves upon those sections by virtue of several clarifications, amendments and editorial changes.

Clause 6 firstly is the power to issue a search warrant and clause 6 empowers a magistrate to issue a search warrant, where he:

> "…is satisfied by proof on oath that there is reasonable ground for believing that…in some place—"building, ship, vessel, vehicle, box"—or other—receptacle…anything"—relating to an indictable offence may be found, and in such a case the warrant may be issued and executed on any day, at any time.

Mr. Speaker, when you are executing a search warrant, you may go for marijuana but find cocaine. The law makes it clear that anything that is illegal that is found on the premises can, in fact, be seized and retained by the police. The intention is that it will be preserved until the conclusion of the committal proceedings or for the purpose of evidence at trial. Subclause (5) makes a very important innovation, by allowing, not just the police to have custody, care, control and possession of whatever is seized, but it empowers the magistrate to allow for that to be done by any other appropriate body.

At the moment, the exhibits for a trial or items seized, normally the police take custody of them, and as we all know in this country we have had some challenges where that is concerned. I mean we have the rats ate the cocaine story, and we have, of course, many cases before the courts where the weight of the illegal substance at the time of seizure does not match the weight of the substance at the trial. [*Laughter*]

Hon. Member: It goes on a diet.

Sen. The Hon. A. Ramlogan SC: We have had cases where things have actually just disappeared from the police locker room, and the property keeper does not give a proper account. We have also had cases with actual money, where currency, hard cash is, in fact, seized and from the time it is seized to the point of trial some of the money evaporates. [*Laughter*] So that now you will have a position where a magistrate will say, "I think that money should be held by the Central Bank" or "I think it should be deposited in a commercial bank," as the case may be. But the appropriate state entity and authority that can be ordered by a magistrate to preserve, protect and retain in its custody, care and control the items that are seized, that are relevant to proving the commission of a criminal offence, that can now be done by an agency other than the police in an appropriate

case. That means, for example, in the case of drugs, you can have in an appropriate case the Forensic Science Centre, or some other body that they might be mandated by the magistrate to properly take custody.

2.00 p.m.

Mr. Speaker, under the existing subsection the magistrate was required, where a person was not committed to trial, to direct that the thing be restored to the person. So that if you are charged for burglary and you are found with utensils that can, you know—a crowbar to pry open a window and so on, if at the preliminary enquiry stage the case is dismissed, you would have to give back the man all his stuff. But oftentimes the police and the prosecution would complain that there might have been, during the course of that trial the man may have been suspected of having committed another offence. And sometimes the police, they want to retain that because it may be relevant evidence for another offence that they are investigating. And we have now empowered the magistrate, in appropriate cases, if the thing seized constitutes evidence in any other criminal proceedings, it is not to be restored and given back to the citizen, and it is not to be disposed of. But that is if it is material evidence that is relevant to the prosecution of another criminal offence; that way it will not be irretrievably lost, and will not undermine the integrity of the prosecution in another case.

Mr. Speaker, on the recommendations of the Criminal Bar Association we have inserted a special protection. The Criminal Bar Association recommended that when you execute a search warrant, items that are subject to legal professional privilege must not form part, any part, of what the police can take and seize. And that is a very important point made by the Criminal Bar Association. It is one that has found favour with us, and we have therefore, put it into the law.

Why is that such an important provision? If the police were to go to execute a search warrant and seized items or documents that are subject to legal professional privilege, and they make use of that, then when the trial comes up, you are gifting the defence an argument that they can raise in defence of their clients. Because the documents that are subject to legal professional privilege are not meant to be for the eyes of the prosecution because you still have a privilege, a right against self-incrimination. And by virtue of its legal character and very nature and function, those kinds of documents are really not meant to be seen by anyone connected with the prosecutorial arm of the State.

In fact, I remember witnessing the execution of a search warrant at the home of former Prime Minister, Basdeo Panday. And I remember arriving at the residence and, at the time, the police officers were already inside Mr. Panday's home, and they were moving in a "vaille-que-vaille" manner as if they did not know what they were looking for. The impression I formed was that this might have been a PR exercise because they clearly did not know what they were looking for. And in one case, I had to stop one of the officers because what he grabbed a hold of was clearly protected by legal professional privilege. So that, I think this is an important innovation. I want to thank the Criminal Bar Association for making this innovative suggestion, and I think it is one that will strengthen the hand of the prosecution by not having inadvertent errors committed by the police when they execute search warrants by seizing the wrong thing that can, ironically, harm the very case that they have to bring through the office of the DPP, subsequently.

Mr. Speaker, recognizing that there is before this House legislation to deal with cybercrime, we have also dealt with the issue of the execution of search warrants as it relates to computer systems. The Criminal Bar Association felt that the execution of a search warrant, as it relates to computer systems, was something that was deserving of special treatment. I have personal experience in that regard, and I can tell you that it is definitely deserving of a separate treatment because one's whole life can be found on that computer, and technology is such that you can embed anything on that computer. And where is the protection for the citizens if the police seize that computer and take it away with them? You are now put on the back foot because you have to disprove a negative—you have to do an Aristotelian impossibility of disproving a negative; and you have no say in the matter.

So we have the Cybercrime Bill before this Parliament, and there is, in fact, a special regime to balance the rights of the accused and the rights of the State to ensure, for example, that you can have your IT expert witness the interrogation of the computer, its hardware and related equipment, to ensure that the integrity of the evidence is not compromised. If the State were to do that on its own without an independent witness or legal representative to seek the interest of the accused person, then the irony is that it will undermine the integrity and the independence of the very evidence that they may wish to adduce at the prosecution.

So proper protocol to deal with computer and software is something that will come by virtue of the recommendation of the Criminal Bar Association, and again, I thank them for that very useful suggestion. We are in virgin territory

where that is concerned. Because sometimes people rush, they rush to seize computer, cell phone and everything that they could find, when what they should be looking for, is not at the equipment, but really go into the server where you will find primarily, at source, any information that would have passed through the person's computer or email account. But it is that kind of misconception that leads to this provision where the Criminal Bar Association has asked that there be special protection for any citizen whose computer or laptop may be seized, and I thank them for that.

Mr. Speaker, clause 7: "Complaint in writing". Clause 7 of the Bill is an updated section 6 of the existing Act which now provides that:

> "Where a complaint is made to a Magistrate or Justice of the Peace that an indictable offence has been committed by any person…"—whom he can compel, that complaint must now be in writing. I think you could have had oral complaints before, but now it must be in writing.

The Criminal Bar Association did, in fact, make a recommendation that this must be typewritten. It was felt that that is a matter that can be dealt with not in the substantive Act, but rather in the Rules of Court which would come, and we can take a look at it then. But for the present purposes, I do not propose to make that amendment in the legislation itself before us.

Clause 8: "Warrant in the first instance". This is where it is an update of section 8, and will provide for the issue of a warrant in the first instance on the basis of a complaint where an oath is made. The clause would now provide that a magistrate in issuing a warrant under this clause, shall take certain statutory criteria into consideration.

Mr. Speaker, there has been a lot of complaint about the inconsistency in the approach of magistrates toward the exercising of this power where they issue a warrant. And we felt that the time had come to put into the legislation some of the critical, relevant considerations to which a judicial mind must have regard when exercising this important power.

> The first statutory criterion, "the nature and seriousness of the offence;"
>
> The second, "the likelihood of the accused…" trying to evade service of the summons.
>
> The third, "the character, antecedents, associations and social ties of the accused…;"

This is particularly important given the kind of criminal enterprise that we see flourishing in some parts of the country. So that you can now, in deciding whether to issue a warrant for their arrest, you can take into account their character, their antecedents, their associations and the social ties of the accused.

Fourthly, "any other factor which appears to be relevant."

We have also made provision that a warrant may be issued and executed on any day, at any time. The fact that a summons has been issued does not, of course, prevent a magistrate from issuing a warrant either before or after that summons has been issued. Where a summons has been served if the accused fails to appear or it appears that you are trying to avoid service of a summons, then the magistrate can also issue a warrant to deal with those who attempt to evade the jurisdiction of the court.

In subclause (6), which is a new subclause, it empowers the magistrate to issue a warrant where an oath is made substantiating the matter of the complaint to his satisfaction.

Subclause (7) provides, the complaint will be in a form set out in the Schedule, and the effect of the compendium of subclauses to which I have referred, Mr. Speaker, is that it gives the officers a practical, but important perspective on law enforcement. Sometimes a person might know that a summons is being taken out, charging them for an offence, and they might seek to be resourceful and even be recalcitrant and avoid service of the summons. Now, in those circumstances, we have, in clause 9, a regime to treat with that. This clause provides, Mr. Speaker, for the issuing of summons by a magistrate where the complaint is made, but not on oath. The summons is required "not to be signed in blank", and where it is served by a constable either personally or by leaving it at his home, the Director of Public Prosecutions felt that we should insert into that, you must leave it with an adult person at home. And I accepted that immediately. So we have provided now:

"by leaving it with an adult person…at his last or most usual place of abode."

Mr. Speaker, clause 10, "Warrant endorsed on bail". There is no substantive change to this provision, except for clarification purposes. The endorsement must:

"state that the person arrested is to be released on bail subject to a duty to appear before the Court, and the time…"—for such appearance—"…may be specified in the endorsement."—and

The endorsement is also required to "fix the amount in which any surety is to be bound."

They may release a person in custody in accordance with that endorsement. And this has the effect of allowing the citizen to know, in clear language, exactly what are the terms and conditions that are attached to their bail, as the case may be, and their freedom.

Clause 11: "Disposal of person apprehended upon warrant". Clause 11 contains some elements of clause 10 of the existing law but with some useful amendments. Clause 11 will provide where:

> "a person is apprehended upon a warrant…"—he is required to be—"…brought before a Magistrate"—and the magistrate would—"…either proceed with the committal proceedings or postpone…"—them to a future date and grant them bail or commit them to prison as the case may be.

I take you to clause 12. Clause 12, likewise, is not a material change to substantive law, but provides that where an:

"…irregularity or defect"—whether "in…substance or form"—in respect of the complaint, summons or warrant"—exists, and there is—"…no variance between the charge contained in the summons or warrant and the charge…in the complaint, or between…them and the evidence adduced…" by the "prosecution at the committal proceedings"—such irregularity or defect will not—"affect the validity of any proceedings at, or subsequent to, the hearing."

The clause goes on, Mr. Speaker, to provide that committal proceedings would continue to be conducted notwithstanding there is an:

> "…irregularity, illegality, defect or error in the summons or warrant, or the issuing, service or execution of the…"—summons or warrant.

This means, Mr. Speaker, that there will be substance over form in the criminal justice system. It means that we will not have the kind of technical objections that we see being taken on the basis that can be cured by a simple amendment or that is based on all sorts of artificial points. That will no longer be the case. It saves a lot of time and, my colleague, the Minister of Legal Affairs, with his extensive experience in the criminal law will no doubt speak to these matters and elaborate upon them.

Mr. Speaker, clause 13 deals with the "Remand of accused person" and will provide for—some of the, subclauses originate from section 29(1) of the existing Act. So subclause (1) reflects section 29(1) of the existing law, which provides that the:

> "accused who is not released on bail …shall be remanded in custody to a prison".

Subclause (2) however, is a new subclause and provides that:

> "An accused…" is not to—"…be remanded unless a complaint on oath was taken or a warrant was issued under section 8."

This is just to clarify and codify what the existing practice is, so that there can be no doubt about it.

Subclause (4) reflects what exists in section 14 at present, but with some amendments. Those amendments, Mr. Speaker, relate to where the magistrate is satisfied that the person that is:

> "…remanded is, by reason of illness or accident, unable to appear before the Court at the adjournment"—he—"may, in the absence of the accused…order…"—them to be remanded for a further—"…twenty-eight days."

2.15 p.m.

Mr. Speaker, the Criminal Bar Association has propounded for our consideration that we not just limit it to, "by reason of illness or accident", but include the words, "or for any other reasonable cause". We think that is a useful amendment to be made, because one cannot have within their contemplation the multitude of circumstances that might justifiably lead to someone not being able to make their court date. So we will accede to that request, and that amendment is already in the Bill that we have brought before you.

I take you now to Part III of the Bill. Part III of the Bill is the heart and soul of the legislation, which deals with the committal proceedings itself.

Clause 14 of the Bill provides that wherever a charge has been brought against any person for an offence which is not to be tried summarily, committal proceedings are to be held. Now, the wording is noteworthy, because it is deliberately crafted, not just to capture indictable offences, but we use the words, "where an offence is not to be tried summarily", because you do have by the way offences, and those are offences that can be tried either summarily or indictably, and if you elect for a trial before a judge and jury, then it would be captured by this, in terms of how we worded it.

Subclause (2) provides for the institution of committal proceedings, and the subclause would provide that this would happen when certain things are filed and evidence is tendered by the prosecution. What does the prosecution need to file to

trigger the committal proceedings? Firstly, statements of witnesses in support of the charge, documentary exhibits, a list of exhibits if any and the prosecution is also required to cause copies of the witness statements, the documentary exhibits, the list of exhibits, it must be served on the accused person or his or her legal representatives.

Now, Mr. Speaker, this really is the lynchpin of the change that we are making, because here you have, instead of one going into the witness box and orally giving evidence in chief, and you have the tedious copying out of it and listening to it, which really does not conduce to a fair and efficient trial, what you have is the magistrate will be able, in the privacy and comfort of his chambers, they would be able to read the witness statement, they would read the documents exhibited to it and they would be able to form a conclusion by virtue of reading it. But this innovation, this procedural innovation, is one that has been with us for sometime in the civil jurisdiction of the courts, and it has worked miracles.

The disposition rate on the civil side as a result of the introduction of written witness statements, has been nothing short of phenomenal. And under the old 1975 Rules of the Supreme Court which we operated with until 1998, it really was a recipe for a lethargic approach in the administration of justice. There can be no gainsaying that. And what you will have now, the prosecution, they do their witness statements, they attach the relevant exhibits, they do a list of exhibits if necessary and they serve it on the defence counsel or the accused, if he is unrepresented, and then they have a right to reply, if they want to reply to anything they can do that and serve it on the prosecution. But the witness statements tendered into evidence by the prosecution will now take the place of evidence in chief at the preliminary enquiry, because it will replace that as it were and now fulfil that function.

It also has a lot of practical common sense in it, because you also have cases where witnesses leave the jurisdiction, they decline to continue to giving evidence, sometimes they die, they are scared off, they are intimidated, but once you have those written statements, Mr. Speaker, and that documentary evidence is tendered into evidence, then it limits and minimizes the impact on the proceedings.

Is there really any need for the prosecution to be calling all of these witnesses and having them come time and again? I remember having to be a witness for the prosecution in a case in my teenage years, and no more than 15 to 17 occasions, you have to take a day off from school, you have to go, you know, you are herded into a room, in the corridor they shout your name and, you know, it echoes—one

police officer—is like an oral baton they pass, one person say, the next person tell the next person and they keep shouting it out. By the time they finish, it was not Anand Ramlogan, it was some fella called Ramlagan who had gone in the court and I am waiting for my name to be called. And then when you reach—you are here to perform your civic duty, and when you reach everybody in court want to "bouff" you, you know. It is a very cold, unfeeling experience, and it is my intention to ask that the courts become more user friendly. The courts, the judges, magistrates and the lawyers are there to serve the people of this country and not the other way around. [*Desk thumping*]

So it is my hope that the transformation in the legal culture of this country will change because of how we are changing how we do business in our legal system. And this change means that the prosecution will not have to bring a whole herd of witnesses to wait and take a whole day off from work and so on, but rather they sign their witness statements in the police station or by the office of the DPP, and that is it. So it is a very important revolutionary change in the administration of the criminal justice system, Mr. Speaker.

If one looks at Antigua and Barbuda, it speaks to committal proceedings being instituted. The hon. Director of Public Prosecutions in his comments on the Bill, said that he prefers to use the word "commenced" instead of "instituted". The reasoning given for that, is that the word "instituted" might carry the connotation that the DPP is involved at the earliest stage of laying the charges and filing the information as opposed to really the commencement of the case itself. So we have made that change and we have agreed with it.

Clause 15: "Accused persons may file statements and exhibits in reply". Well, essentially when you receive the case of the prosecution you have the option, if you so desire, to file your evidence in reply and the statements of your witnesses, and so forth, can go forward. You must of course, not just file it in the court, but serve it on the prosecutor.

Clause 16: "Committal on written evidence and documentary exibits only". When the magistrate reads the evidence and the exhibits, and he is of the opinion, after considering the evidence filed, that there is sufficient evidence to put the accused on trial, then he can make a committal order.

Clause 17 gives an opportunity to show cause why a committal order should not be made, and on the application of either side by way of submissions given to the prosecutor or the accused an opportunity can be had to show cause why the committal order should not, in fact, be made against your client.

Clause 18 deals with the matter of adjournments. It empowers, of course, the magistrate to grant bail and to fix a place and a time. You can remand the prisoner in custody for a period of up to 28 days, and provision is also made if by reason of illness, accident or other sufficient cause, the prisoner cannot be brought to court, he can be remanded into custody in his absence.

Clause 19 deals with the "Admissibility of statements in committal proceedings", and it states that the statement is admissible into evidence as if it had been given as oral evidence by the person. So we are just clarifying that the written witness statement now replaces the oral evidence in chief. When the magistrate is reading the witness statement, he is reading it and he must bear in mind and picture in his mind the witness in the box saying what he is reading. That is what is intended.

The statement must be signed by the person who made it and it must be sworn before a Justice of The Peace who authenticates it by a certificate. Now, we had some toing and froing on this. We had initially felt that there was no need to involve a Justice of the Peace if you sign the witness statement before a police officer, that should be sufficient. But because of the bad experiences we have had in some cases, where people have said they might have been coerced by the police into signing a witness statement or they did not do so of their own volition, we felt it appropriate to retain the procedural safeguard and protection of having it signed before a Justice of the Peace. That of course does not apply to children under the age of 14, because the Children Act deals with that, and requires children under the age of 14 giving evidence in criminal proceedings to do so unsworn.

The declaration by the person making the statement that it is true to the best of his knowledge and belief, and that he made the statement knowing that if it were tendered into evidence he would be liable to prosecution if he willingly stated anything he knew to be false or did not believe to be true. So at the end of the witness statement there is this jurat or clause which you sign to say that you know, you believe and know everything in that statement you are signing to be true and correct, and if you do not, then you are opening up yourself and you are liable to be criminally prosecuted. The magistrate if when he reads the evidence, he finds that certain parts of it might be inadmissible, in such cases he can make a notation on the evidence, put it in brackets and put in the margin, "this is deemed to be inadmissible".

I had indicated in the earlier 2011 Act, we did not deal with the admissibility of evidence for children and we have now rectified that. So where a child who is a

person under the age of 18 years is required to give a statement, the clause requires the statement be recorded in the presence of an adult of his choice. The statement should state the age of the child and that the adult of his choice was in fact present. On the recommendation of the DPP, given that the child is under—anyone under the age of 18, on the recommendation of the DPP, we have also provided that where a statement is made by a child under the age of 14, the statement must be supported by an affidavit of a probation officer, child psychiatrist or any person qualified to assess the child's ability to make such a statement.

Now, Mr. Speaker, there is a little divergence of opinion on this particular issue as between, in the submissions we received, in the representations we received from the Judiciary and the Office of Director of Public Prosecutions. The function of making sure that the child is sufficiently able to give evidence is one that is currently a judicial function that is performed by the judge or magistrate. And the idea that you will have a child psychiatrist or a probation officer's report—as to whether or not that should deprive the Judiciary of that function or is it necessary, is a matter I leave open and I remain open to suasion on, during the course of the debate, except to say that the Judiciary has recommended that it is not necessary and the Office of the DPP has felt that it was in fact necessary. But all of this goes to really the credibility and integrity of the evidence of the child. And I see we have a lot of young boys and girls from a visiting school here with us, I want to welcome them. [*Crosstalk*] It is what?

Dr. Browne: You cannot refer to them.

Sen. The Hon. A. Ramlogan SC: Or. Yes you can.

Mr. Speaker: That is correct.

Sen. The Hon. A. Ramlogan SC: That is fine, Sir. The point being made, Mr. Speaker, is that children—one must ensure that they are competent to give evidence and therefore the procedural safeguards and protections that we have put in the legislation were designed to ensure that the integrity of the evidence of a child, in a particular case, is one that is tested in some manner and evaluated beforehand.

Now, on the one hand the child is deserving of special treatment, but it is also a procedural safeguard for the accused, because I have seen in many—particularly, in matrimonial matters where you have divorces and so on, the child becomes a pawn and the child can be manipulated—[*Interruption*]

Dr. Gopeesingh: An agent of a parent.

Sen. The Hon. A. Ramlogan SC:—and become the agent of someone, an adult person, so that one has to guard against all of this and that is why we have put these procedural safeguards in place, to prevent the manipulation of evidence from children and to protect the child, at the same time, from being manipulated, and to ensure that the child is competent to give that evidence. We have also made provisions, on the recommendation of the Criminal Bar Association, for persons who need an interpreter, because we have had a lot of foreign—we have had persons from Venezuela and other countries who have been charged before our courts and we have now made special provisions for them in this legislation.

2.30 p.m.

Clause 20 deals with exhibits to be marked and delivered and they are really to be marked and given to the Clerk of the Peace for custody. One amendment here I will be making is to ensure that the non-documentary exhibits, I do not think it is wise to burden the court and the registrar to keep that. I think, consistent with the provision in the other clause where an appropriate agency can be specified by the judicial officer to retain possession and custody, that can continue, or else you may run out of space quite easily in the Hall of Justice.

Clause 21 deals with a defence of alibi. It mandates the defence, if an accused person intends to rely on an alibi in his defence, he must file a notice of alibi at the commencement of the committal proceedings after he has served documents on the prosecution. This is in addition to any statement he files. If you are going to run an alibi defence, you must file a notice to alert the prosecution to that at the earliest stage. It also means that there is no trial by ambush and it also reduces the possibility of someone fabricating an alibi defence at the stage of the trial.

Clause 22: If further evidence subsequently comes to light that is relevant to the trial, you can, in fact, make an application and you serve it on the other side and the evidence can be admitted, subject to the court.

Clause 23: "Statements, documentary exhibits and list of exhibits to be signed and stamped". Well, it is signed and stamped by the magistrate who presides over the committal proceedings to ensure that there is no doubt about the authenticity of the documents that were considered by the magistrate.

Clause 24: The "Final decision on committal proceedings". Part IV of the Bill deals with "Discharge and Committal". It provides in clause 24 that once all evidence has been tendered and all submissions have been heard, the magistrate

would be able to make an order to commit the accused person for trial in the High Court or discharge the accused person if he is in custody. The magistrate may make an order for his release.

Clause 25: "Committal for trial in custody or on bail". Again, the magistrate can make an order committing an accused person for trial either whilst he is remanded in custody or he is out on bail. These are just provisions to clarify and make the matter beyond doubt.

Clause 26: "Committal of discharged accused person". Mr. Speaker, clause 26 would set out the requirements in respect of where the magistrate discharges an accused person. Subclause (1) would provide that where a magistrate has discharged an accused person at the committal proceedings, he is required to transmit a record of the proceedings to the DPP. So the magistrate decides to discharge someone, he must send the record to the DPP who will review it and if the DPP forms the opinion that the accused person was wrongly discharged, he is empowered to apply before a judge of the High Court for a warrant for the arrest and committal for the fair trial of the accused person. Where he is of the view that the evidence was sufficient to put the accused on trial, he may issue a warrant for the arrest of the accused person and his committal to prison for trial. That is, the judge can do that, not the DPP.

This clause also provides that where a request is made by the DPP for a record of the proceedings, the request is to be made within 21 days of the discharge of the accused person, and any application as referred to by the DPP must be made within three months after he receives the record of proceedings. It must be made within three months. If thereafter you have to make an application, you require leave or permission of the judge. The rights of the accused person will therefore be protected by this high level of judicial oversight, whilst the public interest will be protected in ensuring that the guilty are prosecuted and may not be defeated by reason of the simple effluxion of time.

Mr. Speaker, I believe these time frames and milestones in the litigation process for the criminal justice system would act as red flags in the minds of both the prosecution and defence counsel, such that they will get on with the job so that they will meet their deadlines and the criminal justice system could deliver justice in a swifter manner. You can, of course, have someone discharged under clause 24 and subsequently if additional relevant evidence is obtained, you can, in fact, refer the matter back to the magistrate to reopen the committal proceedings in order to take further evidence, if necessary, and in appropriate cases.

Clause 27: the "DPP may prefer indictment without committal proceedings in certain circumstances". This is where the DPP can indict and you do not have to have the committal proceedings. The first is a coroner's inquest where the coroner forms the opinion that there are sufficient grounds disclosed for making a charge or indictment against a person pursuant to section 28 of the Coroners Act. That section, of course:

> "If the Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person, he may issue a warrant for the apprehension of the person and taking the person before a Magistrate, and may bind over any witness who has been examined by or before him in recognisance with or without surety to appear and give evidence before the Magistrate."

The second instance is where a co-accused has been arrested and the co-offender has already been committed to stand trial. In such a case, it does not make sense to have a committal hearing at all for the second accused. The third is where a person is charged with serious or complex fraud. If you are charged with serious or complex fraud, there will be no need to have a committal stage. You will have your trial and your day in court before a judge and jury.

People sometimes say all sorts of things about white-collar crime and so on. Mr. Speaker, this Government has done more in terms of legislation to address the question of white-collar crime than any other government in history. [*Desk thumping*] The last time I visited this august Chamber, I piloted amendments in the Miscellaneous Provisions (Administration of Justice) Act to deal with the Jury Act.

We introduced, for the first time in this country's legal history, the question of special juries to raise the competence level of the jury so that in cases of white-collar crime, complex fraud matters, you can have a pool of jurors that have the relevant expertise to be able to evaluate the evidence in a meaningful manner, and that is a significant step in the criminal justice system because one of the criticisms about white-collar and financial fraud trials is that the jury of laymen and women, sometimes they may not be as able to follow as if they had an accountant or a financial mind as part of the jury to raise its level of competence.

Mr. Speaker, the fourth one is if the evidence filed before the magistrate discloses a prime facie case but the magistrate is unable to complete the committal proceedings. He may become infirmed; he may become sick; he may even die, and in such cases, under the old system, the existing law, if a magistrate

fell ill or he died, you would have to start over the preliminary enquiry. We have now changed that because that is an absolute and colossal waste of judicial time. So we have actually changed that now. The DPP can indict and you can have your trial before a judge and jury. It will not be wasted, provided that there was a prima facie case.

Finally, offences of a violent or sexual nature where the child is a witness or an adult witness who has been subjected to threats, intimidation and even elimination. In those kinds of cases, you can eschew the committal stage and go directly to trial.

Clause 28, Mr. Speaker, there is a provision for a right of appeal. I have asked for some further research to be done on that because I would like to know if there was a corresponding right of appeal on the committal order made at the end of a preliminary enquiry. Because if there was no such right, I do not think that there should be a right introduced now for a right of appeal for the committal order made by the magistrate.

Clause 29 deals with the "Transmission and custody of documents and exhibits relating to a case." It deals with the chain of custody, care and control of the documents that form the evidence—that constitutes the evidence for the case—and once the committal proceedings are concluded and a warrant of commitment for trial has been issued, no later than three months from the conclusion of the committal proceedings, the magistrate must send to the DPP all of the relevant documents, who will keep them until the indictment is filed and then transmit them back to the registrar.

I have asked the draft person in the Chief Parliamentary Counsel's department, Deputy CPC, Miss Ida Eversley—who I want to place on record my gratitude to, for the hard work that went into drafting this Bill. [*Desk thumping*] I have asked her to look and check for me, to ensure that electronic transmission of these documents will, in fact, be permissible. If it is not catered for, I will move to amend to include a provision to have electronic transmission. I think in going forward, looking into the future as we move to an environmentally conscious and friendly era where we want to go paperless and wireless, it is important that we futuristically include such provision, if it is not there already.

Mr. Speaker, an indictment filed under this section must be filed within nine months of the receipt of the documents by the DPP, and the indictment by the DPP on the direction of, or with the consent of a judge of the High Court or Court of Appeal where a procedural defect occurred during the course of committal

proceedings. Now, this applies where a person admitted for trial could be indicted for any offence for which he was committed or, alternatively—[*Interruption*]

Mr. Speaker: You have 10 more minutes.

Hon. A. Ramlogan SC: Yes, Mr. Speaker. Thank you. It gives the DPP the opportunity to file an indictment in respect of a charge, of any other charge that the evidence disclosed. Now, the DPP had requested this clause be inserted—for the direction and consent to be obtained—and we have put it in because we feel it is an important provision for the DPP to have, such that we can deal with any procedural defects that can otherwise render the proceedings null and void. So in the making of a decision to direct or consent to the preferring of the indictment, the judge of the High Court or Court of Appeal is empowered to consider the representations made by the DPP and the accused person. .

These provisions represent a significant and revolutionary step to the conduct of criminal prosecutions in this country. The provisions ensure that there is a proactive approach towards the filing of indictments to be adopted and ensures that the present unacceptable situation of sometimes prisoners languishing for years without the indictment being filed, will no longer be the case. In fact, in the case of *Seeromanie Naraynsingh v the DPP*, which I did in the Privy Council, at the heart of that case was the length of time taken by the Office of the DPP to file the indictment, and I think nine months, based on the jurisprudence emanating from that case, is more than reasonable, fair and sufficient, having regard to the facts of any case.

Clause 30 deals with where statements are lost and destroyed. And essentially, Mr. Speaker, if statements or any other evidence are lost and destroyed, you can go to the secondary rule and you can, in fact, have the evidence adduced, whether it is by way of a photocopy or a certified copy, if it is a public document. The clause goes on to provide how the loss or destruction of the document may be proved. You can have a testimony from the officer in whose charge the document was last entrusted; you can have it authenticated by an appropriate official or you can have, as I indicated, the certified copy.

Clauses 31 and 32 deal with the use of certified copies and fresh evidence, and clause 32 avoids certain processes which were embedded in the existing law which harbour inefficiency in the reopening of any enquiry for the purpose of admitting further or more appropriately fresh evidence. It enhances the system in allowing new evidence to be admitted at the committal proceedings rather than simply striking out the proceedings as null and void.

Secondary evidence is evidence that has been reproduced from an original document or substituted for an original item and by virtue of its authentication, we are not sacrificing the integrity of the trial itself. There are, of course, exceptions established in the common law and in our Act that deals with the exceptions to the best evidence rule and I am certain my colleague, Mr. Ramadhar, will elaborate on that in due course.

In clause 33, the DPP can refer back a case to be dealt with summarily. So it empowers the DPP after he receives the statements, if he thinks the accused should not have been committed for trial, he can refer the matter back to the magistrate with directions to deal with the case accordingly. Now, this is a contentious provision. The Judiciary has objected to it and they have indicated that they do not think that the Director of Public Prosecutions should have the power to direct the magistrate in this manner and therefore it is a matter I leave to the floor for open debate. There is a divergence of opinion on the matter. I do not think it is a strong objection, but I do think there is a constitutional principle that is involved, as to whether the Director of Public Prosecutions could, or should have the power in law to direct a judicial officer.

2.45 p.m.

Clause 34: "Committal for sentence". It means that where the accused person pleads guilty to the charge he does not have to be committed for trial obviously, but he can be committed for sentencing either before another magistrate or, of course, before the High Court. We will record the answer in such cases by asking the question:

"Do you wish witnesses to appear to give evidence against you…?"

And the answer, if answered in the negative, is going to be recorded and signed by the magistrate to ensure that where you admit guilt, that there is enough evidence on the record that this was done clearly, it was explained to you and that you did so with the full knowledge of the implications and consequences of what you are doing.

Clause 36 deals with "Bail on committal for trial", and clause 37 deals with the conveying of the accused person to prison.

Clause 38 deals with "Bailing of accused person after committal" and the clause recognizes that there are circumstances where the accused, prior to his committal for trial, is unable to provide surety or sufficient surety. So if you are granted bail but you cannot make the bail—to use local parlance—and you are

able to do so, this provision allows for you to simply come back and subsequently you will satisfy the magistrate or the JP, and then you can have your bail.

Clause 39 makes it clear that a judge in chambers has the right to grant bail when he is petitioned by an accused person, and that is in accordance with the Bail Act.

Clause 40 deals with the "Apprehension of accused persons on bail, but about to abscond". So if you are satisfied as a magistrate that the ends of justice could be defeated, you could commit the person so arrested to prison until his trial or until he produces another sufficient surety.

So you give him bail or he is out for whatever reason, but something comes to your attention through the prosecution that he is about to abscond, to evade the court's jurisdiction, then you can put him in custody. That is a useful innovation because under the present system the magistrate could only revoke bail after the completion of the application and the person had to be given a right to be heard. This innovation, instead, gives the magistrate the power to issue the warrant so as to ensure that the person does not abscond. So it is prophylactic in its approach by not allowing them to abscond and then you try to bolt the door after the horse has already left.

Clause 41: "Power to revoke or require higher bail". It means that he is subsequently indicted by the DPP for an offence which was not bailable but he got bail on the first count, then he can in fact now—subsequently, you can revoke bail or require a higher bail when the second count is preferred.

Clause 42 deals with the "Place of commitment" and we will simply now change it. Instead of specifying the prison or as the case may be, we will simply leave it to say, will now provide that the Commissioner of Prisons will determine into which prison facility the persons who are committed shall go.

Clause 43 deals with "Pre-trial requirements", and the DPP is requested to give at least 14 days before the date fixed for trial, and the names of witnesses for both the prosecution and the defence will be given to the registrar and the registrar as an officer of the court will issue the subpoenas for the witnesses for both the prosecution and the defence.

Clause 44 deals with the reading of statements at the trial and it makes provision for if a person is deceased, unfit by reason of his body or mental condition, or cannot be found, there are threats against him or he is fearful for his protection and safety, you can have his witness statement read in court in the

interest of justice, and my colleague, Minister Ramadhar, will elaborate on that during his contribution.

This ensures that the system of criminal justice allows for an exchange of information between the parties, that there is a free flow of communication so that disputes can be identified and ironed out beforehand. It also allows, Mr. Speaker, in the case of section 15E, for the court in any criminal proceedings to exclude evidence that is prejudicial and not of any probative value or where the prejudicial value outweighs the probative value.

Clause 45 deals with the "Restriction on publication of, or report of committal proceedings". That has always been the law, but the penalty for breach has been increased from $2,000 and imprisonment for four months, to $10,000 and imprisonment for six months.

Clause 46 deals with the Summary Court Act to apply.

Clause 47 deals with the Rules Committee's ability to make rules.

Clause 48 deals with the repeal, and clause 49 deals with the transitional provisions so that pending trials or pending preliminary enquires will not in fact be affected by this law which is prospective and not retrospective in its operations.

Clause 50: "Consequential references and amendments". This deal really with other laws that will now, as a corollary of this, be affected.

Mr. Speaker, I started off by pointing out that prior to the pronouncement of the Privy Council in the case of *Hilroy Humphreys*, our own Chief Justice at the opening of the law term, months before, had in fact highlighted the benefits of this important measure. The abolition of preliminary enquiries is long overdue and much needed in this country, and this legislation is history in the making. We are witnessing the making of history and a revolution in our criminal justice system by abolishing preliminary enquiries, and I urge all to support this legislation and I so beg to move.

Thank you very much. [*Desk thumping*]

Question proposed.

Mr. Colm Imbert (*Diego Martin North/East*): Thank you, Mr. Speaker. Mr. Speaker, this Parliament went through a lot of stress in 2011 where the ill-advised, ill-conceived, ill-fated Act No. 20 of 2011 was pushed through this Parliament by the Government.

Hon. Member: 36(1).

Mr. C. Imbert: 36(1)? I will have you know that the last section of this legislation repeals Act No. 20 of 2011. Okay? So it is entirely relevant.

Dr. Moonilal: Repeal 36(1)?

Mr. C. Imbert: Relevance. And this Act seeks to repeal this Act, 20 of 2011. So I could spend all 75 minutes on Act 20 of 2011.

Mr. Ramadhar: Which we will go to the court—[*Inaudible*]

Mr. C. Imbert: We will come to that. But this Parliament went through a lot of stress with respect to this ill-advised, ill-conceived piece of legislation which the Government refuses to accept responsibility for. Even though they drafted it—[*Interruption*]

Hon. Member: Contempt now.

Mr. C. Imbert: Do not be ridiculous. The court has rendered this decision. Even though they drafted it, even though they amended it, even though the Cabinet proclaimed it or advised the President to proclaim it, it is a piece of legislation that they accept no responsibility for and, Mr. Speaker, they are entirely responsible for Act No. 20 of 2011. I heard the hon. Attorney General—to use the words of the hon. Member for D'Abadie/O'Meara referring to the hon. Member for San Fernando West—"gallerying" in the media yesterday. Those are words used by the hon. Member for D'Abadie/O'Meara to refer to the hon. Member for San Fernando West, when he was suspended from the Congress of the People. He said that the Member for San Fernando West was "gallerying" in the media. So I heard the Attorney General, yesterday, "gallerying" in the media about the decision of the Court of Appeal—[*Interruption*]

Hon. Ramlogan SC: Now you "gallerying". [*Laughter*]

Mr. C. Imbert:—which we will come to in a little while.

Mr. Ramadhar: He was stimulated to it.

Mr. C. Imbert: But, Mr. Speaker—but you could talk you know, your days are numbered. You do not have long to go. Douglas will beat you. [*Laughter and crosstalk*]

Mr. Speaker, the Member for St. Augustine like, you know, wet paper will cut him. But be that as it may, we spent a lot of time, wasted time, the country went through tremendous stress, matters have been played out in the courts since 2011

with respect to this indictable offences preliminary enquiry thing. It has been the subject of public protest. It is the subject of protest up to today. If you came into the Parliament today, Mr. Speaker, you would see people protesting about the Indictable Offences (Preliminary Offences) Act, about section 34.

Mr. Speaker, the Attorney General has not explained what was so wrong with Act No. 20 of 2011, apart from section 34 which gave an amnesty in their friends, apart from that—[*Interruption*] What? What? What?

Mr. Speaker: Member! Member! Member for Diego Martin North/East, let us not—no, no, no. Please, please, please! Let us not impute improper motives to Members of Parliament. I guide you and I warn you at the same time, do not go there.

Mr. Jeffrey: But we can debate.

Mr. Speaker: No, no, no. I am saying, do not impute improper motives.

Mr. Jeffrey: But we can debate?

Mr. Speaker: You can debate, but do not impute improper motives to any Member of this honourable House. Please be guided accordingly.

Mr. C. Imbert: Mr. Speaker, the fact of the matter is that Act No. 20 of 2011 gave an amnesty. That is a statement of fact. That is not an imputation.

Mr. Speaker: Member, take your seat. Member, I need no qualification from you on my ruling. Just leave that point and move on, please.

Mr. C. Imbert: Mr. Speaker, I am not dealing with your ruling, you know. I am dealing with Act No. 20 of 2011.

Mr. Speaker: Take your seat. I have ruled on a particular matter. No, I have ruled on a particular matter and I am asking you, do not challenge my ruling.

Dr. Rowley: But he can debate?

Mr. Speaker: No, I am not speaking to you. [*Laughter*] I am not speaking to you. Member, I am not speaking to you. Would you be quiet?

Dr. Rowley: I will.

Mr. Speaker: Yes, be quiet whilst I am on my leg. All right. Member, you be quiet. If you continue to challenge me whilst I am on my feet, I will ask you to leave the Chamber. No, I am telling you. You cannot be speaking whilst I am speaking. I warn you. Member for Diego Martin North/East, you will continue to

speak, but as I tell you, I have ruled, do not impute improper motives to any Member of this honourable House. You know what you said a short while ago. Continue.

Mr. C. Imbert: Mr. Speaker, at no time did I challenge your ruling. You are mistaken, Mr. Speaker. Let me go now to page 200—be quiet all of you. Only the Speaker could tell me to be quiet—not you—and I am still speaking. [*Crosstalk*]

Mr. Speaker, on—Mr. Speaker, I cannot speak with all this noise. I claim your protection.

Mr. Speaker: I appeal to all Members to observe Standing Order 40(b) and (c), respectively. A Member is on his legs, allow—Member for Point Fortin, I am on my legs; please. Allow the Member for Diego Martin North/East to speak in silence. All Members are so advised and please be guided accordingly. Continue, hon. Member for Diego Martin North/East.

Mr. C. Imbert: Yes, thank you, Mr. Speaker, and I think it is worth repeating that at no time was I challenging your ruling, and let me make myself abundantly clear so that you will not misunderstand me in the future, hopefully.

3.00 p.m.

Let me go now to the matter before the House, Indictable Offences (Committal Proceedings) Bill, 2014, and I go to clause 48 of the Bill which reads as follows:

> "The Indictable Offences (Preliminary Enquiry) Act and the Administration of Justice (Indictable Proceedings) Act, 2011 are repealed."—and in the side note—"Repeal of Chap. 12:01"—the laws of Trinidad and Tobago—"and Act No. 20 of 2011"

And I have in my hand here Act No. 20 of 2011, which is being repealed if this Bill is passed by clause 48 of this Bill. And section 34 of Act No. 20 of 2011 reads as follows:

> "Where proceedings are instituted on or after the coming into force of this Act and the Master is not, within twelve months after the proceedings are instituted, in a position to order that the accused be put on trial, the Master shall discharge the accused and a verdict of not guilty shall be recorded."

And it goes on to say:

> "Except—

(a) in the case of matters listed in Schedule 6; or

(b) where the accused has evaded the process of the Court,

after the expiration of ten years from the date on which an offence is alleged to have been committed—"

This Act was the subject of a lot of stress and distress in this country. [*Desk thumping*] And this Act was assented to on December 16, 2011; 2012 has passed, the whole of 2013 has passed, and we are midway through 2014. So, two and a half years after the Government imposed this calumny, this abuse, this horror on the population, we are here today, after all this stress and all these court proceedings both in the High Court and in the Court of Appeal, public demonstrations, expressions of protest from persons such as the Director of Public Prosecutions, et cetera, et cetera, we are here today, all the work that was put into Act No. 20 of 2011 is to be abandoned.

Now, why? And it is incumbent on the Attorney General—and I say this and I would say this again. The Government has a habit of coming to this Parliament and pretending that things do not exist, that things never happened, that things that you see and things that you hear; like a face on a video and a voice on a recording do not exist, and these are simply hypothetical examples I am using, Mr. Speaker. [*Laughter*] I have called no names and I have referred to no one, most certainly nobody in this House or the other place at this time. [*Interruption*] But the Government has a habit of pretending that when you see something and you hear something it is not real.

Hon. Ramlogan SC: What clause are you on?

Mr. C. Imbert: Now, I am on clause 48. You are repealing 20 of 2011 and the Government, and the Attorney General on behalf of the Government, have not explained why you are repealing every section in Act No. 20 of 2011, and what was so horrible about all of the sections in Act No. 20 of 2011. As I said, we know what was horrible about section 34, because that was the subject of protest and widespread public condemnation.

But, Mr. Speaker, the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011, had 35 sections, what about the other sections? And I will demonstrate to you that once again this Government has not done its homework, it has not done its duty and it has failed in its responsibility to explain to the population and to this Parliament, why it is taking away certain protections that were given to citizens of this country by Act No. 20 of 2011. [*Desk thumping*]

And I want the Attorney General to tell me why when you go to Act No. 20 of 2011, in the initial hearing which was going to be conducted then by a master—[*Interruption*]

Hon. Ramlogan SC: Yes.

Mr. C. Imbert:—and not a magistrate, it does not make a difference, it is just a different level of judicial officer, but it is a judicial officer.

Hon. Ramlogan SC: As is a magistrate.

Mr. C. Imbert: Yes, it does not make a difference.

Mr. Speaker: Attorney General, please take notes!

Mr. C. Imbert: But, Mr. Speaker, in section 11 of Act No. 20 of 2011 which is to be repealed by clause 48 of this legislation, this was the procedure for the initial hearing. And the whole purpose of this Act was to do away with preliminary enquiries, to clear the backlog, to get rid of the logjam, to use the words of the former Member for St. Joseph. He said it is to free up judicial time and so on. So, let us see what was going to be done at the initial hearing, section 11:

> "(1) …where an accused appears, or is brought, before a Master…the Master shall conduct an initial hearing.
>
> (2) Subject to the Rules"—

and these would have been rules made by the Supreme Court:

> "…a Master shall—
>
> (a) verify the identity, place of abode or given address and other contact information of the accused;

And this is very important, and I want the Attorney General to tell me why this has disappeared from this law, because you are a cut and paste Government. When I go to the Antigua Act, it is a very short Act, just a few sections, there is not much in it and I could see what is attractive to this Government because they love to cut and paste, so they just cut and paste straight out of the Antigua and Barbuda Act; the Magistrate's Code of Procedure Act, and this was 2004 eh, 10 years ago. Ten years ago this Act was enacted in Antigua, but they bring some St. Lucia model in 2011 and now almost three years later coming back with a 10-year-old law in Antigua, cut and paste.

I would like the Government to tell me why you have taken this out? Why you just cut and paste straight out of Antigua? [*Interruption*]

> "(b) Inform the accused of his right to legal representation and inquire whether the accused is represented by an Attorney-at-law—
>
> (i) if the accused is represented, record the appearance of the Attorney-at-law;
>
> (ii) if the accused is not represented and requests legal representation, fix a date by which the accused shall retain an Attorney-at-law to represent him or make an order for legal aid to be granted within three weeks;"

Now, all of this was for the protection of the accused, because you were taking away the concept of cross-examination, the concept of testing affidavit evidence. Now, you know, Mr. Speaker, through you, the Attorney General knows that if evidence is not tested then it is subject to question. So, in the existing preliminary enquiry law, a person is allowed to lead evidence in chief and then allowed to cross-examine and to test the veracity of the allegations made. That is being taken away. So, what the Government was doing, what the former Minister of Justice was doing, because he might have been a little off, but he was not completely off, and he had some understanding of criminal procedure having been in—[*Interruption*] yes, a little off. But he had some understanding, having been a judge for a number of years, of the rights of the accused and the need to protect accused persons, because you are taking away the right to cross-examination. So, you are just going on written statements and that really boils down to who could write the best. Who is the best draftsman, that is what that boils down to. Not whose evidence would stand up under a challenge.

So, in the previous law the magistrate was required to inform the accused of his right to legal representation. [*Interruption*] Mr. Speaker, what is going on over there? Mr. Speaker, I seek your protection, they are just babbling over there and disturbing me.

Mr. Speaker: Hon. Members, I appeal to you once again to allow the Member to speak in silence. Please! Continue, hon. Member.

Mr. C. Imbert: I know these complexities of law are too difficult for them, you know. I know, you know. [*Interruption*] This hon. Member for St. Augustine, he is supposed to be some high-powered criminal lawyer. But why are you taking away this provision where the master would have informed the accused of his right to an attorney-at-law, and if he is not represented, the right to retain one and to make an order that he be represented by a legal aid attorney within three weeks?

"(iii) if the accused is not represented and refuses legal representation, record the refusal;

(c) inform the accused of the charge by—

(i) reading the charge and providing a copy of the charge to the accused; or

(ii) providing the accused with a copy of the charge, where the accused is represented by an Attorney-at-law and consents to the waiving of the reading of the charge;

(d) explain to the accused that he is not called upon to enter a plea;

(e) give the accused the warning in section 13(1);

(f) inform the accused of his right to have an interpreter, where applicable;

(g) hear and determine an application for bail…"

What they have done is they have cut and paste and chop and changed and take snippets and bits and smidgen of—pieces of words and just jumble them together to come up with this law, Mr. Speaker. This was good law! This situation where you are taking away the person's right to cross-examine his accuser, you are taking it away, so you are going to give him a complete and comprehensive dissertation—the master is required by law to give the accused, many of whom will be illiterate or semi-illiterate—of their rights under the Constitution and their rights under our laws. So, in the previous law which you are abolishing the master was required to do all of these things.

The next thing the master was required to do, was to

"(h) make a Scheduling Order…specifying the date on or before which—

(i) the accused shall,…retain an Attorney-at-law;

(ii) an order for legal aid shall, if applicable, be satisfied;

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

(iv) the accused shall file in the High Court and serve on the prosecutor any witness statements…"

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

and specifying the dates on which the prosecutor, the accused or the Legal Aid and Advisory Authority, as the case may be, may appear, if necessary, before the Master to apply for an extension of time—

(vi) to file and serve witness statements and other documentary evidence;

(vii) to retain an Attorney-at-law…

(viii) to provide legal aid to the accused…

and for the Scheduling Order to be amended accordingly."

All part of standard process, and it was codified in law in Act No. 20 of 2011, and I want to make it clear. You see, the reason why the Member for St. Augustine is making these noises—that is why he would be removed as leader of the Congress of the People, because he does not bother to understand the complexities of the situation that he is in. He is a—I cannot use unparliamentary language, but he is the chairman of the Legislative Review Committee, and if he does not understand that by abolishing the preliminary enquiry and by abolishing the right to cross-examination, you have to give the person some protection. If he does not understand that and if he does not understand that that is what the former Minister of Justice was doing when he put all of these things into the law, then whatever he has learnt in his years in the criminal justice system has not had any positive effect on him.

Now, what else was in Act No. 20 of 2011? There was a warning about the alibi, the whole question of an alibi, the master was required to explain the meaning of the word "alibi" to the accused person. [*Interruption*] Yes, it is not there. All of these things have disappeared. Now, if this Government thought all of these things were so important, remember, Mr. Speaker, you were here. They shouted and they screamed and they get on and they stamped their foot and they banged the table, about how wonderful this law was. All of these things here. If you go into the *Hansard* you would see the detailed explanation and justification given for all of these protections given to accused persons. If it was so right then, how is it so wrong now? [*Interruption*] Is yesterday was yesterday and today is today? That is what is going on here. Eh, Member for Chaguanas West? They are adopting the policies of the Member for Chaguanas West: yesterday was yesterday and today is today.

Mr. Warner: Tomorrow is tomorrow.

Mr. C. Imbert: Yes, tomorrow is tomorrow. [*Laughter*] So, Mr. Speaker, the master was compelled by law, and these things are very, very important, because as the Privy Council said in that case, that *Humphreys* case—and, Mr. Speaker, you know the Attorney General loves to just quote bits and pieces. The Privy Council case, the case that the Attorney General referred to, the appeal from the Court of Appeal of Antigua and Barbuda.

3.15 p.m.

And you know what is hurtful about this, Mr. Speaker? That decision that the Attorney General brings to this Parliament today and gives all those who do not know better, including the hon. Member for St. Augustine—he does not know better—is a 2008 decision. This is not a 2014 decision, it is a 2008 decision. Three years before they brought Act No. 20 of 2011, the Privy Council made this decision.

The point is, the Privy Council was looking at the Antigua Constitution and they were looking at section 15 of the Antigua Constitution and in section 15 of the Antigua Constitution, it states that:

> "If any person is charged with a criminal offence then, unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by a independent and impartial court established by law."

That is the Antigua Constitution. What is the Trinidad and Tobago Constitution? I want the Attorney General to tell me whether the Antigua Constitution has a section similar to section 5(2)(h) of our Constitution. Because, our Constitution, at section 4, speaks about due process of law and that Court of Appeal decision that was rendered yesterday or the day before—I cannot recall exactly what day it was—[*Interruption*]

Mr. Deyalsingh: Wednesday.

Mr. C. Imbert: Whenever it was—a day or two ago, the Court of Appeal did attempt to or did seek to define what is meant by due process of law. They did attempt to. I have to say—I have to use the words "attempt to". [*Crosstalk*] I read the whole thing, beginning to end. But our Constitution also speaks in section 5(2)(e) similar to the Antigua Constitution at its section 15(1) that Parliament may not:

> "deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;"

That is similar to section 15(1) of the Antigua Constitution. It goes on to say, Parliament may not:

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

(i) to be presumed innocent until proved guilty according to law…"

But it says at the end, 5(2)(h):

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

Now, tell me if that is in the Antigua Constitution. You do not know but I will say it is not. [*Crosstalk*] Yeah, you will soon be nobody.

Mr. Speaker, the point is, in section 5(2)(h) of our Constitution, a person cannot be deprived of the procedures that are necessary to give effect to the fundamental freedoms in sections 4 and 5 in our Constitution. The Antigua Constitution has no such provision. You see, the Attorney General needs to be careful. You cannot just cut and paste and pull and chop, as I said, and take bits and pieces of laws and rulings and so on, and feel that they are applicable. They are distinguishable, Attorney General, and you of all people should know that.

Now, the point I am making is that in Act No. 20 of 2011, certain— [*Interruption*] Sure.

Hon. Ramlogan SC: Thank you very much for giving way, hon. Member. I just want to clarify. The provisions to which you refer, they are established practices and procedures that are imbued in the criminal process such that when we were discussing the matter, it was felt that it is not necessary to put it in the legislation in substantive law because it is settled practice at common law and it is—you know. In Antigua, they follow that practice notwithstanding the fact that it is not in the legislation and, in any event, regulations have to be made. But this is not something that one would normally put into the substantive law, and it was felt that we can perhaps leave it for the practice and procedure. But it is not that we have taken away any right as you are suggesting. That is incorrect.

Mr. C. Imbert: Mr. Speaker, you know—I am not giving way to the Attorney General again eh. I am not doing it, you are wasting my time. [*Crosstalk*] And, Mr. Speaker, I will ask you to tell the Member for St. Augustine to stop interrupting me. You will have your chance to speak, I assume.

Dr. Rowley: "If he still dey."

Mr. C. Imbert: If the Speaker allows you and "yuh still there".

But, Mr. Speaker, the point is that the Government of Trinidad and Tobago, that Government comprised of those people opposite me—those honourable gentlemen and ladies opposite me—thought it necessary in 2011—well, they have some behind too, yes—to put these things into the law, and the former Minister of Justice, a practitioner, and he is the only person in this Parliament who has been a judicial officer, thought it necessary for the protection of the accused to put these things into the law. It is unsatisfactory, it is insufficient. It is simply not good enough for the Attorney General to tell me that all of these things are settled practice and there is no need to put them in the law. If that is so, why did you put them into the 2011 law? Explain that!

I will tell you why since you do not even know. It is important in these matters because you are dealing with people, as I said, who may be illiterate, who may be semi-illiterate, who may have no understanding of their rights, and it may give rise to a constitutional challenge. The reason why the former Minister of Justice, being a former judge, put all of these protections into the law, codified them in law, is because he was seeking to avoid a constitutional challenge in terms of people's rights. I would like the Attorney General to explain to me: why have you taken this all out and what is the problem in putting it all back in? Why "yuh" cut and paste from the Antiguan law?

Now, let us go on. The Act No. 20 of 2011 gave all sorts of details in terms of alibi, for example:

"14.(1) On trial on indictment, an accused may adduce evidence of or in support of an alibi if he has given notice of the particulars in accordance with the warning in section 13(1).

(2) Without prejudice to subsection (1), on trial on indictment, the accused may call any other person to give evidence of or in support of an alibi if—

(a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the accused at the time at which he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) the name or the address is not included in that notice and the Court is satisfied that the accused, before giving notice, took…all reasonable steps to ensure that the name or address would be ascertained;"

The whole point of this is, you are telling the man who is now going to go on trial that if he wants to present an alibi, he has to give you the names and addresses and the contact details of everybody who is going to provide alibi evidence for him. But in the law, you gave the accused—as I said, you are dealing with people who are not so literate—you gave the accused the right, at a future date, to call additional people if, at the material time, he was not aware that this person was a witness or at the time, he did not know the name of the person, he might know the person by face—all of this was in the law before.

Hon. Ramlogan SC: You still have it.

Mr. C. Imbert: Mr. Speaker, this is not in your new law. This is not in it. It is not in it at all! You know, I really am a bit disturbed that the Members opposite have not read the previous legislation and have not read the current legislation.

Can the Government also tell me if the whole point of this thing is to expedite matters? What has happened to the 28-day period in the previous Act where the court was required to get on with the matter within 28 days? What has happened to that? Why are you giving the magistrate all of this discretion? I am seeing a law—as I said, section 34 was an abomination but there are 34 other sections in this legislation, and many of the sections gave adequate protection in terms of our system of natural justice to an accused person and they have taken them all out.

Let us go to the sufficiency hearing.

"19.(1) A sufficiency hearing shall be held by a Master to determine whether there is sufficient evidence to put the accused on trial for an indictable offence.

(2) A…hearing shall be held in open court…

(3) …the prosecutor and the accused shall attend a…hearing.

(4) If an accused is not represented by an Attorney-at-law…and—

(a) requests legal representation, a date shall be fixed by which the accused shall retain an Attorney-at-law…"— and it is— "…within three weeks;…

(5) A sufficiency hearing may proceed in the absence of the accused, except where the Master is satisfied—

(a) …he is ill or injured;…or

(b) …any other matter which the Master deems fit to allow for the…hearing to be"—postponed.

"(6) A Master may—

(a) …considers it expedient to do so; or

(b) at the request of the accused…

adjourn an initial hearing to a certain date, time…

(7) Unless the accused and the prosecutor consent, an adjournment shall not be longer than twenty-eight…days…" and so on.

Why is this gone from the present law?

But what I would like the Attorney General to tell me—I really have no interest in hearing from the Member for St. Augustine—the Master was directed, Mr. Speaker, under section 23 of the previous law as follows:

"For the purposes of a sufficiency hearing, a *prima facie* case against an accused is made out where a Master finds that the evidence, taken at its highest, is such that a jury, properly directed, could properly return a verdict of"—not—"guilty.

24.(1) …after reviewing the evidence submitted by the prosecutor and the accused"—if—"a Master finds that a *prima facie* case against the accused is not made out, the Master shall discharge the accused and any recognisance taken in respect of the charge shall be void."

So, in the previous law, Mr. Speaker, the Master had to find that the evidence taken at its highest is such that a jury, properly directed, could properly return a verdict of guilty. That is in the law.

Let us see what is in this law which clearly some Members opposite have not read. What does it say? It says at 16, threadbare, a bikini clause:

"A Magistrate holding committal proceedings may commit an accused person for trial before the High Court on a charge for an indictable offence where he is of the opinion, on consideration of…the evidence filed…that there is sufficient evidence to put the accused person on trial for any indictable offence."

Now, Mr. Speaker, you are not an attorney as I am not, but there is a vast difference between clause 16, in the current bill, where the magistrate is now being given the authority on consideration of all the evidence filed to make a decision that there is sufficient evidence to put the accused person on trial. So the magistrate is being held to a much lower standard. As far as he is concerned, he

just looks at the evidence and if he feels that there is enough evidence to put the person on trial, that is it, the person goes on trial. But, in the Administration of Justice (Indictable Proceedings) Act, a *prima facie* case had to be made out and there was a definition of a *prima facie* case, which I will repeat:

> "23. …that the evidence, taken at its highest, is such that a jury, properly directed, could properly return a verdict of guilty."

So it was not that it was an arguable case, it was not that the person had a case to answer—no, it was a very high standard that as far as the Master was concerned, the evidence taken at its highest would cause a jury to produce a guilty verdict. What happens here? The magistrate can now decide, based on the evidence, whether the matter should go to trial or not. So it does not have to test the evidence at its highest to determine this person is guilty and therefore should go to trial on indictment. I would like the Attorney General—I know these two in front of me, they do not understand, it is too high for them but I would like the Attorney General to tell me why are you lowering the standard? Because what is happening in this law is the magistrate has to just weigh up the written evidence and make a decision whether the matter should go to trial or not.

In other words, the magistrate has to determine whether the person has a case to answer, that is what is in this bill. In the old law, the Master had to look at the evidence and come to a conclusion, that prima facie, the person was guilty.

3.30 p.m.

Hon. Ramlogan SC: "Da' is bad law."

Mr. C. Imbert: That does not matter, that was passed in this Parliament. Mr. Speaker, I am now hearing the Attorney General tell me that this is bad law. So let me read it again because I know that the Member for St. Augustine does not understand, which is the same reason he will not understand that he will not be the leader of the COP in July. [*Laughter*] "I backing Douglas", Lopinot/Bon Air West. [*Crosstalk*]

Hon. Ramlogan SC: "Wat? I backing Borris!"

Mr. C. Imbert: "Yuh backing, who?" [*Laughter*] Okay, whatever. [*Interruption*] Let me speak—Mr. Speaker, through you, let me speak to [*Interruption*] the Attorney General.

Mrs. Mc Intosh: "Me and Tunapuna backing" San Fernando West.

Mr. C. Imbert: Attorney General—"well, da' is my number two pick. [*Laughter*] Attorney General, let me read the 2011 Act for you, Mr. Speaker, through you. [*Interruption*] Section 23:

> "For the purposes of a sufficiency hearing"—I am talking to you, through the Speaker, with the Speaker's permission—"a *prima facie* case against an accused is made out where a Master finds that the evidence, taken at its highest, is such that a jury, properly directed, could properly return a verdict of guilty."

So in the previous law, the Master had to come to the conclusion, prima facie, the man was guilty and then "he say" all right, well, go to trial. And the Attorney General is now telling me that is bad law.

Hon. Ramlogan SC: I figure it is too high.

Mr. C. Imbert: The threshold, the bar is too high. Well, now the bar is too low, okay? Because you are telling me now that the magistrate just looks at the evidence, no guidelines, no rules, no criteria, and the magistrate—and remember this fella is not being given the right by law. You are saying it is by practice, but this person is no longer being given a right that is in the law, that he has a right to legal aid, they have to explain what alibi means to him and so on. [*Interruption*]

No, Mr. Speaker, you know, the Members opposite really bother me, you know, because you know what they are doing here? All they are doing is setting up a situation to give work to lawyers, that is all, because when you put such a vague wording into a law, in a litigious country like Trinidad and Tobago—Mr. Speaker, in another country, cases are dispensed with two, three years, sometimes 12 days.

In fact, Mr. Speaker, I am familiar with an extradition matter where a fella was before the courts in Trinidad and Tobago, charged for an offence under our terrorism laws, and fighting extradition for two years. He eventually gave up, and he was taken to the United States, and the elapsed time, Mr. Speaker, between him landing on American soil and being convicted, 12 days. I followed the case, 12 days.

So in other countries, Mr. Speaker, they take quick—you know, they do not take a long time to convict people, but we in Trinidad and Tobago, I mean, we have famous cases going on in this country, going past 10 years that cannot even get to trial, you know, famous cases.

So we are a very litigious society and we have—a practice has developed in Trinidad and Tobago, where adjournments are given for long periods of time. You know, you hear about a matter being called in January, and it adjourned to July, and then when the matter comes up in July, it adjourned to December, and when it is adjourned in December, it is adjourned to the next July, and so it goes, Mr. Speaker, this is the practice in Trinidad and Tobago.

But you are putting into law now, these words which are so vague and ambiguous, Mr. Speaker, that you are going to inevitably lead to appeals which are going to clog the system, Mr. Speaker. How is the phrase "on consideration" to be interpreted? "On consideration of all the evidence", what does that mean? If you find the threshold was too high before, if you find that a prima facie guilty situation was too high, well, put another one, you know, that the person has a case to answer, but direct the magistrate. It cannot be "on consideration of all the evidence". What does that mean? If you have 100 magistrates, you are going to have 100 different interpretations of the meaning of the words "on consideration of all the evidence". One magistrate will consider it this way, and another one will considered it that way, and that is why the former Minister of Justice, I must repeat, a former judge, put his definition of what a prima facie case was, and directed the Master to find a prima facie guilty verdict. So if the Attorney General figures that guilty is too high, well, set the threshold somewhere else, but codify it.

While I am on that, let me deal with this 33. I am quite surprised that the Attorney General, having received an objection from the Judiciary—you know, Mr. Speaker, the Judiciary likes to object to all "kinda ting, yuh know". "Yuh cyar" say anything about them, they object. But—no, "ah telling you, ah see a press release, ah have it here. Yuh cyar say anything about dem, dey object. Dey have press release. Dey quarrelling with Inshan Ishmael and dem. Judiciary, dey quarrelling" with Inshan Ishmael and Fazeer from TV6. Mr. Speaker, I think it is an appropriate time to read this media release:

> "Statement on Public Comments on Matters Before the Court
>
> The Honourable Chief Justice has noted within the past several weeks and as recently as today, comments in the public domain about matters which have engaged the attention of, or are engaging the attention of, the Court."

And then it goes on to complain that people are making all sorts of statements that question the Judiciary and so on. So they do not like you to talk about them at all, but the fact of the matter is, whether that is so or not—[*Interruption*]

Mr. Speaker: Hon. Member.

Mr. C. Imbert: Sure.

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for Diego Martin North/East has expired.

Motion made: That the hon. Member's speaking time be extended by 30 minutes. [*Miss M. Mc Donald*]

Question put and agreed to.

Mr. C. Imbert: [*Desk thumping*] Thank you, Mr. Speaker. I thank the usual suspects for supporting me, and the usual suspects for saying no. [*Laughter*] Thankfully the noes were in the minority.

The fact of the matter is, Mr. Speaker, if the Judiciary tells the Attorney General that clause 33 interferes with the separation of powers, it is not something to be treated lightly. Let me go to clause 33, and I would love to know, who was the crazy person who came up with this? I am not imputing any improper motives to any Member of this House, because what happens is, they do not read. [*Interruption*] No, they would just—I will send you a copy. [*Interruption*] I am not afraid at all.

The Chief Justice has complained that persons are making comments about matters that are before the court, okay, or have been before the court. So you cannot even talk about things that happened in the past. You "cyar talk" about things that are happening now, and the way things are going, you would not be able to talk about things that will be going on in the future. So the Chief Justice issued this statement complaining about comments being made about decisions of the court. This is where Trinidad and Tobago has reached. You cannot comment on a decision of the court, they get vex, but that is beside the point.

The Judiciary has told the Attorney General—and he said so, that there is a problem with clause 33, and they are absolutely right, because clause 33 gives the Director of Public Prosecutions the right to direct a magistrate. [*Crosstalk*] Mr. Speaker, look at that, they are asking each other, was that clause in the existing law. [*Crosstalk and laughter*] I will go to the existing law, since I know—the Member for St. Augustine "cyar help yuh boy".

Hon. Ramlogan SC: Which one are you reading, 2001 or—

Mr. C. Imbert: The existing, 2011 is not proclaimed. I am going to the existing. Mr. Speaker, through you, the Indictable Offences (Preliminary Enquiry)

Act, Chap. 12:01. The Member for St. Augustine "cyah help yuh". Let me go to that, Mr. Speaker, in terms of the powers of the Director of Public Prosecutions. In this law—I would not even bother to read it. The DPP can appeal to the High Court, okay? That makes sense. So if the DPP is aggrieved at a decision of a magistrate with respect to discharging an accused person, the Director of Public Prosecutions may appeal to the High Court, okay? That is in the existing law, but you are putting in this law that:

> "…the Director of Public Prosecutions may, if he thinks fit, refer the case back to the Magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper."

[*Crosstalk*] Madness! The Judiciary is right. [*Interruption*] It is not a question of that. It is so obvious. It is in your face. I mean, how could you put in a law that the DPP could give directions to a magistrate what he thinks proper. So he could tell the magistrate whatever he wants. "Wah kinda ting is dat?"

Mr. Speaker, the only person that the DPP can give instructions to is the police. That is the way the Office of the Director of Public Prosecutions was established. He can give directions to the police and tell them to investigate a matter, but the DPP cannot direct a judicial officer. Why would you even want to introduce that into this? You know, if that happens, if a person went before a magistrate and the magistrate discharged the accused on the grounds that he had looked at the evidence, looked at the statements from either side, and come to the conclusion that the person should be discharged, they should not stand trial. And the DPP decides, "No, I am overruling you, and you will go back and you will reconsider that, and you will do what I say", because this is what you are telling us. You are clothing the DPP with these powers.

> The DPP may:
>
> "if he thinks fit"—so it is in his discretion—"refer the case back to the magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.:

What craziness is that? So you are making the DPP—you are giving the DPP the powers of a judge, or the powers of the Court of Appeal or the Privy Council for that matter. It is only higher courts can do that. Only appellate bodies could do that, Mr. Speaker. The Attorney General is supposed to know that. So get rid of this and let us revert to what is in the current legislation, which is that the DPP may go to a judge and get a decision of a magistrate overturned, Mr. Speaker,

before we get ourselves into real trouble with the Judiciary. [*Interruption*] 33 of which law? Of the existing law or the 2011? Of the 2011? Thank you, Mr. Speaker, I will accommodate the Attorney General. [*Interruption*]

Mr. Speaker, that is a different situation, that is where the DPP can, of his own volition, prefer an indictment against an accused person; that is not where a judicial officer has made a decision. That is not giving the DPP the power to overrule a magistrate. It is different, this is where the DPP—you are giving the DPP—you were giving the DPP, because this is not law. You were giving the DPP the power to prefer an indictment of his own volition. It is a different thing. So let us not argue about this. Do not waste time on this matter. The Judiciary is absolutely correct in this instance, and they are right. You cannot give the DPP those powers, and I can assure you that would be struck down by a court in a couple seconds. Seconds! They would not waste time with that.

But let us move on. Mr. Speaker, you know, we have had no explanation. In the previous incarnation of this thing, there was a whole tra-la-la about the engagement of Masters. The Attorney General has come to us now today to tell us that was a lengthy procedure, that the Judiciary needs time to hire and train Masters; you were introducing a layer of bureaucracy. I do not understand what the Attorney General is telling me.

3.45 p.m.

In our judicial system, Mr. Speaker, you have three levels of judicial officers: Justices of the Court of Appeal, High Court judges and Masters. That is our system: Master, High Court judge, Court of Appeal judge. That has been going on in Trinidad and Tobago for years, so what is all this old talk about hiring Masters and introducing a level of bureaucracy?

So what is the Master for? The whole point of a Master is that the Master determines matters that it is felt that this is a better use of—that it saves judicial time. So you give the Master certain things to deal with. You take the workload off the judges by allowing the Master, who is a lower level officer, to deal with them. So what is all this foolishness about how hiring Masters—well, it is best that we abolish Masters; we should not have any.

How could the Attorney General come, as the justification for abandoning Act 20 of 2011, with this theory about it will take time? This law was passed two and a half years ago. You are going to tell me that, in 30 months, they cannot hire one Master to deal with a preliminary enquiry or a sufficiency hearing? That is not it at all. That is not it at all. There is something that has just gone wrong.

Miss Mc Donald: Where is the criminal proceeding rules?

Mr. C. Imbert: Exactly. Act No. 20 of 2011 was proclaimed in 2012. It was proclaimed in August 2012 and when it was proclaimed, certain sections were proclaimed. If my memory serves me correctly, I think it was 1, 2, 3, 33 and 34 and one of those sections, I think it is 33 or 32, deals with the making of rules. So, two years ago, the Government proclaimed that particular section of the indictable proceedings law to allow the Supreme Court to make rules. Why has the Attorney General not reported to us on the progress that has been made over the last two years with respect to the rules? Has a single semicolon, full stop, sentence or word been written with respect to these rules that the Supreme Court was supposed to establish with respect to the operation of this sufficiency hearing?

Proclaimed in the dead of night in August 2012, Mr. Speaker, two years ago. Where are the rules? And do not come and blame the Judiciary and blame the DPP and blame the CPO and the public service and the PNM; probably the PNM too; probably some PNM plant inside "ah dey" that is causing all of this. This is what we are hearing these days from all kinds of people.

The Attorney General owes this country an explanation. You went through this whole stressful thing; the whole process of advertising to hire Masters and so on and two years later you abandon the whole thing? How much money has been spent on this exercise? How much judicial time? If you count up all the hours that the Chief Justice and the Justice of Appeal and Supreme Court judges, how much judicial time has been wasted on getting ready for indictable proceedings in this country, Mr. Speaker? And all of a sudden now you are going to throw it back at the magistrate and you are not giving the magistrate the guidelines.

A Master is a higher level officer than a magistrate, but they did not trust the Master in terms of determining whether a matter should go to trial or not, so they gave the Master very stringent guidelines in terms of informing the accused person of his rights, his right to an attorney, his right to legal aid, what is an alibi, give him a right to call additional witnesses. They did all of that with a Master, which is a higher level judicial officer. They are now throwing this thing back in the Magistrates' Court, a lower level judicial officer, and you are taking away all these things.

The magistrate does not have to explain what an alibi is. The magistrate does not have to find a prima facie case of guilty. The magistrate does not have to make sure the person gets legal aid. It is not in the law. Can they explain that to me? And I dare say they cannot, Mr. Speaker, because the Attorney General has explained where this law has come from and this is bad law.

It was good law to put all of that into the previous legislation, all of those protections for the accused. That was good law. And if they, in fact, redraft this legislation and put back in all of those things, so the magistrate is given proper directions by the Parliament in terms of committing somebody for trial, then this may become good law, but right now it is bad law because you are just throwing this thing into the hands of magistrates without any proper guidelines whosoever.

But, you see, I do not expect them to do anything about it because as I spoke earlier, the Attorney General was "gallerying" himself yesterday with respect to a court decision and since we are repealing Act No. 20 of 2011, there are certain things that need to be clarified with respect to what happened with Act No. 20 of 2011.

The Government would like everyone in this country to believe that the issue with Act No. 20 of 2011 was that it had the unanimous support of the Parliament. That is not the issue and I have spoken about an aspect of it just now. The Government moved in the dead of night, Independence celebrations 2012, to proclaim particular sections of Act No. 20 of 2011 and section 1 is the title, section 2 is the application; section 3 is some other—some irrelevant thing, definitions and so on; and 32 was rules that I have referred to that do not seem to exist.

So 24 months of judicial time have been wasted making imaginary rules, but that is not important. Those are all secondary sections. The important section that was proclaimed in August 2012 was section 34 and the Government has to explain. They have tried to let this country believe that that court ruling of Wednesday was about Act No. 20 of 2011. It was not. It was about the repeal of section 34 and, more importantly, the Government has not told us, the Prime Minister has not told us, why did they proclaim section 34.

The law, as I said, has 35 sections. They proclaimed four of them. They left 31 alone. The 31 that they left alone dealt with the procedures for the abolition of preliminary enquiries. What happened to the other 31 sections of the law? That is the issue before this country why people are so vex about section 34.

It is that you go through this tra-la-la with this law—35 sections in it—you proclaim four of them, three of them irrelevant; the fourth one has nothing to do with the operation of the law. It will not create sufficiency hearings; it will not abolish preliminary enquiries. They just enact a law that has nothing to do with preliminary enquiries and they have not told us why. That is the question they have to answer and no amount of parading up and down by the Attorney General and saying that he is vindicated and so on is going to address that question.

Hon. Ramlogan SC: What is the question?

Mr. C. Imbert: Why did you proclaim section 34? And do not tell me it is an oversight, you know. You cannot fool me. You can "ketch" some other people, but you cannot "ketch" me. Why did you proclaim section 34? That was not an oversight of the Parliament, Mr. Speaker, through you. That is a misconception I need to clear up right now. The proclamation of section 34 was not an oversight of the Parliament. It was an action of the Cabinet. [*Desk thumping*]

I do not sit in Cabinet. I did not send any Cabinet Note to recommend the proclamation of section 34. I did not participate in any Cabinet meeting agreeing to proclaim section 34. I sent no instructions to the President to proclaim section 34. I had nothing to do with that, neither did any of my colleagues. That is the issue there; that is the question you have to answer. Oversight! I am not aware of that. I am not aware of that at all. The proclamation of section 34, that is the issue.

Anyway, Mr. Speaker—[*Crosstalk* and *laughter*]

Mr. Speaker: Please, please, please.

Mr. C. Imbert: Mr. Speaker. Mr. Speaker. [*Crosstalk*]

Mr. Speaker: No crosstalk. Allow the Member for Diego Martin North/East to speak in silence. Hold your fire, Member for Diego Martin West!

Mr. C. Imbert: Thank you very much, Mr. Speaker. Mr. Speaker, we have had a preliminary enquiry law on our books since 1917, 100 years. Other countries have abolished preliminary enquiries. I have no problem with that. No problem. There is a point of view that preliminary enquiries clog up the courts, waste precious judicial time. No problem. No problem if you want to abolish preliminary enquiries because a preliminary enquiry is really a trial within a trial. It is really two trials of the same thing and it really wastes time and it gives people two bites of the cherry in terms of constitutional motions and that is the mischief in preliminary enquiries.

It is not the enquiry itself per se; it is all those interlocutory matters. That is what you are supposed to be telling us. The mischief in a preliminary enquiry is the interlocutory matters where fellows will just bring all kinds of other things to delay the substantive matter. That is the problem with preliminary enquiries, just like a trial. So it is two trials. You have this trial and accused persons have a right to bring constitutional motions and to bring all sorts of applications to challenge the validity of the process.

So, we on this side, we do not have any problem, in principle, with the abolition of preliminary enquiries. We do not, but I have a big problem with just throwing the thing into the Magistrates' Court without guidelines. That is bad law. And you can jump high and jump low, one of the problems why the matters are delayed so often in the Magistrates' Court now—and the Members opposite cannot challenge me on this—is because there are no guidelines.

Currently, with the current system of preliminary enquiries under Chap. 12:01, there are no guidelines. So it depends on the magistrate. They can take as long as they want to commit somebody to trial. They can take two years if they want and the Member for St. Augustine knows that what I am saying is correct. The magistrates can sit down on something for four years if they want. They do not have to give a decision one way or the other whether a matter should go to trial or not because there are no guidelines and one of the good things about Act No. 20 of 2011 was the codification of guidelines, deadlines, 28 days. You must deal with this matter in 28 days. You can adjourn it, but only for another 28 days.

That is in there, Mr. Speaker, Act 20 of 2011. You have to get this thing. If the intention is to speed up the process, they put strict timelines: 28 days/28 days. You must warn the person. You must give them all the protections. You must assume that they do not properly understand their rights. You must explain to them that they should get legal representation. You must provide them with legal representation if they do not have any. You must give them the opportunity to introduce alibi witnesses that they may not be familiar with at the time of the hearing. All of those things are in Act No. 20 of 2011.

The Attorney General tells me the reason why the Government took out all of these protections—the whole question of what is a prima facie case; what is the burden of proof; what is the standard in terms of determining whether the matter should go ahead or not—they take out all that because these things are practice. Nonsense, Mr. Speaker!

If it is practice, then why are we doing anything at all? If everything is already established in practice, that you must give people protection; you must give them a lawyer; you must give them rights; you must tell them about alibi; if all of that is practice, why are we bothering to be here today at all? Just let the magistrate go ahead.

The problem now—and the Government must accept this—is that there are insufficient guidelines given to magistrates with respect to the conduct of preliminary enquiries, so that magistrates are allowed to allow the process to be delayed.

4.00 p.m.

One of the innovations in Act No. 20 of 2011, which I must give the former Member for St. Joseph credit for, is that he gave strict timelines for the progression of matters. There is no way I am going to agree to this legislation, until the Government takes a careful look at all the sections of Act 20 of 2011 that it has removed and that no longer appear in this new preliminary enquiries legislation, and reinserts those sections that would assist with the orderly progression of preliminary enquiries and would not allow magistrates such leeway in terms of determining how long a matter should go on for, how long they could wait before they make their decision, what they could do. They could adjourn any time they want, anywhere they want, and so on. That is in this new law. It is not good law.

So I call upon the Government, fix it. If you fix it and you reinsert all of those innovations that were in Act 20 of 2011, then you may get the support of this side, but if you leave it so, all you are doing is making work for lawyers. Imagine words like, "A Magistrate…on consideration of all the evidence" will decide whether a matter goes to trial. On what basis is he deciding whether a matter should go to trial or not? Because he feels so, or because it is a test that is in the law that there is a particular standard, that the person has a case to answer, for example?

So, once again, this Government has come to this Parliament with, what I will call, "half-baked legislation". We support the principle of the abolition of preliminary enquiries, but we need the Government to make substantive corrections to this defective piece of legislation, otherwise we on this side will not support it. I thank you, Mr. Speaker. [*Desk thumping*]

Mr. Speaker: The hon. Member for St. Augustine, the hon. Minister of Legal Affairs. [*Desk thumping*]

The Minister of Legal Affairs (Hon. Prakash Ramadhar): Mr. Speaker, thank you for the opportunity again. You know, for some time I have been wondering why it is that in every single debate they have singled out the Member for St. Augustine for personal and peculiar attacks, and it is quite obvious to me. It is obvious that there is politics of the worst kind being exercised in this Parliament, [*Desk thumping*] and it was made very clear today by the comments from my friends that they wish to see another Leader of the Congress of the People.

I have stood against their every temptation, their every condemnation to fall prey to foolishness to break this partnership, [*Desk thumping*] and because of that

they have started a campaign against me, personally, as the Leader of the Congress of the People, so that I will be weak in my resolve for what is best for Trinidad and Tobago. [*Desk thumping*] I am further strengthened by what I have heard here today.

Mr. Speaker: Please. Please. Members, Diego Martin North/East—[*Interruption*]

Mr. Imbert: I did not do anything.

Mr. Speaker: Yeah, I know, but your back was towards me whilst you were concentrating elsewhere. I appeal to hon. Members to allow the hon. Member for St. Augustine and Minister of Legal Affairs to speak in silence. I know some of you might be getting a bit hungry because we are inching towards 4.30 p.m., but please allow the Member to speak in silence, and he has my full protection. Continue, hon. Member. [*Desk thumping*]

Hon. P. Ramadhar: For which I am deeply grateful, Mr. Speaker.

I was on the point that it is their interest to weaken the partnership by one of the partners removing itself. They have unrelentingly made efforts, not only through their voices but from their very powerful friends, to denigrate the Leader of the Congress of the People as being weak and lacking in some physical attribute. But I will tell them that intestinal fortitude to withstand these temptations is great, [*Desk thumping*] and if strength is to be determined by "badjohnism", you take that; if strength is to be determined by reckless statements, you take that; if strength is to be determined by irresponsibility to the future of this country, you take that. [*Desk thumping*] But I say, what is important, and every mother, every father and everyone who cares about a nation knows that sacrifice is important—[*Interruption*]

Mr. Speaker: Please. Please, Members, allow the Member to speak in silence.

Hon. P. Ramadhar: Bickering children. Leaderless! Unkempt in your manners.

Mr, Speaker, I was making the point for those whose ears now hurt with the truth, that I intend to be part of a new change of Government and I am very proud to have participated in the People's Partnership to fulfil things that many had spoken about and had dreamed about, but this Government, under the leadership of the Prime Minister, is making it a reality. [*Desk thumping*] So whimper and cry

on election day. Celebrate your intent but it will not manifest; I want to assure you of that. [*Desk thumping*] I have every confidence that the conscience of this nation—[*Interruption*]

Mr. Speaker: Yes, he is responding to the Member for Diego Martin North/East. [*Laughter*] Yes, you made a lot of remarks. He is responding. Could I appeal again, for the second time, to hon. Members on the Opposition Benches to allow the Member to speak in silence. I would not want to invoke the relevant Standing Order to ask Members to leave the Chamber. I know that is why you may rush out, [*Laughter*] but please allow the Member to speak in silence. I do not want to rise again, please. Allow the Member to speak in silence. Continue, hon. Member.

Hon. P. Ramadhar: Thank you, Mr. Speaker. I do not know, was it 75 minutes that we had to sit and endure? It felt like an eternity, really, and arrogance based on ignorance, and I am being very kind to my friend to say that it was based on ignorance rather than something else, and it was delivered with total and reckless disregard for the truth and for the reality.

Let me give you the prime example in "written writing", to quote my friend from Chaguanas East when he made the heated and inflammatory and totally false statement about the interference of the DPP in the Judiciary, and that the directions of the DPP is something to be afraid of. "Oh, my God, this Government is now interfering with the Judiciary." Well, listen, Sir, this proposed lawyer in waiting, I wish to have my day in court with him because he is really nothing but fodder for the lawyers that he is fearful of, and he is quite right. Let me tell you why, Mr. Speaker. There is law written in "written writing", Chap. 12:01, Indictable Offences (Preliminary Enquiry), and this is but one example of the complete tomfoolery that we have been engaged in all afternoon with my friend from Diego Martin North/East.

Could I read this with your leave? This is our law, and it is not the law passed under the People's Partnership. Indeed it is law dating back to 1961, refreshed itself in '62, '76 and, indeed, 1996, 27(1):

"At any time"—

Sir, pay attention, please.

"after the receipt of the depositions and other documents mentioned in section 25 or section 26A…before the indictment is filed"—

Shall I go slower?

Mr. Imbert: I dealt with that already.

Hon. P. Ramadhar: Yes. Zero.

Mr. Speaker: Do not address them, address the Chair.

Hon. P. Ramadhar: You are right, you know, Sir. You are very, very correct, Sir, because they really, really do not deserve the respect that one would normally attach to a Member of Parliament. [*Crosstalk*]

In this statement, if a Member could rise and make the submissions that they have, knowing full well that this is what the law is; could it be ignorance or could it be something else? Let me finish it and you will understand why, Sir:

> "the Director of Public Prosecutions may, if he thinks fit, refer back the case to the Magistrate with directions..."

Let me underline that:

> "refer back"

Now, I am not too sure if "refer back" is correct, but:

> "...refer back to the Magistrate with directions to re-open the enquiry for the purpose of taking further evidence, and with such other direction…"

The DPP directing the magistrate eh:

> "as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial."

This is the law that we have had from pre-independence, post-independence and to this day. That is one example of what we talk about, the mischief or ignorance; I do not know. I do not want to get brought up here for using unparliamentary language, as tempted as I am, because I have sat through, not just today but in almost every single debate, and I have been praying for some enlightenment to come so that we will get rid of all the "gallerying", the falsehoods and come down to basic truth.

Now my friend speaks about the removal of the 2011 law; yes? But he does not speak with any clarity as to the strength and purpose of this present Bill that we have before us. They are interested in form. That is all they are. Never in substance. What is the substance of this Bill? It is amazing to hear all the comments without really assessing the value of this piece of legislation. You know what it does? It removes the right of cross-examination at a preliminary enquiry.

I have heard about the abolition of preliminary enquiries. Really, that is not quite accurate. What it is, is a restructuring of preliminary enquiries because there is still a judicial protection, in the first instance, but the form in which it goes through has changed. In the old law, a preliminary enquiry is like a full-blown trial where witnesses go into the witness box, they give evidence and it is cross-examined. It is at the end of the prosecution's case, when all the evidence has been cross-examined—[*Interruption*]

Mr. Imbert: Mr. Speaker, Standing Order 33(4).

Mr. Speaker: You will get a minute.

Mr. Imbert: It is two minutes, Mr. Speaker.

Mr. Speaker: No, one minute. Continue.

Hon. P. Ramadhar: Thank you very much, Mr. Speaker.

I was on the point to explain the procedure that encumbered the Magistrates' Court in preliminary enquiries, where after all of the evidence has been led and cross-examined the magistrate then weighs, at that stage, whether a "prima facie case" has been made out, and if there is, then the accused is given certain rights, first to give evidence, to call witnesses or to remain silent to not call witnesses and an alibi notice is given, and then the court will determine whether the matter should be committed for trial or not. What is the reality?

I dare say, out of every 199 cases before the Magistrates' Court in the present form are committed for trial, because the cross-examination at the end of it raises credibility issues, and the courts have said, repeatedly, that credibility issues are for the determination of a jury. So at the end of it, what is happening is that we had extensive cross-examination, and I could tell you as a practising lawyer it is our right to cross-examine evidence. In the very case of *Dhanraj Singh*, for instance, the main witness was cross-examined for five days. I did five days of cross-examination on him, at the end of which Mr. Singh was committed for trial and then the cross-examination was read back to the witness at the High Court, and the jury laughed him out of court and acquitted in no time.

The point I am building to is that we have to take a realistic view now of the backlog in the courts, and whether the cross-examination in the Magistrates' Court is worth the clog and the burden to the system that it has created, and this is what this legislation in the most potent part does. It removes the right for cross-examination but the magistrate still has to get all of the evidence in written form by statement, and I am grateful that it is authenticated or sworn to before a

Justice of the Peace, so that anybody making that statement will know that if they make any statement they know to be false, then they can be prosecuted for perjury. Removing that, what it does now is to cut down the length of time that any preliminary enquiry will last, and that if a sufficient case is made out based on sufficient evidence, which the court, the High Court and the Court of Appeal have already ruled on, it is as if there is a defect, for instance, like in the Naraynsingh matter.

4.15 p.m.

Let me give you the example that happened there: evidence was led from prosecution witnesses, and they gave evidence of Dr. Naraynsingh having met and having arranged a deal to "put down a hit" in a certain time frame. We were able to prove that at that given time Dr. Naraynsingh was out of the jurisdiction and could not have been present. Therefore, there was no issue of credibility there, but as a matter that they could not rely on that evidence, and the magistrate ruled and he was discharged. But in relation to Seeromani Maraj there were credibility issues. Once again, laughing stock in the Magistrates' Court, the witnesses were being laughed at. I cross-examined in that case for several days. Went up to the High Court, they were cross-examined again, and the jury could not wait; in fact, they stopped the case. They said they did not want to hear anything further in the matter and stopped it.

The issue at hand then is: do we delay persons? Because we have done cases where preliminary enquiries last for five or more years, and especially for murder there is no bail. And these are people who cry, "Let us go to the assizes," because you know 99 out of 100 you are going up, but you have to wait your five years. We say no, let us cut that out; put the statements in and we will deal with the case upstairs. It is fair to the prosecution. It is fairer to the defence, because, let us not forget, these delays caused a lot of mischief to have happened, and we have to learn from them. One, witnesses die; two, witnesses are intimidated; three, they lose interest; four, they migrate, so the quicker—justice delayed is justice denied; that is the underlying value that we bring to this.

Let us streamline and make better; let us strengthen the institution of the Judiciary. I want to tell you, Mr. Speaker, one thing that brings the administration of justice into disrepute is when matters are thrown out for delay, witnesses fail to cooperate and on technical points. I am not going to be very long, but I just want to explain the rationale behind this legislation.

There is something in here that speaks to procedural errors, where, in fact, the court can rule that even though there was a procedural error, at the end of the day you get your trial. Let me explain what that means. When courts were created, it was to ensure that persons against whom allegations were made had an opportunity to test the allegations, test the cases, test the evidence to see whether, in fact, they should be convicted and also made to pay a penalty for any wrongdoing. So there was the essence of justice to the end of a court.

What has happened over the years—and that is the truth, everybody knows it—is that the courts have become more instruments of technical rules and legalities that have very little to do with justice, and lawyers. I had to participate as a lawyer, and I want to tell you the duty of every lawyer is to take every legal avenue open to the defence of his client. There was a famous section 18 that Mr. Jagdeo Singh had unearthed. Section 18 says that at the end of committal proceedings, or close to it sorry, the magistrate was bound to inform the accused of his right, even though he chose not to give evidence, to call witnesses and for them to give evidence and to be cross examined.

All the written rules and everything that were being ignored, and as a result of which, on a technical point, dozens, if not hundreds of persons, who, having been committed on that procedural irregularity, when you went to the High Court you just argued—or even before you reached—that the entire committal proceedings was a nullity, walked free without trial. This legislation removes the opportunity for procedural defects, to avoid the ends of justice, and that is something to be commended by all. The law before did not. [*Desk thumping*] Let me give you an example, My Lord—I mean, Mr. Speaker. [*Laughter*]

I stood in the assizes in San Fernando, where seven men were put on trial for murder. It was a long time ago, and the young lawyers would remember the authority of Crane, where it was said that a preliminary inquiry created the parameters within which you must have your evidence, and nothing out of that could be led in the assizes—nothing out of it could be led in the assizes. Young lawyer, very thirsty for success—when I looked at the deposition, six men—I am representing six of seven.

In the deposition was an acknowledgment of accused number one, two, three, four, five and they gave their identities. But in the substance of the witness' evidence, the witness had said in describing the activity that caused the death, that "the men", not the names of the accused, but "the men". When the evidence was about to be led before the jury, I rose and objected that they could not now lead evidence from this witness to say that "the men" referred to in the depositions—

the witness having died—we were attempting to put in the deposition and lead that evidence, that they could not now introduce any interpretation to that; that "the men" referred to in the depositions were the men described as having done the act. The judge and the law as it was then, had no choice but to uphold and they walked free.

That is a lawyer taking the benefit of legal technicality. But, Mr. Attorney General, this law says that there will be no such procedural defects or anything of that nature. That is one live example that leaves a bitter taste in my mouth, as it does in any lawyer's mouth, to have taken an acquittal on a technicality. I always love my jury. My favourite two words in the world were "not guilty", because the conscience of the society would have heard the evidence on all sides and determined. And the technical points, yes you had to take them; it was your duty, you were bound to do it, but you never felt right. The society never feels good when technical points are taken and the ends of justice are denied. This is what this clause, this new law streamlines and does.

My friend went on and on and spoke about things that are not put into "written writing". The issue of the right to an attorney—does he not know the case of *Wayne Whiteman*? Let me just say this—[*Interruption*] You could go by what was and what is, we are dealing with what is now and where we shall go into the future. [*Desk thumping*] All you deal with are historical relics.

Mr. Imbert: You passed it!

Hon. P. Ramadhar: You passed it too. With all due respect, Mr. Speaker—[*Interruption*]

Mr. Imbert: You drafted it.

Mr. Speaker: Please, please, Member for Diego Martin North/East.

Mr. Imbert: He is talking about his law as if it is mine.

Mr. Speaker: Yes, but you have already spoken.

Hon. P. Ramadhar: One thing they are full of is words, you know. Words, words, words, meaning nothing.

Mr. Speaker: Just address the Chair. [*Laughter*]

Hon. P. Ramadhar: Mr. Speaker—what was I dealing with? [*Laughter*] So much of a distraction they are, that sometimes the population is distracted by their foolishness, but we shall bring it back now to the present and what we are dealing with.

There are two types of law: one, the codified law—my friend, the Member for Port of Spain South knows this—but the other type of law is what we call common law. Do you know what common law is? Judicial determination on issues that are not necessarily written. What the 2011—[*Interruption*]

Mr. Imbert: It was bad.

Mr. Speaker: Member for Diego Martin North/East, I invite you to have an early tea at this time. Have an early tea and come back at five o'clock, and allow the Member to speak in silence. Have an early tea. [*Laughter*]

Mr. Imbert: You are welcome, Sir. [*Desk thumping and laughter*]

Mr. Speaker: Continue, hon. Member, please.

Hon. P. Ramadhar: You know, for a moment I thought things were better.

Mr. Speaker, we were making the point of the types of law that we have: the codified law and the common law, in which hundreds of years of jurisprudence is based upon the rulings of court from time to time. Until a written law changes the common law, the common law is good law, or sometimes even better, because we use that to interpret written law.

There is a case that went to the Privy Council from Trinidad and Tobago, and every law student knows it, *Wayne Whiteman*, which says that for our Constitution to be given life and breath, it must be given the procedural requirements to make it live, one of which was that upon arrest a person has to be informed of his right to a lawyer. That is law, that is taken now—nobody, except the Member for Diego Martin West—North/East, sorry, well, two of them—is unaware of that. Everyone in the system, and those out of the system, even children know that. In America we call it the Miranda rights. In Trinidad and Tobago we have that, so those procedural provisions are there.

You know, the hypocrisy is what troubles me most, because out of the lips of the Member for Diego Martin North/East were these words: that the law of 2011 took standard procedure and codified it. Forgive me if I misquote a little, but the standard procedure he referred to that, and that it was codified in 2011. So if it is standard procedure and recognized as settled law, the issue of the right to inform of a lawyer, does he even know what happens in a Magistrates' Court?

When you appear, one of the first questions any magistrate—and I really detest the denigration he used about superior persons as masters. Magistrates—we must respect them, because they are qualified. They have practised, they have experience. You are required to be seven years in practice before you are

admitted. They are all appointed by the Judicial and Legal Service Commission as trained persons who are fit and proper to be judicial officers. But the disrespect and contempt I have heard in the voice of the Member for Diego Martin North/East, really tells you how they think. They have no respect for institutions and they undermine them at every opportunity. So that when words like these are uttered in the wider space—magistrates are supposed to be lesser persons.

One of the first things that anybody who has gone to court knows when you appear before a magistrate: do you have a lawyer? Are you getting one? Can you afford one? You know this, Member for Port of Spain South. Do you need to write down all these things? When you write it down and if there is any deviation from it, then you have a case, but if it is left to the practice and the substance—this is one of the things we want to return Trinidad and Tobago to: substance rather than form. But they want everything in form and without any regard for substance, and this is what this legislation is on; I am proud to participate in this debate. [*Desk thumping*]

There is now in this—and there is so much more I could say, but none of which is really to respond to the non-issues raised by the Member for Diego Martin North/East. He did not say anything in 75 minutes. He has a world record for that, [*Laughter*] followed closely by the Member for St. Joseph, I imagine. He repeats himself, and the bravado with which it is delivered, for the unwary and uninformed it sounds as if it is sensible and logical, when indeed, held up to even a flambeau or a candle, you will realize there is nothing of substance in his submissions.

Mr. Speaker, at clause 28, if there is any challenge to the committal proceedings, do you know where you have to go? To the Court of Appeal. One of the things that is a great delay in the system is the use of judicial review during a committal proceeding or after a committal proceeding. The Court of Appeal is where you must go, if at all. You have to think very, very severely about whether you want to go the route of the Court of Appeal on matters of this nature, but you still have access to challenge. This is the point. You still have access to challenge a decision of a magistrate, if you feel that you are wronged; you can do so.

You could wait when you go before your trial, which is what the Privy Council has said, but we have given the alternate opportunity to go before the Court of Appeal and challenge any procedural defect or anything you are not comfortable with. So nothing has been taken away from the rights of our people. In fact, the right of our people is for a fair judicial system that delivers justice in good time.

It makes no sense for you to be innocent and have to go through the torture and torment of five, six years of a preliminary inquiry and, hear this one: wait for committal. When you get your committal, get this one: wait for indictment. Sometimes four, five, six years will pass, because the DPP's office has to wait on the notes of evidence, which could be voluminous in "written writing", by hand, that many people cannot interpret after, so you have to wait for the person who wrote it to come and for them to type it up in deposition form, to send up to the assizes, or after that long wait and you get it, the DPP, because of the lack of resources given over the years, except for this Government—I think it is 27 new attorneys we gave them resources for; 27 new lawyers to help with this—so that you accelerate the process.

So when you get rid of the four or five years—this takes out four or five years from the committal proceedings—let me be a bit more conservative, let us take out three years from that. But what this law says is that after the committal proceedings, there is a time frame within which you must have the notes available. [*Interruption*]

Mr. Speaker: Hon. Members, I think it is a good time for us to pause and have tea. This sitting is now suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Hon. P. Ramadhar: Thank you again, Mr. Speaker. Mr. Speaker, just for the sake of clarity, for those who may have missed it before, that there are two types of law in the society in Trinidad and Tobago. One is the codified law, and the other is the common law. And I was making the point that the length of time for the process for the committal proceedings, where the innocent languish unnecessarily, if they are to be acquitted, the trial, they beg for it.

The guilty, equally, that justice delayed is justice denied, and this is what we are about to do to streamline the process of the judicial system, so that it will not be held in disrepute; that it will not be held in contempt for people who say that it is ineffective and non-functional. Because they see persons who may have a ton-load of cases, and until this administration, were able to walk the streets freely, where witnesses were intimidated, witnesses died, migrate and for whatever reasons, when the trial date does come years after, there is no connection between the offence and the penalty which really amounts to an abrogation of duty of your government and of your society. There was a sense of futility, and there was what they called a space of impunity, where criminals believed that I could go ahead

and do all my crime in a certain time frame. If I am caught, prosecuted, I will not face my sentence until many years. It was worthwhile continuing your progress into crime.

This legislation deals with that because it takes out the three years as being reasonable, instead of five, as many cases were seven or so years, to say let us put it down to three years. So you take three years out of the equation for the preliminary enquiry. You take another two or three years out of the period between committal and indictment. And it goes directly now, within a short period of time, where the magistrate does not have to be burdened by cross-examination that could go on and on and on, and they have the sufficiency of evidence before them, which the law already recognizes. The law already recognizes in case law what sufficient evidence is. And if based on that, there is a case made out, you are committed to stand trial, and there is a timeline to follow from that to the assizes where you will meet your trial. So the argument—[*Interruption*]

Dr. Gopeesingh: Over time line.

Hon. P. Ramadhar:—really is futile. There is a timeline, but what is critical is that the very complaint that my friend had that there will be an interference with judicial independence, is to put a timeline on the magistrate as to what time frame they must conclude the hearing, and that in itself is poking a finger into the judicial discretion. You cannot rush the courts, as painful as it sounds, but there is a dynamism and an understanding with us all that we must proceed with greater alacrity in dealing with matters.

I could tell you this, Mr. Speaker: there was a case in San Fernando last year. One accused person—a very simple matter from what I have read in the papers, as far as I am concerned, and when I practised—a matter that should not have entertained the court's time for more than two, three, at most four weeks; that matter went on for seven months. One of the juniors in that matter was a junior to me and I enquired, "what in the world were you doing with this case for seven months?" And when he told me the technical arguments that were argued, in terms of committal proceedings and a host of things that they are entitled in law to argue, I realized what a deep, deep hole we had dug for ourselves, where we had lost sight of the purpose of the court, and really encumbered it with technicalities.

This is an effort to streamline and strengthen the institution of the Judiciary, so that there will be no debate, no arguments on technical issues that have nothing to do with truth or untruths, with justice or injustice. So this is what this does.

I could give you another example. One of the very important of the many, many important, if not all the clauses that should be highlighted, is this issue at clause 19, Mr. Speaker; where, in fact, the issue of a child's evidence. We have had many cases, which I have argued, where the magistrate in an indictable offence is to take the evidence of a child, and there was a process that was laid out that the magistrate had to follow. And there were many breaches in that process. And you come up to the assizes and you quash the entire committal, and the case sometimes would be sent back for the child to undergo the same ordeal of having to give the evidence.

In this, it is clear, that the evidence of a child under the age of 14, the statement must be supported by an affidavit of a probation officer, a child psychiatrist or a person qualified to assess the child's ability to make such a statement.

In the past, that was left to the magistrate to decide, who is a legally trained person without any psychiatric exposure or training, but the magistrate had to go through a ritual that was sterile and ineffective in reality as to whether that child was competent to really give the evidence.

Indeed, I recall a case, the accused is now dead. He was acquitted of murder. Frederick Brown in the assizes in San Fernando. He was charged for murdering his wife. And the evidence against him—a notorious name, eh, and a notorious man. I did the hardest of cases because I figured, look, if there is a death penalty attached to something, an accused person must be given the benefit of the best possible defence, and the prosecution must rise to ensure that they bring the best possible evidence so the jury can make a proper decision on the facts before it, and not technicality.

The only evidence against Frederick Brown was the evidence of his child who, with embarrassment, I must tell you, the prosecution attempted to bring as a witness. But you know what? The evidence of the child related to a period where the child was two years old—two years old. By the time the matter came up to trial, the child was seven-plus years, and the prosecutor argued forcibly, and vociferously, for the admission of that evidence. And I remember a sterling judge, if ever there was one, Justice Melville Baird, who is a man not wont to condescend to abusive language, but when he had to rule on that matter, used language that I had never heard him use in relation to the prosecution in that matter. How dare we put a court through an ordeal to exercise discretions that they are not trained in, to accept evidence?

So that this now will help in a large part for children, as the Attorney General has reminded us, not to be used as pawns in cases, because their minds are so sweet and malleable for persons they trust, that whenever you tell them, they could repeat, and repeat it again. And I will tell you one thing, Member for Chaguanas West, you know full well. To hear a child speak something, it is difficult for you to say that the child is lying, but the child is not really lying intentionally, but what has been conditioned, what has been programmed to them to repeat. And with this help now, we will have a clarity of evidence, so that we will have greater justice for the young children, so that their evidence, when accepted by those safeguards, will carry the sort of weight that it really should.

So, Mr. Speaker, we could go on and on and deal with the terrain of the Member for Diego Martin North/East, but really he has said nothing in his period of standing and speaking that had not been dealt with in the broad parameters of accepted law, accepted practice, you know. But he made such a remonstration that it is worthy now to deal with section 34.

The Member must know that the section 34 that this House debated was to the effect that there will be a period of—well, let me put this in context. It had come originally in form, that if after seven years from a charge—let me make this very clear for the country to hear it. If after seven years of a charge where a person is charged for an offence, that you cannot bring them to a trial, you may apply to the court, and the court may discharge you. That was the section 34 that we all debated. I think it was good law, but I thought that, listen, seven years, having regard to the sum of delays, was too little. And on the floor we asked for it to be moved to 10 years, and the *Hansard* would reflect that the hon. Prime Minister turned and said, her Minister of Legal Affairs suggests 10 years, and she will agree with that. But Member for Diego Martin North/East was insistent that we should leave it at seven. He had been arguing for seven years—[*Interruption*]

Dr. Gopeesingh: That is right.

Hon. P. Ramadhar:—from the date of charge.

Dr. Gopeesingh: We remember that; seven years.

Hon. P. Ramadhar: That was a matter of record. Why is that? But yet they come now, section 34, that everyone wants to disown, that everyone rightly should disown it, came from another place; another place. Where the other side represented by purportedly some of the best legal minds agreed with a completely, completely different section 34 from that which we here had debated; completely different from the LRC's approval.

I want to say something, every week that we come here and attack the chairman of the LRC, they do not attack me, you know. They attack the institution of the CPC department, the lawyers from the AG's office, and all the good, hard-working souls who contribute to legislation. I am not a draftsman. We are here to look at the policy, to see if what is before us aligns with the policy of Government. So every attack on the chairman of the LRC in an attack on professionals who have given and dedicated their lives and service to this nation. But all of the attacks, all of them, amount to zero when you analyse them because the work is well thought through. They may not be in agreement with what the—I almost said prosecution—PNM will want, but certainly this is what the product of work and dedication brings forth to this Parliament.

I was making the point that the section 34 that came downstairs, came here, was a completely alien section 34. What that did was to say, if after 10 years from the date of the commission of an offence you can apply, if you are charged, to have your case dismissed; acquitted. What does that mean? What that means, or meant, was that even if nine years after an offence, then the offence is detected, and you are charged, one year into it because you have your preliminary enquiry. Right. Remember the time frames we were dealing with for preliminary enquiries, especially for white-collar crimes. And that is why I want to bring this point up. It was almost impossible for a preliminary enquiry to be completed within that time frame and get your committal, and have an indictment. So your 10 years could have passed, "voop"! And sometimes after 10 years, you may then discover the offence—you could not charge, because that section 34 was an abomination; I agree. Every single one, in another place, voted for it. It came here and every single one—[*Interruption*]

Dr. Gopeesingh: Of them.

Hon. P. Ramadhar:—of the PNM Members, as much as they wish to disavow the parenthood of this thing, participated in its delivery.

Dr. Gopeesingh: Voted for it.

Hon. P. Ramadhar: Right. They abdicated responsibility. They wished that it never happened. And they wish by saying that they were not responsible, that it never happened. They are responsible, like we are, all.

5.15 p.m.

Now, my party, I remember made a call that when there are amendments upstairs they should not just come back down on the floor so that we could really

digest, because, remember it is a full Bill that we had debated and certain clauses amended, and when it came, by which time—let me say no more. The long and short of it is, that a new process has to be adopted where amendments come that we are given sufficient opportunity, all of us together with the professionals, to look at them and say, "is this what we really want?"

Now, to try to avoid the reality, the Member for Diego Martin North/East says, "it is about the proclamation". Well, good news, Sir, every bit of legislation that goes through this House has to be proclaimed, except under the PNM. I brought my mind to some of the legislation which they kind of hoodwinked the population to believe that they brought legislation to protect the people.

Let me give you one example: the Fair Trade Act, since 2007 I believe it was, passed, never proclaimed. What that would do, because we are taking steps now to facilitate this very important legislation that protects the people of Trinidad and Tobago. What it would do is that it would ensure that there are no cartels, big business interests who come together and fix prices because there are serious criminal offences involved there with high fines and possible jail. I do not want to commit myself in terms of bringing that into this, but there are consequences for those kinds of things. Passed since then, never proclaimed.

Bankruptcy Act that could protect people and their homes and when their businesses go bad from an appetite of banks to sell your property when things go bad. When things good you are their best friend, when things go bad they do not hold out with you, you know. Wham, they have a friend waiting to buy—you know, we hear these things. That legislation passed since 2006—2007. Guess what? Never proclaimed! But we do not operate so, when we bring law it is to be proclaimed.

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for St. Augustine and Minister of Legal Affairs has expired.

Motion made: That the hon. Member's speaking time be extended by 30 minutes. [*Hon. Dr. T. Gopeesingh*]

Question put and agreed to.

Hon. P. Ramadhar: I am deeply obliged. [*Desk thumping*] So, they want to wash their hands; they say the way it was proclaimed. Now, there is a serious consequence to that attempted proclamation, and the Prime Minister was on record in the public domain as to what led to that proclamation and what consequence flowed from it.

This is the first time in Government, the first time in Government where serious consequences flow from misdeeds. [*Desk thumping*] And the COP and as the leader of it, we are proud to change the dynamics of the politics. We came in on the basis of new politics. You know what new politics is? The restoration of old values in leadership. And we came in together with our partners and we are fulfilling a dream that others only had, but this Government is making a reality. So that in the future everyone who wants to enter political space will know that there are no secrets, whether by video, whether you are tapping phone, whether you are tapping Internet connections or whatever, there are no secrets in life.

So, live your life, Sir, young man, young woman, with the full knowledge that if you wish to enter political space, to hold the trust and confidence of the people of Trinidad and Tobago, that you will be exposed, so that from very young prepare yourself. Live nobly, live honourably, live with integrity and decency, so that when you come into the political space we say that is the sort of leader we want. This Government is nurturing that, manifesting it against all of the allegations of corruption, all of the allegations of nepotism, bring it and we shall deal with them, because this is a very unhealthy political environment that we inherited from 2010. It did not mean that all the negatives of the past would have disappeared at the press of a button, and you stick your finger in the ink. It takes a long time, it takes dedication and commitment to fix a nation whose history has been thwarted. Since the grand old days of the great PNM under Dr. Eric Williams, the right honourable, things have changed dramatically in relation to what that party created, what it represented about the people and everything else. It has now been distorted to represent interests that we do not see. The faces of the friends are just a facade for the powers that manipulate behind them.

Now, the reason I make these points is that that effort to demonize, to damage, to throw mud and hope that it will stick, has worked to a point. But you would find a certain different aggression in me, and like many of my friends, with the reality of what is at our doorstep, the return to that infamy, that infamous behaviour where the people never matter, they just mamaguy, but never acted in their interests, the day for that done. They want to return to that and I say "no", I would stand in your way. You want to remove the leader of the COP, you try it! You try it! [*Interruption*] Now, it may happen. I am not infallible, I am nothing other than a human being who has high ambitions for this country. I have dedicated my life to it. In or out of politics, I will continue to do my work. [*Desk thumping*]

Now, I go forward, we are dealing what the section 34. The section 34 that they speak to, what legislative change? They talk about white-collar crime. You know what they have here? Mr. Speaker, there are instances where the DPP is now empowered under the law which the People's Partnership has brought forward to bypass even the preliminary enquiry, because the country agonizes at some of the white-collar crime cases—the few there are—how long, a decade may pass or more and they are still paddling, as a friend of mine put it, in a wire canoe up a stream to try to get matters like white-collar crime resolved and I do not want to go into any particular case. I make no reference to any particular case, but this legislation allows and permits the DPP, and I shall read—I am quoting from a document:

> Will empower the DPP to proffer an indictment even if committal proceedings have not been conducted in five instances—

and I will remind you what these are.

One, a coroner's inquest: that is like an accident or uncertain killing where you are not sure if it is accident or something else, something illegal. A coroner will have his/her hearing, at the end of which, in the old way—then you say, "listen nah, an indictable offence has been disclosed". So then now, when that happens they have to lay a charge and then you start the whole process of preliminary enquiry. When the evidence of the coroner is the same evidence that would be led at the preliminary enquiry. It is a waste of time. This legislation says, immediately you could move from coroner to charge and indictment, so you could avoid the preliminary enquiry process, as shortened as it is.

Two, where you may have more than one accused person, but one of the accused may not be arrested and prosecuted, so, you have warrant out for him you cannot find him, years go by, others go through their PI and they are in the assizes now. "Bam" by good luck or otherwise the accused is caught, you have to go back and do the PI for him, you know. Not anymore. If they do not want to support it, that is a matter for the PNM. To say to go back and have a PI, go through that process, that will take years while the other accused await their trial. No, the DPP can directly prefer.

Three, you have cases, and I know of cases—I do not want to repeat them here—where magistrates and judges could not complete the case, either they are sick or they have died, or for whatever reason the cases could not be completed. Guess what you have to do? They call something, the lawyers would know, de "novo trial", meaning from afresh, start it all over. This streamlines, and yes you

can file an indictment and go to the assizes with it. And these last two I saved for last, where there is a violent offence or a sexual offence, where a child may be a witness or an adult witness who has been subject to threats, intimidation and elimination. Can we say that that is not a real danger in this society? What did they ever do to try and fix that? We want your help to fix that, where witnesses are threatened, where they are eliminated, so the DPP now could forego that preliminary enquiry period and take you straight to trial, judge and jury, and have the matter determined.

That is a fundamentally important and necessary change for the administration of justice. This People's Partnership Government is giving the system, the establishment, the institutions the power to deal with the demonic rise in crime and the new way of dealing, meting out what they call justice on the streets, but we call murder and assassination. The interference with the judicial system is a most deadly and dangerous thing, because when the people lose confidence in that, you know what happens? They basically park up, give up hope, and the very thing that this People's Partnership inherited where people are afraid to even make a report to the police or afraid after they make the report—Member for St. Joseph, you know this, eh—they are afraid, and there are witnesses afraid to come forward. After a while, suddenly you go in the court and they cannot remember a thing, selective amnesia. We must put an end to that.

And maybe I should lift the curtain a bit that we are moving now to videotape. We are moving to either a suspect or an accused or a witness, we videotape everything you say, so that would become primary evidence. So, if you want to interfere and threaten or eliminate a witness, we have it for a jury to decide, on video, so you take away the possibility of elimination. And if you are foolish enough to do so, I want to tell you as defence counsel, the worst thing to have, the worst thing to cross-examine or to prove a case, the worst witness to attack is what? A dead one. Because what you have is a deposition as it stands now. You cannot cross-examine that, so your goose cook unless you could find some other means to discredit that.

So, we want to take away the threat factor, but you hear allegations all along about protecting white-collar crime, which is fraud. White-collar means fraud, and I was making the point where I started, of some cases, white-collar crime, fraud crimes, the country looked on in agony in some of them, for years it has taken and we hear about others who were taken to another jurisdiction and they finished serve their time and other cases have not been completed yet. The DPP now with this legislation will have the power to take you straight from charge to

the High Court, and with the other combination of legislation which we have passed for the special jury, you have persons who understand, who have the capacity to understand these technical issues and you would have your trial.

So, if you are guilty, well, you know full well that we are preparing for you; if you are innocent equally, but you will get it quick, you will get it fast and if justice is to be meted out. As Farouk Hosein, former Director of Public Prosecutions or assistant Director of Public Prosecutions taught me in San Fernando, he say, "you know, the State never losses once there is a fair trial". So, do not get vex "Mr. prosecutor" if there is an acquittal, do not get vex "Mr. defence attorney" if there is a conviction, once the trail was fair, because justice was served and we are all officers of the court." That is something a lot of people miss. You have to win for a prosecutor, you have to win for a defence counsel, it is good to win I assure you of that and I will on June 29th. [*Desk thumping and laughter*]

Mr. Speaker, call it what you want, Sir. I campaigned for the people of Trinidad and Tobago. I am just a symbol of their efforts over the years. [*Interruption*] Just a symbol. So, Mr. Speaker, I think that puts to rest the issue of whether this Government has gone soft. [*Interruption*] "All yuh fix up." [*Laughter*] You promised Penny the same thing. [*Laughter*] So, for those critics of this Government who say that this Government of which the COP is integrally part and its policies are given life and breadth in this partnership, not with no PNM. They are anti-people, anti-progress.

Miss Mc Donald: For now.

Mr. Speaker: Please!

Hon. P. Ramadhar: I want to say, Mr. Speaker, there are some on the other side who I truly like, because their heart—[*Interruption*]

Dr. Gopeesingh: You like everybody.

Hon. P. Ramadhar: No, hold on. There are some who I had liked—[*Interruption*]

Mr. Deyalsingh: Just now.

Hon. P. Ramadhar:—but then I realized that the ones that I still like are decent in their hearts still, and others who I had liked have proven me justified in not liking them anymore. [*Laughter*] Because I like decency, I like honesty, I like straightforwardness, I like honour and integrity and intelligence.

So, this section now empowers the DPP to take a case, a fraud and take it straight to the High Court and deal with it. This Government is the Government that has empowered, and I have said this before and it is good to repeat: the institutions of state, the FIU, the Board of Inland Revenue now, anyhow, I do not want to disclose a lot of things, to go after the money, which, at the end of the day or the beginning of the day is the cause of a lot of the crime on the streets or in the boardroom. Money!

5.30 p.m.

So at every end, we have given the resources to the people through the police service—how many hundred more cars, Leader of Government Business, Dr. Moonilal?

Dr. Moonilal: About 300.

Hon. P. Ramadhar: About 300, more than your votes. Three hundred new cars. I remember how many torchlights I had given away in the past, when in the night there were accidents, or whatever, and I had to stop and give the police my torchlight. They did not have that. In the courts you will always hear them—Minister Jairam Seemungal, you know, they do not have a pocketbook, no pocket diary, handcuffs, and that was then, and when we came in they did not have bulletproof vests, no communication—[*Interruption*]

Hon. Member: No reverse gear.

Hon. P. Ramadhar: No reverse gear? So you had to push it out. They could only go forward. [*Laughter*] Well, look at that, I did not even know that.

Hon. Member: Forward ever backward never.

Hon. P. Ramadhar: But we have given the resources.

Mr. Deyalsingh: That is a "rasta car".

Hon. P. Ramadhar: A "rasta car" or a rusty car, I do not know.

Mr. Deyalsingh: Forward ever backward never.

Hon. P. Ramadhar: But, Mr. Speaker, the point I am making, is that at every end, whether it is street crime or boardroom crime, look at what we did for the SEC. There is a new legislation, "give them real teeth to go after", but yet we are regaled, weekly, monthly, minute by minute that this Government is corrupt and facilitating these things, right. We are talking about drugs and we are talking about guns on the street, because this relates to that, that if you are caught, and we

expect that you will be, because we are the ones with the new DNA legislation; we are the ones who will be building—it is behind schedule, yes—the forensic lab, but we are the ones who are doing it; we are the ones who are bringing science and technology to fight crime; we are the ones who give all of the resources. They talk about OPVs and all of these things, put scanner on the port, we are the ones who give comfort. And I want to say, there will be legislation being brought to this House from the PCA to strengthen, and I want to compliment the Member for Chaguanas West. I remember, you know, it is important—I wake him up—[*Interruption*]

Dr. Moonilal: What wrong he did now?

Hon. P. Ramadhar: You might have forgotten, Sir, he might have forgotten, but let me remind him because I will never forget this. Something I had thought about as a young lawyer and coming into government, you know, it is something that the Member brought to our attention that, you know, all of us in public life are subjected to the integrity legislation. We had to sign up documents saying what you have, what you give away, everything, all kinds of things, the innocent are the ones who pay the price for that—the complications and the stress, "oh God", did I forget this, did I forget that.

The guilty though, however, they know how to do things. The guilty will not be caught by that sort of legislation, but it is a good start, eh. It is a good start. You know what the suggestion was, that police officers also should be subject to some form of scrutiny for riches that they may have, that you will see them have, that they cannot account for. I congratulate you for that.

Mr. Warner: "But, all yuh turn it down."

Hon. P. Ramadhar: "Not all yuh." There is a reason, it is difficult to put in place, because even the integrity legislation that we have now is so cumbersome and there is an agenda of things that must be done. It must be done, but over time. As you say, "chirrip, chirrip", little grains of sand, little drops of water make the greatest lands and the mightiest oceans. But if there is nobody who cares to even get that grain of sand or that drop of water to fill the bucket to create the land and to create the water, who is going to do it? It is only we who have shown that need and that understanding to protect this place and save it, not just for today, it does not happen overnight. I wish it could happen faster, but it is surely happening. And that is the critically important thing.

I was making the point about legislation for the PCA, controversial I am sure when it comes that will give the director greater powers to oversee any allegations

of police wrongdoing. The reason for that, that I raise this, is that unless we have a police force that the population trusts and supports, then we will be spinning top in mud. And there are so many great and good officers, the tremendous work of the police service, today, where—and I do not want to go into numbers—we have seen changes in the right direction in crime, it has started to happen. There are forces that wish to push that back. I will not contribute to those forces. None of us here will contribute to those forces.

In fact, we are the ones who stand and push against the evil forces in the society against the ridicule, condemnation, criticisms and denigration—somebody got to do it. This is the only Government that has the intestinal fortitude, working together, and the coalition for the first time where you may have different points of view. We may disagree sometimes, very loudly in public, but most times quietly in private, to chart a way forward that is best for the people of Trinidad and Tobago.

So, that all the criticisms of this Government, coalition politics is that check and balance on each other which you will never get it in perfect equilibrium, because when you have perfect equilibrium, you do not have a coalition, you have a unity, a unitary party. So that balancing, that healthy tension, that healthy disagreement is a must for the future of the politics of this nation. So that is why we could come here with legislation that really, may not be the best, but it is good law. It makes improvement for the Judiciary and for the society. So we would not be deterred by unworthy criticisms, we go forward, and if you have better ideas as we proceed, we are always open to them, always. What is best for Trinidad and Tobago is best for all of us across party lines, across political lines, across social lines, economic lines, whatever lines, this country needs to come as one.

We always talk about coming together, this is the opportunity for this in a real world, not just words, but by your actions, to show that you really care and not to—what is the word again?—"gallery" and denigrate, over and over and over. This is our opportunity, one of the many efforts that we have made, one of every effort that we have made that they criticized and condemned. Why? They want us to be seen as failures, but it is not up to you, not up to the PNM, it is up to the people, and I have said this repeatedly and I shall repeat it again, that this is the year that the truth has got to be told. Thank you very much, Mr. Speaker. [*Desk thumping*]

Mr. Jack Warner (*Chaguanas West*): Thank you, Mr. Speaker, and possibly, I could begin by reminding the Member for St. Augustine that the truth must be told every year.

Mr. Ramadhar: Every year.

Mr. J. Warner: Not just this year, every year and every time.

Mr. Ramadhar: Tell the PNM that. I agree with you.

Mr. J. Warner: But you know, Mr. Speaker, let me begin and say very early, I have nothing against the repeal of PI, nothing at all. But that is not the issue. Mr. Speaker, I stayed here for the past three or four hours listening to the Attorney General and the last Member for St. Augustine. And I wanted to hear from them, why we are repealing Act No. 20 of 2011. I recall on that fateful Friday, November 2, 2012, at the time I was Minister of National Security, and there were about 20,000 people as a minimum, marching through the streets of Port of Spain, against section 34. And you know when I am passionate about something, I am passionate. I was looking at this and I was saying to myself, and then I blurted foolishly of course, "where are the Indians"? Where are the Indians, I said? Because I wanted somehow to say that this is not, of course, a national march against the Government.

Mr. Speaker, I was wrong, because from then to now that section has not blown away. And nothing we can do, except give a national apology, will make that blow away. And whether it is the PNM or the COP or the UNC, whatever it is, is irrelevant. The fact is, we brought that Bill here, we brought it here, and we must tell the people of this country why. We must say, Mr. Speaker, why we are repealing Act No. 20 of 2011. Why?

I stayed in the Government and I fought tooth and nail, Mr. Speaker, to support this Bill, and when that was passed, I also voted for it like everybody else. And to come now and to cavalierly repeal the Bill without saying why, has left me distressed.

But before I go further, I want to just say a few remarks about one of the points raised, again by the Member for St. Augustine. I am glad he is here still. The Member for St. Augustine, the hon. Prakash Ramadhar, I thank you for your kind sentiments about the police officers being asked to declare their assets. I came to you guys, National Security Council, and I begged you all, let the police declare their assets. I had gone to the Commissioner of Police, he agreed, he and his men. I had gone to the police welfare association, they have agreed, and the Government disagreed. I said, if you cannot do all, because of the vast numbers, let us approve a random selection. You remember that, Member for St. Augustine? And that too was dismissed. Of course, Jack Warner brought it, so I expect that. If we had put that in the system, today, possibly the levels of crime we are having, may not have existed. Just by an aside.

Mr. Ramadhar: It is coming.

Mr. J. Warner: I am happy to hear that. But you know, I also listened to the Member for St. Augustine, and I heard him talking about his characteristics as a leader, his leadership skills, his strengths and so on, and while he was talking I was pinching myself and saying, are you asleep? Is that he? I said to myself, I do not know that person he is describing, nor does Winston Dookeran either, I imagine. Because the fact is, for four years, Member for St. Augustine, as brilliant as you are as a lawyer, for four years, or at least three of those years the criticism has always been, consistently, forget the PNM. If rain falls you cuss them, if sun shines you cuss them, if it flood you cuss them. The point is we were put there because of their failings, and therefore it makes no sense if you keep harping again and again about the PNM. The fact is at the point in time, we were in power and we were put there to do good, and therefore doing good should not be looked at as a favour, it should be looked at as what is of course, an entitlement. And therefore I am saying they made the point over and over about you being weak, I am telling—you said you are going up on June 29, the same day I am also going up. [*Crosstalk*] Yeah, I am going up, it is all right, I am going up I tell you, but I will tell you something, I will win and I wish you the best. [*Desk thumping and laughter*] I wish you the best because I will tell you something, at the end of the day—[*Crosstalk*] listen "nah" man, let him talk for himself "nah" man, Oropouche East. He does not need any help, he does not need any prompting. [*Laugher and crosstalk*] No, no, Nalini Dial.

So I am saying therefore, the point remains—and I am happy for this nice exchange and so on, this is how it should be, not this adversarial role and cussing people and so on. So I am saying therefore, the issue is not really about PI or no PI, that is important, I agree with that. But why do we have to repeal all the elements of Act No. 20 of 2011.

I sat there at one time and I voted for this Member for St. Augustine; for five days we debated this Bill, five days, passionately toing and froing, arguing and so on, and one of the rare occasions when we came together as a House, we all agreed. And you do not think that you owe it to us to tell us why the Act is being repealed, lock, stock, and barrel. Why is it being repealed? You owe it to us and the country, because the fact is this, if in 2011 the Act was so good, it was better than sliced bread and so on, it was the best thing ever, all the people who worked on it and so on, all the stakeholders, 2011. What happened three years later? And worse yet, the AG has not impressed me as if he had a plan at all; I say the AG has not impressed me as if there is some plan to revise the criminal jurisdiction in the country.

5.45 p.m.

In fact, I sat there and I said, "Jack Warner, why are you going into this debate? You are no lawyer. Whey cockroach going in fowl business for?" But then I said to myself, if the Minister of Justice "eh no lawyer eider, so who is me"? [*Laughter*]

Mr. Deyalsingh: "Talk nah, man."

Mr. J. Warner: I could talk. Therefore, this is why "ah talking an ah ramajaying because I eh no lawyer eider". But the fact is—[*Crosstalk and laughter*] I did not hear him, but "is all right". But the fact is, I want to ask if the Government has a plan, Minister. I want to ask the question, if the AG has a clue of what he is doing. In fact, more and more you ask the question: Why is the AG bringing this Bill? Now, I know the AG could bring the Bill; that is not the issue, but why is the AG bringing this Bill when the Minister of Justice is the person whose remit it is to bring Bills of this nature?

So I rushed to the *Gazette*, 136 of 2013, Volume 52, dated October 16, 2013 at page 1521, and I saw all the assignments of the Minister of Justice, and I will tell you why I am saying this, you know. I saw where the Minister of Justice, Sen. the Hon. Emmanuel George, has to look after the:

"Criminal Justice System

—Reform and Transformation

—Quicker Justice Initiative Programme

Forensic Services

—DNA Services

Offender Management

—Prison Service

—Community Service

—Parole and Prison Management

—Rehabilitation

Criminal Justice System

—Witness Protection, Care and Support

—Youth re-offender Programme

Victims of Crime

—Charter and Counselling

—Compensation" and so on.

I am saying, Member for St. Augustine and the AG, this Bill deals with the administration of the criminal justice system, and therefore it falls smack under the portfolio of the Minister of Justice. Now, I am saying, this being the case, it begs the question: which Minister will be responsible now for the implementation of this Bill? That is the question. Will it be the AG? Will it be the Minister of Justice? Will it be a combination of the two? I do not know. The fact is, I do not want to wake up a morning to hear the AG say: "Is not me, is he." I do not want to hear the Minister saying, "Is not he"—

Mr. Ramadhar: I hear your point.

Mr. J. Warner: That is the point I am making. Because you will wake up a morning to hear, you know, in some press conference, properly choreographed and so on, that, "It is my fault". "Is me." "Not me, is he", and so on. And I am saying, let us know why "yuh" bringing it, and I say again, you have a right. It is your entitlement to bring it, but tell us, "nuh". Tell us. [*Interruption*] I know you are a reasonable man. I know that and I would do my best for you until June 29, but "dat cyar" help you.

Mr. Speaker, the other point I want to raise and I want to ask the question: what is the plan for the reform of the criminal justice system? I did not get that from the contributions so far. Again, I will repeat, "Cockroach cyar be in fowl business". Not being a lawyer, I eh supposed to ask that, but the fact is, I want to know. What is the plan? It is easy to come here and to rattle off chapter so and so, and Act so and so and so, but the fact is, I am still none the wiser as to what is the plan. Or is there a plan? Because I will tell you something—[*Interruption*]

That is all right. I was more concerned about your court mannerisms and drama and so on. I was thinking I had to use you in July when you are freer. [*Laughter*]

Mr. Speaker, I am saying that at the end of the day, you come here two and a half years later to repeal the Act of 2011. Two and a half years later you come here, and I repeat: a Bill where you spent five days debating, an Act where the President had given his assent to, in part; you come here, of course, with a Bill that employed the services of the Chief Justice, the DPP and others.

Mr. Speaker, as National Security Minister, I spent days in the Chief Justice's office, with the last Minister of Justice, Justice Volney, talking about this Bill. Days, Mr. Speaker, talking about this Bill! And I thought I was doing something good, something bright and so on. I thought I was a star boy talking to them and so on, at that time, to see all "ah dat" has been just dumped in the dustbin of history, without an explanation. It just does not make sense, and that is my beef.

I must admit before I forget, that there are one or two elements in the Act of 2011 that are good. You could say what you want. I am not going into details right now. They have been articulated before. But there are elements that are good, about the masters, for example, and magistrates, who give warrants and so on, and who cannot give warrants and so on. There are things that are good. Why have you dumped everything? Where is all the work of these people—[*Interruption*]

Hon. Member: Cut and paste.

Mr. J. Warner: Cut and paste?

Hon. Member: Yeah. That is what it is.

Mr. J. Warner: Okay—[*Interruption*]

Mr. Ramadhar: [*Inaudible*]

Mr. J. Warner: Okay, if you say so. I take your word for it. The fact is this, that together with the 2011 Act 20, the Government also said that they will build judicial centres.

Miss Mc Donald: "Four ah dem."

Mr. J. Warner: They will build four. That was two and a half years ago. Four!

Miss Mc Donald: "Not ah blade ah grass cut."

Mr. J. Warner: Mr. Speaker, not one block has been erected. They rushed out with this Bill to give the veneer of some kind of plan to reform the current justice system when there is nothing. What have you put in place? What "you have" on the ground? Four centres! You could not start one? Not one? And the fact is, one Minister at one time, Christlyn Moore, she said she had no money. After Christlyn Moore, Emmanuel George—I have the documents here, I would not read all of them—he "say" he had no money.

We are halfway in the year, mere months before the next fiscal year. When you will start? When you will start? And if you "doh" build these centres, of what value, therefore, is the Act itself in terms of implementation? "Tell meh, nuh. Help meh. Help meh. Please, help meh."

Mr. Ramadhar: I am happy that you have raised that because the very existing infrastructure can now be streamlined and used—the very Magistrates' Court.

Mr. Deyalsingh: Is that so?

Mr. Ramadhar: Yes.

Mr. J. Warner: Thank you. I was not aware of that. But if it is so, fine! Because I will tell you something. Until I see how that is done, I cannot believe. It is difficult to trust "all yuh guys. Ah cyar believe. So ah tellin yuh. Dah is all".

Mr. Speaker, my biggest fear—as I say I would be very brief—is that this law will be tinkered with, will, of course, be passed. Mr. Speaker, nothing will happen between now and May 2015 when, of course, they demit office, as they will, and a new body comes into place. [*Desk thumping*] It is foregone. It is just a matter of time. And when a new body comes into place, it is a new Bill again, and it means all the laudable objectives that we look forward to, will not be there.

I ask myself, why? Why? And if I were to say I want to get one answer in this debate this afternoon, I want to ask the AG: tell me if there is any policy in this Bill for discontinued preliminary enquiries that are already in progress. Or if, of course, there is any policy to establish a limitation against prosecutions. Those two questions "ah doh know". [*Interruption*] "I doh know", so just tell me because at the end of the day, I am saying it is a level of serious concern I have.

Mr. Speaker, as I said before, because of the nature of this debate, this cockroach has no place there, it is just that these concerns which I had and which I still have, are very real.

Mr. Speaker, I thank you. [*Desk thumping*]

The Minister of Land and Marine Resources (Hon. Jairam Seemungal): Mr. Speaker, I rise to contribute to this Bill brought by the hon. Attorney General, entitled the Indictable Offences (Committal Proceedings) Bill, 2014.

This Bill seeks to repeal two pieces of legislation. One is a very historic piece, which is to repeal the Indictable Offences (Preliminary Enquiry) Act, Chap.

12:01—that Act was enacted in 1917, some 97 years, close to 100 years old—and to repeal the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2012.

Mr. Speaker, this is a very important and historic piece of legislation, where we are now seeking to deal with the abolition of preliminary enquiries in the Magistrates' Court. Preliminary enquiry in the Magistrates' Court affects two sets of persons. It affects the accused, generally those who are incarcerated and those who are sent to prison during the time of the preliminary enquiry, up to the end of their trial. It also affects the victim, the victim's family, who are also during that time, uncertain as to when the end of justice will come for them.

I say this because I am also a victim who has undergone such trauma, especially during the preliminary enquiry. I would not go into details of the matter or anything, but I would just share the personal experience as to what anxiety, even during the day before the day of these enquiries and even after.

The Attorney General, during his deliberation, stated how the witnesses, in general in the Magistrates' Court—and my colleagues here who are attorneys as well and who practise in the Magistrates' Court. The witnesses generally feel at the end of the session as though they are the accused and they are the ones who have committed an offence. Because a general John Do will be appearing as a witness; he may even be a victim, and go into the Magistrates' Court and you would hear the Clerk of the House call: "John Doe" very quietly. The police officer sitting: "John Doe!" The second police officer: "John Doe!" The third police officer: "John Doe!" The fifth police officer: "John Doe!" So everybody in the whole court, and even in the streets sometimes—and it is that type of uneasiness, especially where the general layman, the general man in the street is concerned, that the Attorney General is seeking by this Bill to bring ease to his life and their families.

Mr. Speaker, one who practises in the Magistrates' Court alone, with the setting of the Magistrates' Court and the closeness sometimes in which the accused himself sits to the witnesses, and even, too, some of the victim's family, the whole setting of a Magistrates' Court is designed in such a way that generally creates fear in the heart and in the soul of victims and witnesses at the Magistrates' Court.

So I want to compliment the Attorney General for seeking, once and for all, to amend the piece of legislation, or to abolish the piece of legislation that was over 100 years in the making. This will not be the first country that has done this.

There are many other countries within the Commonwealth jurisdiction that have done similar, that have abolished some in full, preliminary enquiries, and some are in the stage of abolishing preliminary enquiries. The United Kingdom, by its Indictments Act, 1915 and by the Criminal Proceedings Act of 2009, has done away with preliminary enquiries.

Just next door in Antigua and Barbuda, their Criminal Procedure (Committal for Sentence) Act, Chap. 118 has abolished preliminary enquiry.

6.00 p.m.

Mr. Speaker, in Australia, the Victorian Criminal Procedure Act of 2009, the Western Australia Criminal Procedure Act of 2004 and the New South Wales Criminal Procedure Act of 1986 have also done away with preliminary enquiries. Mr. Speaker, other countries like the Bahamas in its criminal procedure codes have also touched on preliminary enquiries. In Barbados, they have done it by their Magistrate's Courts Act, Chap. 116A of 1986; in Canada by the Criminal Code Act of 1985; in Dominica by criminal code Act, Chap. 12:01; in Guyana by the Criminal Law (Procedure) Act, Chap. 10:01; in Jamaica by the Committal Proceedings Act of 2013. So, there are many other countries that have done very similar exercise by way of at least eliminating or to some extent, attempting to eliminate preliminary enquiry.

Mr. Speaker, there are many jurists who have deliberated on: is there need for preliminary enquiries or what are the causes and effects of preliminary enquiries? And of all the reports that I have read, one of the most fundamental parts that persons have deliberated on is the delay in the criminal justice system, and the delay of finding justice to a victim and to an accused as well.

Mr. Speaker, in a report from the Victorian Shorter Trials Committee, when they were deliberating in Australia with respect to whether or not—the effect of preliminary enquiry—a very interesting part of the report, and I will just paraphrase, which states that:

> There is no simple way in shortening the time taken by trial. Reduction will come from a combined effect of a number of changes in different areas. People realize that in the conditions of today many of the approaches, practices and procedures, appropriate in criminal trial in earlier century, have the effect of producing cumbersome, inefficient, ineffective trial system.

Mr. Speaker, there are other jurists who speak of the delay itself when speaking of the preliminary enquiry, and one of the main effects as well of the preliminary enquiry is that when you have police officers who are witnesses, in

most instances, in preliminary enquiry, they have to spend a day, sometimes day after day at the Magistrates' Court. When that same matter reaches the assizes, that same police officer has to attend court at the assizes as well, and, Mr. Speaker, on many occasions there are several police officers. On the average, there are about 20 to 30 police officers who attend court on these preliminary enquiry days throughout the Magistrates' Courts in Trinidad. These same police officers, if they did not have to attend the Magistrates' Court for attendance of the preliminary enquiry, can be out in the street fighting crime and controlling other nuisance or other criminal activities and helping the law-abiding citizens.

So, the abolition of the preliminary enquiry at the Magistrates' Court will create, if not one of the most important effects, that it allows for more police officers to be available to the police commissioner in his fight against crime. Mr. Speaker, it also will free up persons who are witnesses and persons who may be performing duties who would otherwise have to take time off to attend court and to attend sessions, and on many occasions if you do not have all the witnesses and you do not have the police witness present, on many occasions the matter does not go forward. I have seen on several occasions when even the police officer, who is the charging officer, does not attend court or could not attend court for some reason or the other—you have 15, 20 witnesses who attend court and that matter is adjourned because the charging officer is not there. Again, it is a waste of human resources and this human resource can be better utilized in other areas, had it not been for that preliminary enquiry trial.

So, Mr. Speaker, abolishing the preliminary enquiry will in the first instance allow for more police officers to be available to the Commissioner of Police, and in the second instance will at least help with the victims who now can give their evidence by way of statement, and that statement and all the evidence together can be deliberated upon by the magistrate in his private Chamber and not having to bring people to the court. It will also allow to free up the magistrate to attend to many of the other simple matters that can be dealt with.

Mr. Speaker, those of us who practise in the Magistrates' Court would tell you that the first thing they do is go through the list for adjournment. On an average day when you have 80 and 90 matters to be heard, the magistrate may only be able to attend to one or two, and sometimes, Mr. Speaker, especially when there are matters to deal with in a criminal nature, especially with preliminary enquiries, and the magistrates put aside a particular day for a preliminary enquiry

matter to be dealt with and on that day for some reason, either the accused is not present, or some other key person is not present and that matter has to be adjourned, an entire day is also wasted.

So, abolishing preliminary enquiry and having one trial will then allow for better case management, similar to that of the civil jurisdiction on the civil assizes where we now have case management and all the documents are agreed upon. The entire bundle is agreed upon by both sides before the matter actually goes to trial. In this case, Mr. Speaker, that power is now vested in the magistrate to determine by way of paper committal.

Paper committal is something that is actually practised now in the Magistrates' Court, but the difference here is that there will be no cross-examination of witnesses. In the current system, paper committal is provided for, but built into that paper committal system, it allows for the calling of witnesses to be cross-examined by either the accused or the prosecution.

So, Mr. Speaker, the People's Partnership Government is committed to bringing before this honourable House, legislation to improve the efficiency of the judicial system. As we join with all stakeholders in the fight against crime, we continue to strive, to secure this beautiful nation of Trinidad and Tobago. This Government would serve notice on every single person who engage in antisocial behaviour, who engage in social disorder, in criminality, in lawlessness, that we will use every available law and every available resource that is available to the police service to protect law-abiding citizens and to ensure that justice is served and justice is brought to all.

Mr. Speaker, I again want to emphasize that this Bill, the Indictable Offences (Committal Proceedings) Bill, would not find itself before matters relating to whether or not one's constitutional rights have been infringed by this Act, will not find itself before the court. Because in the Privy Council, which is the highest court of law, as the Attorney General alluded to, has deliberated in the case of *Hilroy Humphreys v The Attorney General of Antigua and Barbuda*, and in that case the accused contended that his right of cross-examination had been infringed—his constitutional right to be cross-examined had been infringed by the State—by the State, enacting an Act that will take away that right and send it straight to the assizes. But in that case, Mr. Speaker, the Law Lords deliberated that the removal of rights to cross-examination as exists now—and that would be in Antigua and Barbuda—would not be breached by any constitutional right of the

accused, and the abolition of preliminary enquiry would not be unconstitutional as cross-examination at preliminary enquiry is merely a system of criminal procedures.

Mr. Speaker, the aim of this Bill is to also speed up on the backlog of cases that is before the Magistrates' Courts, because on the average it takes about five years for a preliminary enquiry from the person being accused and sentenced, to be incarcerated in the Remand Yard—that is the holding bay. Generally, it takes about four to five years just for the preliminary enquiry to be completed, and when the preliminary enquiry is completed and the accused is committed to trial, it takes another two to three years before that matter is heard. But the sad thing, Mr. Speaker, is that when the judge sentences the individual, time does not start to run until the date of the sentence. They do not take into consideration all the seven years that you would have spent in jail before. They actually use that to guide how long that person will remain incarcerated.

So, Mr. Speaker, this Bill also provides for procedures that in many instances may have been at the discretion of the magistrate or, in some instances ad hoc procedures, but it also, in clause 29 of the Bill, provides for procedures that have to be followed. For instance, on the completion of the matter before the magistrate and on signing the committal order, he has within three months on the request of the DPP to provide all witness statements and every matter that is related to that particular case to be sent to the DPP. What this law provides, Mr. Speaker, is to shorten the trial time and to speed up in many instances, and to provide direction as to where and how matters are to be handled when sentencing.

So, Mr. Speaker, in a broad sense, this Bill allows the Justice of the Peace to have concurrent jurisdiction. One of the problems we have, and I have experienced it, is that if a Justice of the Peace in one jurisdiction, you swear before that particular Justice of the Peace and he is not attached to a particular Magistrates' Court within another jurisdiction, you have to go and swear over the entire affidavit before another Justice of the Peace within that jurisdiction.

And here, it allows for any Justice of the Peace to practise throughout because currently, the law provides that Justices of the Peace are persons who fall within the jurisdiction of the particular Magistrates' Court.

6.15 p.m.

The Bill also provides for the protection of legal privilege especially documentation of that nature where lawyers have protection for all documentation that are matters between them and their clients, and just like there are privileges

of this House, Mr. Speaker, lawyers also have privilege of protection of confidentiality where clients are concerned. So in that case, even if you search someone's office, for instance, you cannot just take away matters that are privileged in nature.

Mr. Speaker, I really want to support the Attorney General on this piece of legislation, and I want to ask the other side to support this piece of legislation as well because it is a very important piece of legislation for the fight against crime, it is a very important piece of legislation that affects, not only the victim but it affects persons who are incarcerated, and who are presumed to be innocent until the outcome of a final trial—not until the outcome of the end of the preliminary enquiry, they are presumed to be innocent until the outcome of the final trial and that is the trial at the assizes.

So, it affects many people, some of whom are persons we know and some of whom are, in many occasions, constituents of ours who we generally know to be innocent as well, Mr. Speaker, but the time that these persons come to trial and the time the judge sentences, in that instance, it may be years after the person is actually accused. So, I want to congratulate the Attorney General and ask the Members on the other side to support this Bill. I thank you, Mr. Speaker. [*Desk thumping*]

Mr. Terrence Deyalsingh (*St. Joseph*): Thank you, Mr. Speaker, for allowing me the opportunity to contribute on this Bill, Indictable Offences (Committal Proceedings) Bill, 2014.

Mr. Speaker, allow me to start on a very eclectic manner and I hope to tie in the eclectic pieces as I go along. [*Crosstalk and laughter*] Mr. Speaker, I will be referring to the *Catholic News*. I went to mass in Mount D'or last week Saturday and, you know, you have to buy a copy of the *Catholic News*. I will be referring to a children's rhyme called the hokey-pokey and I will be referring—[*Interruption*]

Dr. Moonilal: For children? "Yuh sure?"

Mr. T. Deyalsingh: Yes, it is a children's rhyme, the hokey-pokey. [*Crosstalk*] Yes, it is a legit thing. I will be referring to—let me be generous—an oral discourse with a constituent of mine who called me a crook. It is the contempt with which we as politicians and parliamentarians are held by the public, so he called me a crook. I said, "But I am not in Government." He said, "Yuh join in Opposition, so when yuh get in Government, you could teif so you go be ah crook then." [*Crosstalk and laughter*] He called me a crook. And it was one of the rare times when I think I should not have been engaged by that person but I was engaged.

Hon. Member: But you engaged him?

Mr. T. Deyalsingh: I engaged him. So, in the eyes of the population, I am a crook. In the eyes of the *Catholic News*, Sunday June 01, 2014 under the headline "Missing values" by Archbishop Joseph Harris. I quote and he says—he was talking about missing values:

> "'When we add to that the corruption of political and civic leaders, the growing distance between rich and poor, the discrepancy between what corporate executives make and what their workers make, the indecent demonstrations of wealth' and religious leaders who were not prepared to speak out, then the society has a serious problem."

These are the words of His Grace, the Archbishop, talking about the corruption of political and civil leaders and I put that together with the verbal jousting I had with my constituent calling me a crook, and if I am not a crock now, I will become a crook.

Dr. Browne: Prediction.

Mr. T. Deyalsingh: Prediction. And I said I will be referring to a children's rhyme called the hokey-pokey, "yuh put yuh left hand in, yuh right hand in, yuh spin around and yuh do the hokey-pokey" and whatever.

Mr. Speaker, no one—three Members of the Government have spoken to date, not one person has told us why section 34 was proclaimed early. This issue—this debate we are having today, has nothing about what the hon. Member for St. Augustine would talk about which is the proclamation of the Bill. If I read Legal Notice No. 348, Mr. Speaker:

> "…President…"—the then honourable His Excellency George Maxwell Richards—"…do hereby appoint the 31st day of August, 2012, as the date on which sections 1,"—which is the short title, section—"2"—which is definitions, section—"3"—which is inconsequential and section—"…34 and Schedule 6…"

No one has told us why sections 4 to 33 were not proclaimed.

What do some of the intervening sections speak about? Section 4 is its "Application"; section 5, the "Power to issue search warrant"; section 6, "Institution of indictable proceedings and compelling appearance of the accused"; section 7, "Summons for appearance of the accused". None of those sections were proclaimed. So when the Member for St. Augustine stands up here very piously

and talks about principle, honesty and integrity, he never said that only certain sections of this Bill were proclaimed. Section 25, "Order to put accused on trial"; never proclaimed. And if one goes back to Justice Boodoosingh's decision, I think it was said in that, that he expected an early trial for some people.

But do you know which section was approved, early proclaimed? The one section that met the objective of certain people was section 34: "Discharge on grounds of delay", only substantive section to be approved; nothing from section 4 to section 33. Section 34 was cherry-picked. And that is why Archbishop Harris is right; that is why my constituent is right—we are all crooks.

Dr. Moonilal: Mr. Speaker, [*Inaudible*] whatever it is, "he talking rubbish, nah, man".

Hon. Member: No, no, no.

Mr. Speaker: Yeah, I think you should withdraw it.

Dr. Moonilal: Withdraw that.

Mr. Speaker: You cannot accuse Members of Parliament on both sides as crooks. I think you cannot do that. You just cannot go there.

Mr. T. Deyalsingh: Okay, I was just quoting from Archbishop Harris'—[*Interruption*]

Mr. Speaker: Yeah. Hon. Member, remember the last time you were quoting from some taxi driver—[*Laughter*] You had quoted some time ago, when you were debating, someone who you met, and I told you anytime you quote in this House, whether it is archbishop or whoever, you take responsibility for those quotes. I am just guiding you, do not make personal reflections or impute improper motives to any Member of this honourable House. You bring a substantive Motion and do not put words into the mouths of other Members, please.

Mr. T. Deyalsingh: Very well, Mr. Speaker, thank you. So I go on.

We are here today because of the flip-flopping again of this Government. The hon. Member for St. Augustine speaks about principle. Where was the principle in agreeing with us to bring the Caribbean Court of Justice here? It was good then, it was not good later on. It is the same modus operandi we are seeing again when it comes to the criminal justice system, and that is why we are perceived in such a way.

The hon. Member for St. Augustine spoke about their fervour in dealing with white-collar crime and bringing legislation. We recently had the legislation to buy out certain rights under HCU. It was the PNM Opposition which had to point out that clause 3 had the effect of actually giving money to shareholders in HCU. That is their commitment to white-collar crime. If we did not raise the alarm bells, Mr. Harry Harnarine would be walking away with millions today. This is their commitment.

But, this is what I am saying about the children's rhyme, the hokey-pokey. This House of Representatives, on November 11, 2011, met from 1.30 p.m. to 8.55 p.m., seven and a half hours, seven people spoke. It then went to the Senate on November 22, 2011; 11 people spoke. The House sat that day from 11.00 a.m. to 11.34 p.m.; 12 and a half hours. We came back when the mess occurred. House of Representatives, September 12, 2012, an Act to amend the administration of justice Act; six speakers, 1.30 p.m. to 11.25 p.m., 10 hours. It went back to the Senate, September 13, 2012, 13 speakers, 1.30 p.m. to 10.53 p.m., nine and a half hours; a grand total of 37 and a half hours spent on this piece of legislation, not to mention the public humiliation, public outcry, the shame and the reams of newspaper printed over this. But the Government clearly had a plan in mind. It moved from mission impossible at the start of 2010 to mission accomplished by August 31, 2012.

Mr. Speaker, many people alluded to a particular case, a judgment which was handed down on Wednesday. It has nothing to do with the enactment of section 34 as Members opposite will have you believe. That is the fluff that they are throwing out for the population. It has everything to do with the early proclamation of section 34 [*Desk thumping*] and people, the country has to realise, has to wake up. Yes, the Parliament enacted a Bill in 2011 but the Parliament did not surreptitiously cherry-pick section 34 for early proclamation. [*Desk thumping*] That is the issue. And we are "playing farse" with foolishness when we keep telling the PNM that you agreed to its proclamation. We never did. The Opposition cannot proclaim anything. We can help the Government enact legislation. We did our constitutional duty.

6.30 p.m.

Mr. Speaker, the Attorney General who is the legal advisor to the Government, the titular head of the Bar, in his presentation alluded to something. Now, I do not think he meant it in passing, but the Attorney General has to understand that his words carry significant weight. He is the principal legal advisor to the Government and the titular head of the Bar. He is not a bush

lawyer. He is a respected civil lawyer. He will represent us at fora abroad, international fora. Unlike the Member for Diego Martin North/East and myself, we are not lawyers. He is a lawyer. He made a statement here today in relation to clause—I will get it now, Mr. Speaker, but I will come back to; it in relation to clause 23, I believe of the Bill. Yes! When he was piloting the Bill and he reached Part II, clause 6(4), and I will just read the first sentence, so we get a flavour. He said when a thing is seized and brought before any magistrate, the magistrate may detain it or cause it to be detained. And then he said, he referred to money in the hands of the police evaporating, and then he went on to say now, it could be lodged in the appropriate place, and he said the banks—the banks, commercial banks.

Mr. Speaker, when he made that statement, I got two phone calls and three texts from bankers. I want to ask the hon. Attorney General in his wrap-up, or anyone from the Government side who is going to speak after me, with the exception of when the court makes a court order in specific cases—there was a recent case with FCB with stolen money, that FCB will keep the money. There was another case some years ago, where the money was lodged, I think, with the Unit Trust. Taking those exceptional cases done under a specific court order, is it now government policy under this new Bill, that money to be used as evidence is now to be lodged in the commercial banks?

I ask the question because when you go across now to clause 23 of the Bill, the other clause which deals with it, he was talking about lodging evidence in other places, like the forensic centre and so on. Clause 23 says:

> "All statements filed, documentary exhibits and the list of exhibits admitted as evidence shall be signed and stamped by the Magistrate presiding over the committal proceedings."

Mr. Speaker, I urge the Government to pay attention to a recent Court of Appeal judgment which says that the police—regardless of what the Attorney General thinks about money evaporating in the hands of the police, a recent Court of Appeal decision says that the police is the appropriate authority.

Now, if it is commercial banks, according to the Attorney General, will now be the depository for evidence—in this case, physical evidence—I want to ask the Attorney General and anyone speaking after me, to tell me if the banks have been consulted; if the rules of evidence have to be changed. Because if I have a wad of 1,000 bills introduced as evidence, the magistrate then has to what—stamp each bill, count them, take them to a commercial bank, a commercial banking officer

has to receive all these bills, count them, record serial numbers, and then store them. Because money like that, I think the bankers have a term "fungible". If you deposit money into a bank, Mr. Speaker, $500, all you are concerned about is, you get back $500. You do not expect to get back the same serial numbers of bills. So the bankers say money is fungible, it is exchangeable, as long as you get back the value.

But now you have money as evidence, do we have to amend our laws of evidence to now account for this chain of custody from the Judiciary, from the magistrates to the bank? Because the money may also have trace evidence; it may have fingerprints, cocaine, gunshot residue, all that. Are the banks going to assume that responsibility as the Attorney General recommends? How are we going to avoid misidentification of the notes, adulteration of the notes, damage, discrepancies? Could somebody tell me if the banking association, the banking fraternity has been consulted on this? This is a serious issue. You cannot bring up policy like this on the fly. You cannot! You cannot!

Who handles the money? You have to date-stamp everything. Is it that if there is discrepancy now in the notes, is it that a banking official now has to come to court to give evidence, to account for why I submitted 20 notes and only 19 notes came back to the court? Has the bankers' association been consulted with this? Have the banks agreed to undertake this responsibility? [*Interruption*] This is one of the reasons this Bill is so flawed.

Dr. Rambachan: Well, you consulted them.

Mr. T. Deyalsingh: You consulted the banks?

Dr. Rambachan: What did they say?

Mr. T. Deyalsingh: You consulted the banks?

Dr. Rambachan: You are asking me? You did your research. Well, what did they say?

Mr. T. Deyalsingh: Mr. Speaker, clause 19(3) and (4) of this Bill, this cut and paste Bill as my colleague from Diego Martin North/East spoke about, it comes directly from the 2005 Act, no problem there. But if it is we are trying to dynamite the logjam, according to the hon. Attorney General, what does clause 19(3) and (4) deal with? It is a process of statement. We have to ask ourselves, is this necessary at that stage of the proceedings as matters of evidence, admissibility of evidence could be considered at another time, under proper

criminal procedure rules? It will save a lot of time if it is done elsewhere. This piece of legislation is a knee-jerk reaction to the problems that the Government has found itself in.

Mr. Speaker, the hon. Member for St. Augustine was at pains to talk about witness protection, at pains. Clause 45(1)(a), the way that clause is drafted now, it does nothing, absolutely nothing to protect victims and witnesses because you know why? It provides for the publication of names and addresses and occupation of witnesses. Let me read clause 45(1) to show why we on this side cannot support this Bill in its current form. Clause 45(1):

> "No person shall print, publish, cause or procure to be printed or published, in relation to any committal proceedings under this Act, any particulars other than the following:"

So you cannot print anything, but you could print the following. And what can you print, Mr. Speaker? And I want the Member for St. Augustine to listen to me because he stood here and talked about witness protection and witnesses being killed. So what can you publish, Mr. Speaker? Hear what:

> "(a) the name, address and occupation of the accused person and any witnesses;"

[*Crosstalk*]

What utter madness is this? So on one hand, the Member for St. Augustine is talking about witness protection; on the other hand, the law says you cannot publish anything except the name, address and occupation of the accused and their witnesses. Tell me, we are playing the hokey-pokey, we are, and the Government thinks that they could spin us around, like the hokey-pokey, we will get dizzy, and all this will pass. No siree! None of it! None of it!

Mr. Speaker, the flip-flopping of this Government on matters of the criminal justice system is now legendary. I spoke about their flip-flopping on the Caribbean Court of Justice issue. When they were in power, it was a good idea. When they were in Opposition, it was a bad idea. Then we will get it halfway for our 50th Anniversary of Independence. We told them it cannot be done; so said, so done.

But every time the Government comes to this Chamber on anything to deal with crime, the language is so riveting, that you feel that once we pass it, Mr.

Speaker, all will be well. I take you back to Tuesday, November 29, 2011, the Administration of Justice (Miscellaneous Provisions) Bill, Sen. The Hon. Anand Ramlogan:

> "Mr. President, this is part of a powerful package of legislation from the People's Partnership administration"—powerful package of legislation—"in less than two years aimed at"—and hear the words—"revolutionizing the criminal justice system consistent with our pledge to the people of this country to deliver more cost-effective justice in a more expeditious time frame."

Those were the words, but hear how long the hon. Attorney General was contemplating the original piece of legislation:

> "Mr. President, when I wore a different cap as a columnist in one of the newspapers in June of 2009…"

So the hon. Attorney General, then lawyer, Anand Ramlogan, has been thinking about this issue from 2009, when he was out of Government.

> "I wrote a column entitled, 'Towards swift justice'. And I pondered in that column: "Why is it that the abolition of preliminary enquiries in Trinidad and Tobago was taking so long?"

So he was pondering this since 2009.

We agreed as a Parliament to enact, note the word, Mr. Speaker, to "enact", because the Government has no distinction between enactment and proclamation. They do not understand the distinction between "enactment" and "proclamation". They use the word enactment to tar us on this side with the early "proclamation" of section 34. What was the original purpose? To speed up the criminal justice system, to ease the burden on the Magistrates' Court, so people could appear before a master for a sufficiency hearing. That was the original intention which we supported; which we supported!

If you listened to the then piloter of the Bill, the then Minister of Justice—Mr. Speaker, you know, the people who do bird watching, the Audubon Society, I think it is, they go out with their binoculars to look at elusive birds. Well, this is the "elusive" Legislative Review Committee:

> "We went into the Legislative Review Committee"— Member for St. Augustine—"of the Cabinet"—headed by Member for St. Augustine—"and what did we find? We found the Bill that Members opposite spoke about."

So they inherited a piece of legislation:

> "That is a Bill we looked at, and from the outset, when I read it once as a former judge, I knew it could not work."

Fine, so they inherited something, it cannot work: "I knew it could not work." Hon. Ramadhar, the hon. Member for St. Augustine who is also on that Committee knew it could not work.

> "So rather than try to patch it, we literally dumped it."

No problem. That is your prerogative as a new incoming Government:

> "We then went to the computer and started to go online. We…made strategic arrangements and alliances with the people of the Ministry of Justice"—where?—"in St. Lucia. We have been in communication. We have missions to Jamaica and the Bahamas and we have been in communication with Ministries of Justice in the Commonwealth."

I am showing you, Mr. Speaker, the amount of research that they claimed to have done under the Legislative Review Committee, the hon. Attorney General was pondering this since 2009. So is it that the law we passed here was bad law? That is what they are saying now, you know.

6.45 p.m.

They are saying that the law that was passed then is bad law and we are saying no, it is the early proclamation and the cherry-picking of one section that has us here today:

> "We looked at and considered all that the Member for Diego Martin North/East has spoken of. We have looked at all that, and we have come up"—and hear the lofty words—"with what we consider to be the Trinidad and Tobago model," the T&T model,—but it gets better—"one to be emulated throughout the common law parts of the world, and especially in the Commonwealth. That is where we have come."

So the piece of legislation we helped them enact was lauded as being some groundbreaking thing in the Commonwealth, in the common law jurisdictions. It went to the Legislative Review Committee. They spoke with people in St. Lucia, Jamaica, Bahamas and they came up with this T&T model.

If it was so good then, no one who has spoken here so far—and I am hoping someone who speaks after me will tell me why this is now bad law. Why is it bad

law? Why? But the Member for St. Augustine, who gave a very nice throne speech today, campaign speech—and I am really sorry for San Fernando West because he had the floor today.

Today, Mr. Speaker—and I am quoting him—today, he spoke about the strength and purpose of this current law being in this Bill that we are passing today, but here is what he said on Friday, November 18, 2011. Remember the lovely language of the Attorney General? Hear the language now of the Member for St. Augustine at 5.15 p.m.:

> "Thank you very much, Mr. Speaker. As I rise, let me just compliment a most robust and audacious presentation by the Minister of Justice."

Robust and audacious, that is the language. Robust: strong, could withstand pressure; and audacious: groundbreaking, bold.

> "In this society, a lot of wrong things are allowed to pass and then we talk about looking at options when no action" has been taken.

That was the language used then, hon. Minister of Legal Affairs, Prakash Ramadar. He called it a most robust and audacious presentation by Minister Volney then.

If it was good law then, could somebody tell me what happened in the intervening period to make it bad law now? Because what happened had nothing to do with the law. What happened was a promise made to other persons; a promise made to other persons.

Mr. Speaker, we enacted legislation in this Chamber, back then, predicated on certain assurances and promises of the Government:

(1) amendment to the Supreme Court of Judicature Act to hire more Masters;

(2) the building of the Forensic Centre; and

(3) the construction of four judicial centres.

And the hon. Member then for St. Joseph spoke about construction having already begun. I now quote:

> "As we speak we know that the construction of judicial centres and courthouses will take 30 months. The Member for Diego Martin North/East has said two years…two to three years;"—he says—"you are fairly accurate"—Member for Diego Martin North/East—"it shows that you are in the engineering business; you know where you properly belong."

Thirty months. May of this year is almost exactly 30 months. Where are these elusive judicial centres? Where is the Member for Toco/Sangre Grande? A judicial centre is supposed to be there. The Member for Siparia? A judicial centre is supposed to be there. The Member for Caroni Central? A judicial centre is supposed to be there in Carlsen Field. The Member, whoever handles Trincity. [*Interruption*] Malabar. It moved. Has any blade of grass been cut? Has any foundation been laid? Have any contracts been given out?

Mr. Speaker, I say no more on those judicial centres because I have a question in the Parliament about it and I cannot wait to hear the answer. But the hon. Member for St. Augustine has the audacity to say here today that those judicial centres will now be streamlined to accomplish the tasks under this new piece of legislation. So, in his world, the judicial centres are being built.

He goes on:

> "The land has been identified, and very shortly, while it is no grass has been cut, the money is there and has been identified for the soil testing to be done. The conceptual plans have been developed, approved by Cabinet."—and—"A special projects unit of the Ministry of Justice is in place."

Those were the conditions under which the PNM agreed to enact the original piece of legislation. The enactment was done with our eyes wide open and we make no apology for it. What we never agreed to was the early proclamation of section 34.

But you see these judicial centres, which the hon. Member for St. Augustine alluded to today, when he said they will now be streamlined to accommodate this new Bill, I quote the *Hansard* of that same day, Tuesday, November 29, 2011.

> "Volney further told *Sunday Guardian* that he was informed that the shifting of the project was discussed between two of his colleagues."

So the original thing was to have it under the Ministry of Justice, but then Minister Volney was telling the Parliament that the project had been shifted.

> "'The information I got is that at some nightclub, two Cabinet colleagues were talking about courthouse construction.'—imagine—'In a nightclub! It is madness, malice, mischief and idle talk. Parties take place on Saturday night, so the germ was being spread last Saturday night'.—at a party."

Dr. Khan: What are you reading from?

Mr. T. Deyalsingh: Mr. Volney's *Hansard* of Tuesday, November 29, 2011, when the project for the construction of the four judicial centres was taken away from his Ministry and given to something else, somebody else. And he is claiming that this decision was taken by two Cabinet colleagues in a nightclub. It is there.

Dr. Khan: Did he name them?

Mr. T. Deyalsingh: No, he did not. So that is what we have to contend with, with this piece of legislation. We helped you pass good law and the hon. Attorney General wants my political leader to apologize. Apologize for what? We did nothing wrong. [*Interruption*] Well, that is another story. The Member for Diego Martin West has nothing to apologize for. The Member for Port of Spain South has nothing to apologize for. The Member for Laventille/Morvant, nothing to apologize for. The Member for Laventille East, nothing. I have nothing to apologize for. We did nothing wrong. We helped you enact good law. You chose to early proclaim section 34. The Member for La Brea did nothing wrong. The Member for Diego Martin Central, St. Ann's East and Arouca/Maloney; we did nothing wrong.

But, Mr. Speaker, we will not be a party to this hoax, this game of hokey-pokey, as I said, because unless we see certification written, signed, sealed and delivered, from the Chief Justice, Chief Justice Ivor Archie, the Chief Magistrate, the Law Association and the Criminal Bar Association, we are not taking your word for it that you consulted.

Why am I saying that? I have good grounds for not taking their word for it because the hon. Prime Minister herself made a statement, after section 34 broke, and she said:

> "The Honorable Minister of Justice drew my attention to paragraph five of the note, which stated that the Honorable Chief Justice had been consulted on the date for proclamation."

He was never, so we are not going to take your word for it that you consulted with anybody. Unless we on this side see a certification signed by Chief Justice Ivor Archie, Chief Magistrate, the Law Association and the Criminal Bar Association. We do not trust you. We have no faith in you. You have taken us for fools enough.

And to show you the far-reaching implications, how far the tentacles of section 34 reached, it was even drawn out in the public domain where the Honourable Chief Justice and the DPP had to distance themselves from these claims of consultation. Because on September 11, 2012, the DPP had to issue a

press release informing the public of his lack of knowledge and he had no role to play in the early proclamation of section 34. None! So this whole mess forced high judicial officers to come out into the public domain and refute what people were saying.

I read from the Prime Minister's statement again and the hon. Prime Minister quotes:

> "I am NOW satisfied…there was no prior adequate or proper consultation with either office holder on the early proclamation of Section 34."

Well, Mr. Speaker, I am also not satisfied. I am not satisfied with the reasons given for why the original Administration of Justice (Indictable Proceedings) Bill is bad law. We are not satisfied, just like the Prime Minister, that this Bill has been through the Judiciary, the Magistracy, the Law Association and the Criminal Bar Association. We are not satisfied—the DPP. Fool me once, shame on you. Fool me twice, shame on me. Shame on us. We will not be shamed again. We will not be fooled again. Never!

And you know what they are going to do in reply to my contribution here today? They are going to go back to PNM things from 1956, but we have real live, living people here today, walking around in society, who have done this. We could take a DNA sample from them. We do not have to exhume any bodies from 1956. We have real, live, living people who pulled this hoax on the Parliament. [*Interruption*]

You see. I know that, the legacy of the PNM. I know that. Whoever speaks after me, Mr. Speaker, I guarantee you they are going to mention Calder Hart, they are going to mention John O'Halloran. "All ah them dead". You won the election. You won the election. You won the election. You won. Let us talk about 2010—2014, living people, living people, living people.

Dr. Rambachan: Why Hart has not been charged?

Mr. T. Deyalsingh: You charge him. Why is anybody not being charged over Room 201?

Dr. Rambachan: You know about Room 201. What evidence you have?

Mr. T. Deyalsingh: It is in the public domain. Charge somebody "nah"? You want to talk? You want to talk? [*Crosstalk*] But apparently PNM filmed the video.

Hon. Members: Ah! Ah! Ah!

Mr. T. Deyalsingh: Apparently I was there and I filmed it. "Allyuh say PNM filmed it". Yeah. I was there. I was the camera operator. "Yeah, yeah".

Dr. Rambachan: So PNM filmed the video.

Mr. T. Deyalsingh: And we filmed the one with Gerry Hadeed too. We recorded the one with Gerry Hadeed, too. Good! "Is PNM!" Yeah, yeah.

7.00 p.m.

Mr. Speaker: Hon. Member, please.

Mr. T. Deyalsingh: Yes, Sir.

Mr. Speaker: You see, Hon. Member for St. Joseph, if you address your remarks to the Chair and avoid the crosstalk, I do not think you will—you have precious time. Address the Chair.

Mr. T. Deyalsingh: Yes, Mr. Speaker.

Mr. Speaker, I am sure if a hurricane happens tomorrow, it is the PNM's fault. We will not be supporting this until we see certification. No one who has spoken so far has told us why we moved from the abolition of PIs. We went to a sufficiency hearing before a magistrate and now we are going to a committal proceeding before the magistrate. Whoever speaks after me, if the original intention was to dynamite the logjam, using the hon. Attorney General's words, to take away these PIs, put them before a master and free up the magistrates, that was what we helped enact.

We agreed with the Government that PIs had to go. We agreed with you, bring on the masters. We agreed with you, bring on the judicial centres. We helped you enact good law. No one has stood up here today, and I am hoping somebody does it after, to tell me now what is wrong with the abolition of PIs, what is now wrong with the sufficiency hearing before the masters, because the hon. AG said, to justify this new legislation, that the masters are just another layer of bureaucracy. Was it not another layer of bureaucracy back in 2011? Masters of the court have always been around. They did not drop out of the sky on November 18, 2011.

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for St. Joseph has expired.

Motion made: That the hon. Member's speaking time be extended by 30 minutes. [*Miss M. Mc Donald*]

Question put and agreed to.

Mr. Speaker: You may continue, hon. Member.

Mr. T. Deyalsingh: Thank you, Mr. Speaker. Thank you colleagues. Thank you, the Member for Port of Spain South. Thank you colleagues on all sides.

Mr. Speaker, as I was saying, we agreed with the Government in November 2011, let us abolish PIs, they are cumbersome, waste time, expense on the courts, justice delayed, justice denied. We agreed to go after the St. Lucia model of sufficiency hearings before a master of the court. We agreed on the enactment of that piece of legislation based on those parameters. Can someone tell me today, why it is, having the experience which the hon. Attorney General said he was looking at since 2009, the Legislative Review Committee as I read out the *Hansard*, looked at Bahamas, Jamaica, Antigua—they looked at everything—what is wrong with the sufficiency hearing before a Master that we now have to switch to a committal proceeding before the magistrate?

If the original intention was to dynamite this logjam before the Magistrates' Court and hand it over to masters and now we go back to magistrates, how are we dynamiting the logjam? We are going back to the same magistrates who you wanted to ease up in the first place. Where is the logic? Where is the reasoning? Where is the policy position? Mr. Speaker, the hon. Attorney General in piloting referred a lot to the Privy Council decision. So he referred a lot to English jurisprudence to back up his claim as to why we must do what we are doing now.

I want Members opposite to know that the same English jurisprudential model used by the Attorney General today is the same jurisprudential model that in 2012 did away with committal proceedings. From the UK Government website, Ministry of Justice—[*Interruption*]

Dr. Rambachan: Say that again, hon. Member for St. Joseph.

Mr. T. Deyalsingh: The same English jurisprudential model, which the hon. Attorney General used today in piloting this legislation to repeal the Indictable Offences (Committal Proceedings) Act and to give support his arguments to have this committal proceeding, that same English jurisprudential system is now doing away with committal proceedings. I will explain to you now, through you, Mr. Speaker:

"Justice Minister Damian Green said:

"'Abolishing committal hearings is another one of the"—reforms—"we are taking"—forward—"to make justice"—respond more quickly—"and effectively for victims, witnesses and the taxpayers...'"

So they are doing away with it.

> "The changes are the latest stage of a series of moves to make the justice system swifter."

So they are doing away with committal proceedings to make their justice system swifter. They have also included introducing dedicated traffic courts. So this is what they are doing, dedicated traffic courts to deal with low-level motoring offences and increasing the use of digital technology between the courts, prisons and police—and hear this:

> "Scrapping the hearings will help the courts to run more"—effectively—"and ensure a better service for victims, witnesses and local communities."

So they are scrapping committal proceedings in England.

Now I am not saying that we need to follow them. I am asking the Government, if it has looked at the other jurisdictions that have problems with committal proceedings.

> "The Crown Court locations where committal hearings for either-way cases will be abolished from May 28, 2013 are:—and they go on to give a whole list of regions in England—"Maidstone, Lewes, Canterbury, Guilford, St. Albans…"

and the list goes on and on, about 40-something territories within the UK where they are dismissing, getting rid of committal proceedings. For every argument for committal proceedings, I can give you an argument against, but you are the Government.

In Australia, committal proceedings again under the microscope, and they ask the question whether committal hearings have any future as part of their criminal justice system. Do they have a future? But that same Australian report, if I am to be totally objective, will give you reasons for and reasons against. What is your policy? Tell us. Have you looked at all the reasons for, the advantages of committal proceedings, and the disadvantages, and have you come up with a policy position which you can share with us, instead of just saying in 2011 we abolish PIs and we bring in sufficiency hearings, but because there was a public backlash, we are now going to the Antiguan model? That is simply not governance good enough for Trinidad and Tobago in 2014. I am sorry.

"Reforming the committal hearing system" by Asher Flynn, lecturer in criminology:

> "Significant questions have been raised over the past three decades, most recently by Victorian Attorney General Robert Clark,"—

"Victorian" meaning the State of Victoria in Australia.

> "as to the benefits of the pre-trial system. In particular, whether having so many steps on the path to trial is simply contributing to already lengthy court delays."

So Australia is saying that committal proceedings contribute to court delays.

England is saying that committal proceedings contribute to court delays, it is not justice for the victims, the witnesses and the communities. What is your position, Government? Or is this Bill just a knee-jerk reaction? What is so wrong with the original Bill which we helped you enact in 2011? "The Abolition of Committal Proceedings – Progress To Date", St. Ives Chambers:

> "The perceived inefficiency and expense of committal proceedings led to their abolition in indictable only cases..."

Which is what we are doing here. Which is what we are doing here, indictable cases; not summary cases.

> "The requirement for each person charged with a criminal offence in England and Wales to make his…first appearance in the Magistrates' Court means…there must be a procedure in place to transfer the more serious cases to the Crown Court. Historically, this took place by committal."

Which is what we are doing.

> "Committal proceedings offered the accused an opportunity, in theory, to challenge the case"—before—"him…In practice, however, challenges rarely took place and the committal stage was a mere formality."

So I have given you examples, Mr. Speaker, of the jurisprudential learnings from Australia, England—Canada has the same problem; I think America has the grand jury system as their filter. What I have just read into the *Hansard* is an analysis of the pros and cons of the committal hearing process, and by far the disadvantages based on the experience in Australia and England seem to outweigh the advantages. So what are we really doing? Are we really simply putting back the work on the magistrates? Is this not a reversal of the position of 2011; a reversal of the position of the Caribbean Court of Justice? And we are going to be asked here to pass bad law.

Mr. Speaker, I want to refer to two pieces of bad law to alert Members opposite that you have to be careful when we pass bad law. We told you the Central Bank (Amdt.) Bill would have been deemed to be unconstitutional. So

said, so done! There is a recent case of defamation, whether it is libel or slander, in the public domain which a Member of the Government wants to bring against a TV station. When we were debating the abolition of criminal libel for defamation, we told you then that if you did that it opens the floodgates for all of us to have no protection against defamation, libel and slander. We told you so.

We said we have no problem with taking out the criminal element, that is the jail term, but substitute a significant fine. But we passed bad law because the Prime Minister at that time had attacked the media, and she had to appease the International Press Institute, and she gave an undertaking to do away with this. And Members who debated that, you could have seen in their faces that they were not in agreement with that, but they had to do it. That is coming back to bite us—not them—us, and I urge Members opposite, when you caucus to have someone explain the ramifications of these bad legislation that you continually bring to this Parliament, right. It is virtually impossible for anybody in public life to protect themselves against defamation, whether it is libel or slander. I say no more on that, just to alert the Government as to the consequences of bad law.

7.15 p.m.

Mr. Speaker, as I close finally, I urge the Government to heed the warnings which I have given to us already in this Chamber, because the name of Dana Seetahal SC was called in this debate. When I debated something on crime, I said it is Dana Seetahal SC today, it is the Judiciary tomorrow and the politicians next. You scoffed at me. There is a report floating around that yesterday—yesterday—there was an attempt to assassinate a Member of Government. Members opposite, you are playing with fire. You are not listening, you are not learning.

Mr. Speaker, with those few words, I thank you.

Mr. Collin Partap (*Cumuto/Manzanilla*): Thank you, Mr. Speaker. It is my pleasure to join this very important debate on a Bill entitled the Indictable Offences (Criminal Proceedings) Bill, 2014 standing in the name of the hon. Attorney General.

Mr. Speaker, as we know, the legal maxim is: justice delayed is justice denied. There is much delay in the system that dispenses justice in Trinidad and Tobago, and one of the major offenders is the pretrial criminal procedure known as the preliminary enquiry—let me repeat that: a pretrial criminal procedure known as the preliminary enquiry.

Mr. Speaker, in our legal criminal procedure, before an indictable offence is heard in the High Court, there must be a preliminary enquiry. These prolonged hearings are held before a magistrate, and the purpose of the enquiry is essential as the prosecution must first establish a prima facie case against the accused.

Over the years, these preliminary enquiries and preliminary hearings are usually heard before a magistrate, and this was a safeguard for dispensing justice, but the sheer volume of cases in the system now, as it stands, is an impediment to quick justice. I can read from the *Express* newspaper headline of November 03, 2010:

"Judge: We need to attack backlog matters"

Trinidad Express again, December 09, 2013, headline:

"Archie wants backlog of cases cleared"

We have again the Trinidad and Tobago *Express* of February 05, 2011:

"A cause for worry"

Those are all judges and the Chief Justice saying that there is a backlog in the system.

Mr. Speaker, let me give an example: a person who is charged with an indictable offence is taken before the magistrate, the matter starts. It is adjourned and adjourned and adjourned, until the preliminary enquiry begins. The accused as well as the witnesses, which include the officers involved in the investigation, must all be present. This is not only a wanton waste of time on behalf of the police, there is a wanton waste of resources as family members have to pay the lawyers again and again and again as they show up.

At the enquiry there is extensive cross-examination by the defence counsels, persistent adjournments and sometimes complex legal submissions. Mr. Speaker, witnesses must come to court to give evidence, and for cases of sexual offences the victims must relive their traumatic experiences again and again and again.

Mr. Speaker, this process allowed for, one, cases to become protracted over several years—and we mean years upon years. Two, a considerable amount of judicial time was spent in hearing preliminary enquiries and, three, it created a backlog in respect of other proceedings heard in a summary court.

Mr. Speaker, this Bill seeks to repeal the Administration of Justice (Indictable Offences) Act, 2012 and the Indictable Offences (Preliminary Enquiry) Act. By

removing preliminary enquiries from our justice system, it brings us in line with other jurisdictions like the UK, Australia, Antigua & Barbuda, New Zealand and Canada, just to name a few.

Before I continue, when a matter is called the accused will have a preliminary enquiry, which is a trial within itself. If the matter goes up to the High Court, he has another trial. After that, he has an appeal to the Appeals Court and after that he has an appeal to the Privy Council. So, Mr. Speaker, he does not have one bite of the cherry, he has four. This Bill solidifies the Government's focus reflected in pillar three of the People's Partnership Manifesto concerning national and personal security.

Mr. Speaker, the removal of the preliminary enquiry, previously put forward in 2011, seeks to ease the dependency on a plethora of resources, whether it may be human, physical or even time. Our administration does not only deal with the reactionary measures, but we also take a proactive approach.

Mr. Speaker, I want to focus on Part III of the Bill, which provides for committal proceedings. To me, this is the engine room of the Bill. This part of the Bill is similar to that of Antigua & Barbuda, as it provides that the magistrate will make the decision to put the accused on trial or discharge him entirely, on the basis of written submissions, statement of evidence, statement by witnesses, copies of all exhibits and the list of exhibits.

Mr. Speaker, at this enquiry there is no cross-examination, and as lawyers would know, when you are in the court it is the cross-examination that causes the backlog, because you could cross-examine for days, upon days, upon days, upon days. As the Member for St. Augustine rightly said, there was one time he cross-examined for six days, and that was just one witness. And this is not even the trial, that is at the pretrial stage.

This new procedure was challenged in the case of *Hilroy Humphreys v the Attorney General of Antigua & Barbuda* in 2008, where he brought a judicial review proceeding claiming that the abolition of the preliminary enquiry infringed on his constitutional rights. Mr. Speaker, the Privy Council held that, and I quote:

> "…defendants in criminal proceedings do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court."

Mr. Humphreys also argued that the abolition of the preliminary enquiry deprived him of the right to a fair trial guaranteed by the Constitution, and the Privy Council held, and I quote:

> "It is one thing to say that if the procedure for bringing someone accused of an indictable offence to trial includes a preliminary enquiry, that enquiry must be conducted fairly, by an impartial court and so forth. It is another thing altogether to say that one cannot have a fair hearing without a preliminary enquiry. In the Board's opinion it is a mistake to argue that because the old system provided a fair hearing, the change or abolition of some element of that system results in the new system being unfair. Systems of criminal procedure may differ widely without being unfair.
>
> "The question is not that the extent to which the new committal proceedings differ from the old preliminary inquiries but whether the new system of committal proceedings and trial, taken as a whole, satisfies the requirements of…"—the Constitution.
>
> The question in each case is whether the requirements of a fair hearing are satisfied. The Board agrees with the Court of Appeal that they are. The committal proceedings are not determinative of guilt but act as a filter to enable the magistrate to screen out those cases in which there appears insufficient evidence to justify a trial. They are conducted by an independent magistrate to whom both sides may submit evidence and make submissions. The restriction to written evidence applies to both prosecution and defence."—equally—"The specific requirements…of the Constitution are all satisfied by the composite procedure of charge, committal proceedings, indictment and trial. In particular, the accused is entitled at trial to cross examine the prosecution witnesses and give oral evidence in…"—conjunction with the section.

Mr. Speaker, as we all say, when you go to trial you have two trials, and this seeks to eliminate one of them, especially the cross-examination element.

When you cross examine at the preliminary enquiry and then you go again at the trial, it is repetitious. With submissions being made through Part III, one can see that the abolition of the preliminary enquiry does not infringe upon any rights to a fair trial.

I would like to focus on clause 21, the notice of an alibi. I would read to you a case of the High Court in Trinidad and Tobago v Garrison 2008, where the then Justice Anthony Carmona commented on the need to amend the laws of Trinidad

and Tobago in relation to an alibi notice. In that case, the accused was found guilty of possession of a dangerous drug for the purpose of trafficking. Justice Carmona described the alibi put forward by the accused as being bogus and based on conflicting evidence. He stated that the law in its current form afforded the accused person the opportunity to fabricate alibis and, by extension, to manipulate the criminal justice system. He said:

It is in the humble opinion of this court that there is a need to address this.

So, Mr. Speaker, I think that clause 21 of the Bill provides that an alibi notice be filed at the commencement of the committal proceedings, and the documents have to be served on the prosecution. This gets away from when you go to the courts, sometimes the accused sits there and you listen to the prosecution's side of the case, and you do not have to say anything until you take it up to the High Court. So you could manipulate your alibi based on the evidence that you are hearing before you.

This takes away that element—and this is what then Justice Anthony Carmona was saying. With the alibi notice you have to put your alibi in promptly, and this gets away from having to listen and adjust your alibi. Mr. Speaker, when I look through the Bill, this is one of the most critical parts of it.

Two other clauses, clauses 28 and 29—clause 28 provides that there is an appeal of the decision of the court to commit a person to prison, and this appeal would be to the Court of Appeal, and any decision taken by the magistrate could be appealed to the Court of Appeal, Mr. Speaker.

And that is again, you know, giving the accused a right to a fair trial.

7.30 p.m.

Mr. Speaker, clause 29, the "Transmission and custody of documents…relating to a case". You know, once the committal proceedings are concluded, a warrant of committal "for trial has been issued,…no later than three months from the conclusion of the committal proceedings..." and the DPP has to send the complainant the witness statements, both for the prosecution and the defence, and all the exhibits, up to the High Court. And this again, will help in eradicating the delay.

But, Mr. Speaker, I want to go back. Committal proceedings, Mr. Speaker, you know, it has to be an essential part of the criminal justice system if we are to move the backlog of cases. Mr. Speaker, you know, the Chief Justice—and if you

look at the Judiciary reports, year after year, you will see there are almost a hundred thousand new cases filed every year. And with this system we can try and start to clean up some of the backlogs.

Mr. Speaker, committal proceedings, as I said before, do not infringe upon the rights of the individual or the accused, it makes it more streamlined. Your evidence will be tendered. Your witness statements will be tendered to the magistrate, and the magistrate will sit and he will hear the prosecution—well, he will read the prosecution's witness statements, as well as the defence. Mr. Speaker, this saves time; it saves money; it gives the accused, you know, speedy justice, as well as the victims, speedy justice.

Mr. Speaker, for far too long, Trinidad and Tobago, we have been plagued with backlogs of cases, and it is these backlogs of cases, you know, if you want to take care of crime, you have to take care of the courts. And the courts, you know, once the system starts moving quicker, you will see there will be a decrease in crime, as the criminals know their matters will be brought forth in a timely manner, and justice will be dispensed very, very quickly.

Mr. Speaker, this Government has taken a lot of new initiatives, not only in crime, but also on the Judiciary. And I would like to, you know, thank the Ministry of National Security the Cumuto Police Station, is now ready to be opened. It was constructed under this Government [*Desk thumping*] and we have waited, in Cumuto, for over 10 years. And I think the Manzanilla Police Station is another one that is going to be constructed pretty soon. I think the Minister has seven new police stations to open, and this is part of the crime reduction package—300 new vehicles were put onto the roads over the last few months. I know when I drive down the highway, you know, blue lights are everywhere [*Crosstalk*] and it makes the citizens feel a little more secure. [*Crosstalk*]

Mr. Speaker, the Government has done a lot for crime. In Sangre Grande, I mean, the Eastern Division which includes Sangre Grande, crime is the lowest in the country, and I think, in the Central Division the crime statistics are also equally low, and it is because of the policing work and the new technology and the new initiatives of the Government, Mr. Speaker.

As I close, I would like, Mr. Speaker, to first of all, support this Bill, as we had consultations at my constituency office on Wednesday with a few of the stakeholders within the community, and they are all for this Bill, Mr. Speaker. So, as their representative, I am here today supporting the Bill, supporting the Attorney General and supporting the Government. Mr. Speaker, with these few words. I thank you. [*Desk thumping*]

Mr. Speaker: Before I call on the hon. Member for Port of Spain South, we have a Procedural Motion. I will now call on the Leader of the House, the hon. Minister of Housing and Urban Development.

PROCEDURAL MOTION

The Minister of Housing and Urban Development (Hon. Dr. Roodal Moonilal): Mr. President, in accordance with Standing Order 10(11), I beg to move that this House continue to sit until the completion of the debate on the Bill at hand. I beg to move.

Question put and agreed to.

INDICTABLE OFFENCES (COMMITTAL PROCEEDINGS) BILL, 2014

Miss Marlene Mc Donald (*Port of Spain South*): Thank you, Mr. Speaker, and thank you for the opportunity to join in this debate, the Indictable Offences (Committal Proceedings) Bill, 2014.

Mr. Speaker, the general purport of this Bill is to repeal the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, and the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011, and to replace them with new legislation to govern indictable offences.

Mr. Speaker, it was just over the weekend I looked at the manifesto of the UNC, PP Government, which is now their policy document. And one of the objectives there is the reform of the criminal justice system.

Mr. Speaker, I recall back in 2011, this is one of the reasons put forward. They said, their objective is to reform the criminal justice system. And so, they came to this Parliament—it is just like déjà vu eh, Mr. Speaker—in 2011, with the Indictable Proceedings Bill, it was debated, it was passed, and this Government came here touting the benefits to the criminal justice system. They proposed to introduce something called the sufficiency hearing before a master of the High Court. And this is just going back and trying to understand where we were then, and why we are here today. And this new system of sufficiency hearing, the objective was to replace the burdensome preliminary enquiry system.

Hon. Member: Correct.

Miss. M. Mc Donald: I want to say to you today, Mr. Speaker, and to the national community that this Bench, the PNM Bench, we are all in support of the abolition of the preliminary enquiries, but certainly, Mr. Speaker, what has

happened to this Bill here today, and I have sat here, I have listened to the Attorney General, I have listened to the Member for Toco—no, no, sorry—La Horquetta/Talparo, I have listened to the Member for St. Augustine, I have listened to the Member for Cumuto/Manzanilla, and on no occasion, Mr. Speaker, have they answered the burning questions that I have. So my debate is very simple because both my colleagues, especially the Member for Diego Martin North/East and the Member for St. Joseph, they have done a wonderful job of the analysis of this Bill. And I stand in support that we on this Bench cannot support this Bill.

Mr. Speaker, permit me to say that the only way that I can make sense of this new piece of legislation [*Crosstalk*] is by making—Mr. Speaker, I would like to speak in silence, please, and ask that you protect me from the Member for Mayaro from shouting at me across the floor, please. [*Laughter*]

Mr. Speaker: Yes. Yes. You have my full protection. Please. No shouting, please; undertones.

Miss M. Mc Donald: Mr. Speaker, the only way it can make any kind of sense is by me making reference to the former Bill, especially where the Government now proposes the repeal of this entire Bill. The former Bill, Mr. Speaker, Act No. 20 of 2011, had—how many—35 clauses—[*Interruption*]

Hon. Member: Correct.

Miss M. Mc Donald:—35 clauses, Mr. Speaker. Five clauses were proclaimed, and I cannot understand—try as you may—why there could not have been amendments as opposed to a total repeal. And the Attorney General has not given me any kind of comfort, or none of the speakers on the Government side. I do not think they understand, really, the Bill. They have not given me, or this Bench, any kind of comfort as to what really has happened to that Administration of Justice (Indictable Proceedings) Bill, Act No. 20 of 2011. By way of clarification, Mr. Speaker, a preliminary enquiry is often described as a trial within a trial. And the purpose of a preliminary enquiry is to determine whether the State has enough evidence to justify a trial.

Back in 2011, this House was told, as well as the nation, that this new approach in the hearing of indictable matters will now ensure that a criminal trial will begin in less than one year from the time an accused person has been charged with the commission of an offence.

We were also told that this new system will greatly reduce the workload of magistrates, and they would be able to devote more of their time to summary trials, thereby reducing the average time to completion. All these things we were told, Mr. Speaker, and the Opposition's position was clear. And we said at that time that certain mechanisms needed to be in place before the Bill was proclaimed. That Bill, Act No. 20 of 2011 had a proclamation clause. And permit me to remind this honourable House about the concerns we, the Opposition, had and which the Government promised that these would be put in place before the proclamation of that Bill.

Mr. Speaker, you would recall the introduction of the criminal proceedings rules. Where are those rules? According to my friend, the Member for Diego Martin North/East, where are those secret rules? Where are they? They have never come to this Parliament for approval.

[MADAM DEPUTY SPEAKER *in the Chair*]

We spoke about, one of the other mechanisms, was the hiring of criminal masters, and the staff support for the criminal masters. What has happened there? We also talked about the inadequate infrastructure to support this new system. It is within that context the then Minister of Justice spoke about the construction of four new judicial centres. You would recall at Trincity, at Sangre Grande, Siparia and Carlsen Field. They also spoke about three new magistrates' courts to be constructed.

Madam Deputy Speaker, according to my colleague, the Member for Diego Martin North/East, not one blade of grass—[*Interruption*]

Hon. Member: Correct.

Miss M. Mc Donald:—has been cut to date; nothing! [*Desk thumping*] Absolutely nothing has been done to date.

So, Madam Deputy Speaker, you would recall also that throughout the Minister's presentation in 2011, he gave the assurance that the Bill, that is Act No. 20 of 2011, the Administration of Justice (Indictable Proceedings) Act will not be proclaimed until all mechanisms were put in place.

7.45 p.m.

Madam Deputy Speaker, I would not have to go through the sordid details about what happened, but, of course, in August of 2012 very surrep—[*Interruption*]

Mr. Deyalsingh: Surreptitiously.

Miss M. Mc Donald: That is right, thank you. I would not have to repeat it. My friend just said it for me. [*Laughter*] Clandestinely.

Mr. Deyalsingh: Better, even better.

Miss M. Mc Donald: Secretly, "pervertly" [*Laughter*] and covertly—no, everything is wrong with the passage of that Bill on the night—[*Interruption*]

Hon. Member: Pervertly.

Miss M. Mc Donald: Yes, it was very perverted. A perverted move [*Laughter and desk thumping*] that five sections were proclaimed.

Section 1, the short title and commencement; section 2, that the Act is inconsistent with the Constitution, because it was done by a three-fifths majority, section 3(1), the interpretation section; section 32, rules of court, and that is what deals with the introduction of the criminal procedure rules and, of course, section 34, which dealt with grounds of delay.

Madam Deputy Speaker, I am saying as my friend the Hon. Member for St. Joseph said, yes, we agreed in principle with the abolition of the preliminary enquiry then, but the proclamation of that Act had absolutely nothing to do with this Bench.

Hon. Member: That is right.

Miss M. Mc Donald: Absolutely nothing to do. Responsibility for the proclamation cannot be placed in the lap of the Opposition, and I want to make that very clear on *Hansard*.

Madam Deputy Speaker, this shameless Government has now returned to this House.

Mr. Indarsingh: The language.

Dr. Moonilal: Madam Deputy Speaker, 36(4).

Madam Deputy Speaker: Yes, have your seat. Member for Port of Spain South, I want to ask you to use—I know, your language, it is really unparliamentary, the term that you are using, you probably want to use something else but not that, what is being unparliamentary.

Miss M. Mc Donald: I hear you, Madam Deputy Speaker, but I have heard worse said on their side against this Opposition Bench, but I will move on.

Madam Deputy Speaker, I have absolutely no confidence in this Attorney General; [*Desk thumping*] I have no confidence in this Government. In other words, what are they trying to tell us, mission accomplished, time to move on? We cannot accept that.

Madam Deputy Speaker, when I describe this Government as a Government that governors by "voops", "vaps" and *vaille que vaille*, you probably could understand why I am saying it, and the national community could understand why I always use those words to describe the governance style of this Government. [*Interruption*]

Is this Attorney General telling us today that this Bill that contained section 34, that is Act No. 20 of 2011 and which was debated in 2011 and 2012 because we spent a lot of hours, was that a wrong Bill? Was it bad law, that we are now back here after three years, debating, virtually the same thing?

Madam Deputy Speaker, if the Government had a proper legislative agenda, a well thought-out legislative agenda, with law that would redound to the benefit of all citizens of Trinidad and Tobago, we will not be here today wasting valuable time. What cogent reason has the Government given to this House and to the nation, as I said, after spending hours and hours of debate to come back three years after to repeal this Act? What cogent and compelling reasons have you given to this House?

Madam Deputy Speaker, I want to state that this is a serious indictment against this Government. This Government is untrustworthy, you are incompetent, you are lazy, and the people in this country have had enough of this tardy governance. [*Desk thumping*] So, Madam Deputy Speaker, it is within this context that I want to ask the Attorney General certain questions, and these are the questions, because he spoke at length and all other speakers did not even try to tell us what is the genesis of this. So, I am asking: Where are the comments of the Judiciary? [*Interruption*] Where are the comments of the Criminal Bar Association of Trinidad and Tobago? Where are the comments of the Law Association? Where are the comments of the Director of Public Prosecutions?

Madam Deputy Speaker, I know the model we are using is the Antiguan model, but I want to hear from the Attorney General, why he selected this model. The reason why I am asking that is in light of a legal submission, or opinion, which was given to the Government or to the Minister and is dated May 05, 2011, and this came from the Law Association of Trinidad and Tobago. As I said, it is dated May 05, 2011. The Law Association in its opinion pointed out two

commonwealth Caribbean countries which had abolished the preliminary enquiry system. They pointed out St. Lucia and they gave details; they pointed out Antigua and they gave the details.

Madam Deputy Speaker, why I am saying this, I am sure that the chairman of the LRC, the Member for St. Augustine, would have been presented with this legal opinion. And I am sure that this would have been taken to the Cabinet, and I would like the Attorney General, who is the legal advisor to the Cabinet—he is the legal advisor to the Cabinet—to tell this House, to tell this country, why the St. Lucian model was selected over the Antiguan model in 2011? Why?

Mr. Deyalsingh: In the first place.

Miss M. Mc Donald: In the first place. Why? And then I want you to answer another question. Why is the Antiguan model being selected now over the St. Lucian model? Tell us, because, you see, you have not said anything. You have not said why. You are presented with two options; you selected the St. Lucian option, you touted the benefits of the St. Lucian option with the sufficiency hearing.

First, you had the initial hearing by a magistrate and then it goes to the master in the High Court, now you are looking to abolish that. Why are you going now to the Antiguan model with the use of the committal proceedings? What is this? Because you are going right back into the Magistrates' Court, you are going right back to do what you tried to come out from, that is, all the backlog in the Magistrates' Court, the bottlenecking in the Magistrates' Court, because everything is now centered back in the Magistrates' Court. So, the Attorney General needs to tell us, why is he selecting this model over the St. Lucia model? Let us hear. And I am saying to the Attorney General, you are the arbiter of the public interest and you have to take responsibility for ensuring that the public interest is taken into account. You are the guardian of the rule of law, let us not forget that.

Madam Deputy Speaker, we are now hearing about committal proceedings, and by and large, committal proceedings are held to determine whether there is sufficient evidence to require the defendant to stand trial in the High Court. That is what it does, just as what the sufficiency hearing would do. But, Madam Deputy Speaker, when I peruse this Bill, I know that these committal proceedings would be left now in the Magistrates' Court.

Under this new Bill, and these are just some observations that I have made under this new Bill, the exchange of statements on both sides will constitute the

evidence. Both sides now will be filing, and this is what the court will be considering. You see, Madam Deputy Speaker, under the old system it was just the prosecution would be filing their statements and exhibits, now you have both sides, that is both the prosecution and the defence doing same. But this whole system, Madam Deputy Speaker, should be complemented by the criminal proceedings rules. Where are the criminal proceedings rules to go along with this system to have it working properly?

Let me ask the Attorney General yet another question: Does your Government have a clear policy document on this issue? I am talking about the issue of the abolition of the preliminary enquiry. Do you have that? I want to know, and tell us what is the difference between what is happening now in the Magistrates' Court and what you are now proposing. You see, the thing about it, the AG is talking about backlog in the Magistrates' Court and that you would be freeing up the magistrates. AG, if you read some of the clauses in this Bill, as my colleague from Diego Martin North/East, and I do not want to sound repetitive, you would realize that there are no improvements in this system you are introducing.

Mr. Imbert: None!

Miss M. Mc Donald: There are no innovations in this system that you are introducing. All you would succeed in doing is clogging up the Magistrates' Court.

Madam Deputy Speaker, as I said before, under this new system of committal proceedings, because everyone now would be filing statements, the defence no longer has an added advantage of holding his case close to his chest. There is also no cross-examination and, Madam Deputy Speaker, because of that I can tell you—let me see in my notes here—that since you are taking away the right of the person to be cross-examined, you need to put tighter measures in place. For example, the timelines that my colleague spoke about; the time periods, so whatever is done would be in the interest of justice. [*Interruption*] You should not leave this up to a magistrate to determine what is a reasonable time frame. That is wrong, because what you are doing, you are taking away a fundamental right of cross-examination and, therefore, if you take that away, you need to replace it with tighter measures.

Madam Deputy Speaker, I turn my attention now to some of the clauses in this Bill, and I want to make a comparison. Section 11 of Act No. 20 of 2011, talks about initial hearing before the Magistrates' Court, and it says quite clearly, "at an

initial hearing, a Master shall—verify the identity, place of abode…address…" and a lot of information would have to be taken from the accused person. Madam Deputy Speaker, if you turn to clause 14 of the new Bill being proposed here, all that has been taken out of the new Bill. It has just disappeared.

Another point, Madam Deputy Speaker, is section 13 of the old Act, Act No. 20 of 2011. Section 13 talks about notice of an alibi, and the notice of an alibi, this has been removed completely from the new proposed legislation. [*Interruption*] Old section 16 talks about adjournment; how a master may adjourn and the adjournment timelines also. The timelines set, what has happened here, it will cause undue delays. In section 18 of the old one, it sets out proper timelines; in clause 18 of the new proposed legislation, what has happened there is no timelines have been given.

Madam Deputy Speaker, I turn to clause 19 of the new Bill in front of us. Clause 19(3) and (4), and we are seeing in subclause (3):

> "Where a statement is to be admitted in evidence pursuant to subsection (1) and the Magistrate is of the opinion that a part of it is inadmissible, there shall be written against that part the words 'treated as inadmissible' together with the signature of the Magistrate."

8.00 p.m.

Madam Deputy Speaker, both in subclauses (3) and (4), we are saying that this process is unnecessary, as matters of the inadmissibility of evidence could be considered matters of case management to be dealt with under the criminal procedure rules. So that is why we are saying that this will save a considerable amount of time if you will also introduce with this, along with these proposals, along with this Bill, the criminal procedure rules. You all have come today and four speakers, and no one has said what is going on with those criminal procedure rules.

Madam Deputy Speaker, look at clause 33(1) and (2). This is giving power to the DPP to give mandatory directions to the magistrate in cases that are sent back to the Magistrates' Court. If the Attorney General does not know, this we consider as offending the judicial independence of the Magistracy, we have to be careful how we tread, and something like this should be expunged from the legislation.

Clause 45(1)(a), that is the section where—it deals with "restriction on publication of, or report of committal proceedings":

> "No person shall print, publish, cause or procure to be printed or published, in relation to any committal proceedings under this Act, any particulars other than the following:
>
> a) the name, address and occupation of the accused person and any witnesses;"

We are saying, that we live in a time where we need to protect victims and witnesses. We need to be mindful of this. So therefore, the routine publication of people's names, where they live, their occupation and of any—all of this concerning the witnesses, this could lead to witness intimidation and this could be prejudicial to your trial. This should be taken out of the legislation.

Another one is 45(1)(c), which talked about:

> "submissions on any point of law arising in the course of the enquiry and the decision of the Magistrate thereon."

This also should not be published. It can also prejudice your trial, should you be publishing parts of your submission from the committal proceedings.

Madam Deputy Speaker, we also look at clause 27, the DPP preferring indictments without committal proceedings. We think that is an error, and again should be expunged. Each person should be given that right of committal proceedings before the DPP can even commit. He cannot say he is not doing it and just send the matter to the High Court.

So, all in all, I want to say that, as I said, my two colleagues have dealt with this Bill effectively. I want to say that the timelines are important to this Bill, and therefore the AG needs to take a second look at this. The issue of the prima facie case has been taken out of this proposed legislation, he needs to take another look at this. The issue of the alibi has been taken out, he needs to take another look at it. In all, this Bill is defective in nature and we cannot support this Bill in the format that it has come here. [*Desk thumping*] I thank you, Madam Deputy Speaker.

The Minister of State in the Ministry of Works and Infrastructure (Hon. Stacy Roopnarine): Thank you very much, Madam Deputy Speaker for allowing me the opportunity to make a very brief intervention this evening as we debate this very important Indictable Offences (Committal Proceedings) Bill, 2014. I think this is indeed very important legislation. As we have said before, we are seeking to repeal the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, repeal the Administration of Justice—[*Crosstalk*]—Madam Deputy Speaker.

Madam Deputy Speaker: Continue, hon. Member.

Hon. S. Roopnarine:—to repeal the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011 and to provide for indictable offences.

I really want to take the opportunity to commend the hon. Attorney General for bringing this to the Parliament, and I took note as the Member for Port of Spain South spoke. She made some very interesting comments, and one of the things she said is that the PNM cannot support this Bill. But, Madam Deputy Speaker, I am very confused, and I am confused because I want to go back to an article, an article in the *Newsday*, dated July 05, 2009. It is an article by Andre Bagoo:

> "THE GOVERNMENT is to table legislation to abolish the preliminary inquiry procedure, Attorney General John Jeremie has said.
>
> In an interview with Sunday Newsday on Thursday, Jeremie revealed that the Office of the Attorney General and the Ministry of National Security are working on legislation to abolish the procedure which is used in the Magistrates' Courts to determine if a prima facie or first instance case is made out against an accused person."

Dr. Gopeesingh: What date is that? Give them the date.

Hon. S. Roopnarine: Date, July 05, 2009. The article goes further to say that:

> "Jeremie could not say exactly when the bill, which is to be a part of a larger package of laws to deal with crime, is to be laid in Parliament…"

Madam Deputy Speaker, I want to state for the record that this is the Attorney General under the previous PNM administration. [*Desk thumping*] But they come here today to say that they cannot support a Bill brought to do the same thing by the Attorney General of the People's Partnership administration. So this is the politics being played in the PNM. Today, this is their policy, tomorrow they have a different policy. Today, the Member for St. Joseph says one thing, and tomorrow the Member for Diego Martin North/East says something else. And this is the way of the PNM. So it is utter confusion.

I would love to hear a Member on the PNM Bench get up and tell this House, what is your policy; what are your plans. We have not heard that. We have heard a lot of talk, but I have not ascertained, and members of the public also have not ascertained, what are your policies and what are your plans. I really thought,

perhaps, the Member for Diego Martin North/East or the Member for St. Joseph would have given us an indication of what these plans are. But we have heard nothing, and that is no surprise because that is the way of the PNM.

Madam Deputy Speaker, let me say that this Government has brought legislation in the fight against crime. This is not the first instance. We have brought the Anti-Gang Bill, 2010; we brought the Anti-Terrorism Bill, 2011; [*Desk thumping*] we brought the Firearms (Amdt.) Bill; the Financial Intelligence Unit (Amdt.) Bill, 2011, Miscellaneous Provisions (Bail and Kidnapping) Bill, 2010; Interception of Communications Act, 2010 Trafficking in Persons Act, 2011, and so we continue to bring legislation to this House in order to help in the fight against crime.

This Government remains very committed to upgrading our legislative framework, to support the criminal justice system in the fight against crime, and that includes, the detection of crime, the gathering of evidence and successful prosecutions.

So we are here today in an effort to bring our legislation up to date with technology and with the current situation in Trinidad and Tobago. And, Madam Deputy Speaker, the fight against crime has to be a holistic approach, from detection up to the point of prosecuting and punishing the perpetrators in a timely manner. And so today, we propose to abolish preliminary enquiries, therefore freeing up the magistrates' time to deal with other more pressing matters.

Persons who spoke before me, in particular, I think the Member for Chaguanas West and the Member for Port of Spain South, you know they made a lot of noise about the Government not delivering these magistrate and judicial centres. But, Madam Deputy Speaker, I want to ask again of Members on the PNM Bench in particular, to tell us what is your crime plan, tell us what you are going to do differently in your next—[*Interruption*]

Mr. Imbert: "To get rid ah all yuh. That is we crime plan."

Hon. S. Roopnarine: Tell us what you would do differently from the last time you were in Government, because I want to remind the population what the PNM crime plan was. You gave us what? You gave us SAUTT; you gave us the OPVs; you gave us the non-working blimp. Every year from when the UNC left office in 2001 there was an increase in murders from 151 in 2001 to 509 in 2009. [*Desk thumping*] And do not forget, Madam Deputy Speaker, the kidnapping spree in 2007, 155 kidnappings followed by the breakfast meeting. Remember that? The breakfast meeting with criminal gang leaders at the Crowne Plaza Hotel. Is that the crime plan of the PNM? I am asking.

Madam Deputy Speaker: Members, I want to listen to the Member for Oropouche West, and I want to ask you to allow the Member to speak in silence. Member you may continue.

Hon. S. Roopnarine: Thank you for your protection, Madam Deputy Speaker. And so I am asking, if this is the crime plan of the PNM, if this is what you think will work for the people of Trinidad and Tobago, because we have heard nothing.

Madam Deputy Speaker, the MP for Port of Spain South indicated, she spoke about our People's Partnership manifesto. [*Crosstalk*] The Minister of Sport is not here. She spoke about the People's Partnership manifesto and she spoke about the reform of the criminal justice system. I want to tell you something, Madam Deputy Speaker, something happened in this country that many persons are perhaps not aware of, and it is this. For the first time in the history of Trinidad and Tobago, in 2010, we saw a leader adopting our manifesto produced by the People's Partnership as government's public policy. [*Desk thumping and laughter*] And for the first time, in the history of our country we also saw, four years later, a comprehensive report to the people of Trinidad and Tobago of the status of those promises. [*Desk thumping*] I want to tell you this document was produced by the Hon. Dr. Bhoendradatt Tewarie, Minister of Planning and Sustainable Development, under the leadership of the hon. Prime Minister. And this comprehensively shows that four years later the People's Partnership, under the leadership of the hon. Kamla Persad-Bissessar was able to deliver 90 per cent of our promises. [*Desk thumping*] Ninety per cent in four years.

So I am very happy to see that the Member for Port of Spain South is taking an active interest in the manifesto and following up on these promises that have been delivered. But what I want to know is in your nine years, what did you deliver? We can show in four years of our delivery. You had nine years, what did you account to the people of Trinidad and Tobago and what did you deliver? If any Member could stand up and say that I would be willing to give way.

Madam Deputy Speaker, given the fact that the speakers opposite raised issues with respect to the manifesto and what the Government has done, permit me to spend a few moments on some of the Government's policy and some of the measures implemented in the fight against crime. I think my colleague, the Member for Cumuto/Manzanilla, mentioned the construction of the Cumuto Police Station, but he did not mention that this Government also constructed the

La Brea Police Station, the Oropouche Police Station, Maloney Police Station, Arima Police Station, Piarco Police Station and I think that there are two more that are currently under construction. [*Crosstalk*] I am speaking about crime.

Madam Deputy Speaker, I want to also tell you that it was this Government that established the Rapid Response Unit and many of you will see that this unit is functioning. It was launched in December 2013.

I have gotten a lot of comments from constituents in the constituency of Oropouche West who talk about their satisfaction with this unit in terms of their responses and their response time.

8.15 p.m.

It was this Government that has procured from 2010 to date, 747 new vehicles in the police service. You know, many of us would remember the days when you would call a police station and they would tell you they have no vehicles, and that was the norm. Now, perhaps if that would happen, it is an anomaly as opposed to the norm, because there are 747 new vehicles assigned to the police service to better allow them to execute their job.

Madam Deputy Speaker, it was this Government that established the NOC, the Network Operation Centre, and this was established to allow a better centralized command and coordination of different law enforcement agencies. They monitor the CCTV cameras and the Ministry of Works and Infrastructure is actually embarking on an initiative with the Ministry of National Security to allow for the sharing of our camera systems so that we could better utilize the technology that is already existing.

It was under this Government that we saw, from 2010 to 2014, over 2,000 special reserve police officers trained by the Trinidad and Tobago Police Service, so that now we have more officers on the street in the fight against crime.

Hon. Member: What are the results?

Hon. S. Roopnarine: Madam Deputy Speaker, you know, as a young person, I often see some of the challenges faced by young people in the society, in particular, in terms of keeping them on the right track and keeping them away from a life of crime. [*Interruption*] I am coming to sport in a little while. So we have to find ways to keep our young people engaged in positive activities and engaged in social programmes in order to keep them off the streets.

You see, Madam Deputy Speaker, no youth is a bad youth. It is what we teach our youth; it is the investment that we make in them today that will determine their future tomorrow. [*Desk thumping*] And I can say without a doubt that the administration of the hon. Kamla Persad-Bissessar is certainly committed to making that investment in our youth [*Desk thumping*] and in terms of protecting their future, and in protecting their future, we are also protecting the future of our nation.

So for young persons, we have implemented a number of programmes. Yes, one of them is the LifeSport Programme. There may be issues in terms of the audit ongoing. However, I would like to state, for the record, that approximately 2,000 young persons have benefited from this programme in 33 areas throughout Trinidad. I think that a number of young persons have benefitted in a positive way from this programme and the idea is to streamline it so that it will become more effective and the ongoing audit will tell us what is required to do so.

Madam Deputy Speaker, we also have the Citizens Security Programme. The goal of this is to contribute to a reduction in crime and violence in 22 pilot communities. [*Interruption*] I am not saying that we started the programme; I am speaking about the programme that is continuing under the Ministry of National Security. This programme, from 2008 to 2013, 22 communities targeted under the programme recorded a decrease in murders of over 50 per cent, while there have also been other reductions in other categories of serious crime. So that programme continues as well. In addition to which, we also implemented the Hoop of Life Programme—[*Crosstalk*] in June 2012.

Madam Deputy Speaker: Members, Members, please.

Hon. S. Roopnarine: I will tell you about the Hoop of Life Programme. On June 30, 2012 that league was launched successfully, completed in March 2013. [*Crosstalk*]

Madam Deputy Speaker: Member for St. Joseph, you have already spoken.

Hon. S. Roopnarine: In essence, the Hoop of Life initiative is aimed at providing youths in at-risk communities with an opportunity to engage in healthy competition as a positive alternative, to engage their energies in something positive. This initiative also fostered camaraderie and cohesiveness among communities.

Madam Deputy Speaker, the first edition of the basketball tournament was won by the Laventille team which claimed a $1 million first prize, so we congratulate the community of Laventille. In the second edition of the

tournament, the first prize is expected to be $1.5 million. And I had the pleasure of seeing, in my own constituency, members of the La Romaine team win that competition, and I want to commend publicly the members of that team and their coaches for the good job that they have done, [*Desk thumping*] and I wish them all success in the upcoming tournament.

We also have police youth clubs. There are some 200 clubs, 10 of which we have established in the last fiscal year, and the membership of those clubs is now just over 6,000 youths and continuing. There are many other things I can tell you that the Government is doing in the fight against crime. Suffice it to say we are very dedicated and committed to the task at hand. So, today we are seeking to bring this legislation before us to abolish the preliminary enquiries, and I think that this is something that is being done in many countries today. The Attorney General gave the example of the Antigua model. I would like to quote from an article in *Caribbean News Now*. The article is dated June 06, 2014 and it is entitled: "British expert says preliminary inquiries should end in Eastern Caribbean," by Kenton X. Chance. The article goes on to say:

> "A British legal expert helping with the revamping of the criminal justice system in the Eastern Caribbean believes that preliminary inquiries should be abolished.
>
> A preliminary inquiry determines if the state has enough evidence to justify a trial. It is intended to safeguard against putting people in jeopardy of being convicted in a trial without the state having sufficient evidence to prove the case.
>
> If, after hearing the evidence, the magistrate is satisfied that there is enough evidence that the person could be convicted, then the person is committed to trial at a higher court.
>
> Witnesses often testify twice during the preliminary inquiry and also at the trial.
>
> 'Why call witnesses twice? We can call witnesses just once at the trial and then their evidence can be tested', criminal justice advisor to the Eastern Caribbean in the British High Commission, Daniel Suter said, referring to the preliminary inquiries."

So you see, Madam Deputy Speaker, what we are seeking to do here in Trinidad and Tobago is nothing new. It is being done in other parts of the world and I think it is something that we could certainly support.

Madam Deputy Speaker, I just want to go to clause 14 of the Bill. This makes provision for where a person is charged for an offence which is not triable summarily, committal proceedings are to be commenced on the filing into evidence by the prosecutor in the Magistrates' Court of witness statements in support of the charge, a copy of all documentary exhibits and the list of exhibits which the prosecutor intends to produce. And so, we have seen this working in Antigua. I think the Attorney General went at great lengths to explain this and I do not think that there is much more I can say on that.

With respect to clause 19, clause 19 provides for written statements from witnesses, signed and stamped by the Justice of the Peace. In addition, it also provides for allowing children witness statements, and I think this is very important. Part of that clause allows for children under 14. Their statements are to be supported by statements from either a probation officer, child psychiatrist or any other person qualified to make this assessment. This clause also provides that where a statement is to be taken from someone under the age of 18, it is required to be recorded in the presence of an adult.

So it is important for us not only to allow children to give the witness statement, but also to ensure that in doing so, we continue to protect them. I think that it is critical that as we go forward and as we implement this legislation, that we continue to protect our children.

I want to quote from an article entitled: "Questioning Child Witnesses". It is written by Nicholas Scurich, a Phd from the Department of Psychology and Social Behaviour and Criminology of the University of California. And it speaks to improving the quality of child witness testimony. Madam Deputy Speaker, permit me to just quote a part of it. It says that:

> "The discordance between what jurors expect and how children do testify could lead to the testimony being unfairly dismissed. As mentioned, the outcome of the case can largely turn on the credibility of the child witness testimony. There are (at least) two theoretical ways to augment the perceived credibility of child witness testimony. First, one could call an expert in developmental psychology to disabuse juror expectations and explain the usual range of emotions expressed by children. Research on this prospect is not encouraging, as jurors tend to heavily discount this type of expert testimony and revert back to their preconceived expectations…The second prospect is by improving the substance and quality of the testimony itself."

So, Madam Deputy Speaker, this really goes to show that it is important that we allow for the child testimony and I certainly support this clause in terms of protecting our children, those who are to be giving statements in this regard.

So, Madam Deputy Speaker, I support this legislation and I think that as a responsible Government, we have done a number of things that would allow for improvements in our legal framework to deal with the fight against crime. I think that the Government has given a comprehensive report of some of the measures that we have taken, some of the things that we have put in place in terms of reporting four years later in terms of what we have done as a Government.

Yes, we have certainly been very transparent and accountable [*Crosstalk and laughter*] in our approach and I must say that—[*Crosstalk*]

Madam Deputy Speaker, now I have to go to my document, my achievement booklet. [*Holds up document*]

Hon. Member: "Read de whole ting!" Just read it! Read it out!

Hon. S. Roopnarine: Madam Deputy Speaker, because the MP for Port of Spain South entered into this territory about our manifesto, it has now provoked me to respond accordingly. [*Desk thumping and crosstalk*]

I want to state, for the record, some of the commitments and some of the deliveries for those commitments made in terms of the commitments given in the manifesto of 2010.

Miss Mc Donald: "36(1) eh. Make sure yuh tie it back to the Bill."

Hon. S. Roopnarine: You went into our manifesto and, therefore, I am responding to the concerns that you raised with respect to the People's Partnership manifesto. So, manifesto commitment:

"Establish a National Security Operations Centre"—done.

A new National Operations Centre has been established with the main objectives being to provide"—[*Interruption*]

Miss Mc Donald: Madam Deputy Speaker, 36(1). This has nothing to do with the Bill—nothing! I spoke about the reforms of the criminal justice system. No, no—36(1).

Hon. Member: Save us! Save us! Save us!

Madam Deputy Speaker: Member, I want to ask you to start tying your contribution to the Bill that is before the House. You may continue.

Hon. S. Roopnarine: Madam Deputy Speaker, much was said in this debate—[*Interruption*]

Madam Deputy Speaker: Members. Members, please.

Hon. S. Roopnarine: Much was said in the debate in terms of the context of the fight against crime. The Member for Chaguanas West did ask about the framework of the Government in terms of the fight against crime and the MP for Port of Spain South did raise the question of the manifesto and the commitment that we gave in the manifesto, so I am simply responding to those comments made by Members who contributed prior to my contribution in this debate.

Madam Deputy Speaker, we indicated we would:

> "Implement the use of GPS Bracelets on offenders who are on probation but are deemed a security risk."

The actual achievement to date:

> "The use of GPS Bracelets will be introduced through the Administration of Justice (Electronic Monitoring) Act, No. 11, 2012 which was assented to on July 3, 2012.
>
> This Act will soon be proclaimed once there is the finalization of an Order by the Minister of Justice that will specifically provide the feature of electronic monitoring devices."

8.30 p.m.

Madam Deputy Speaker, we indicated in our manifesto that the:

> "Training programmes and merit systems will be established to motivate police to new ideals of justice.
>
> The National Security Training Academy…was established to provide members of the national security community with the unique competencies they require to successfully conquer the Security and Safety challenges that they face."

We also indicated in our manifesto that we will:

> "Strengthen the National Security Council"

There were several achievements done in this regard.

> "The…SSA has been established with some core functions being to centralize information that could facilitate the detection and prevention of drug trafficking, and to prepare and update a supply/reduction drug programme."

We had the:

> "Rationalization of SAUTT and the SIA in an effort to position these agencies to effectively support strategic and tactical operational responses that the Government undertakes. Additionally, a number of security Agencies have been merged to form the…(SSA).

Madam Deputy Speaker, one of the other commitments we gave was to:

> "Modernize physical infrastructure and amenities to boost the morale and improve productivity"

So I gave a list of some of the police stations that were being constructed and have been constructed by this administration, and we also have a number of other physical infrastructure put in place. We mentioned that of the new police vehicles and, we also have a number of CCTV cameras also implemented at strategic locations and that will also be expanded.

> Madam Deputy Speaker, we also gave a commitment to:
>
> "Implement the criminal injuries and compensation laws and adjust the measure of compensation"

The achievement to date is that:

> "This has been achieved through the Programme for Compensation to Victims and their Families which is now being undertaken by the Ministry of Legal Affairs."—under the MP for St. Augustine—"As at September 2013, 153 persons applied for various types of compensation of which 106 have been awarded grants."
>
> We also gave a commitment in our manifesto to:
>
> "Implement legislation which will rebalance the justice system in favour of victims with emphasis on protection for the rights of victims, witnesses and jurors.

And I gave a comprehensive listing of some of the legislation implemented in that regard.

> Madam Deputy Speaker, we gave a commitment in the manifesto for:
>
> "Community policing—a strategy that involves the police presence in the community as an important deterrent to crime"

Some of the actual achievements to date, include that of the:

> Police Caravans—The aim of the Police Caravan is to showcase the"—Trinidad and Tobago Police Service—"so that citizens can be educated on the activities, roles and functions of the various arms of the Police Service."

Miss Mc Donald: Madam Deputy Speaker, I am sorry I have to do my colleague this, but 36(1), please. [*Crosstalk*] I do not want to do her that.

Madam Deputy Speaker: Members, the motion is overruled. You may continue, Member.

Hon. S. Roopnarine: Madam Deputy Speaker, let me also state for the benefit of the Member for Port of Spain South, she raised the issues with respect to the manifesto of the People's Partnership and she indicated about the criminal justice system. The Member for Chaguanas West also raised the same in the context of the framework of the Government's agenda in the fight against crime. And so permit me to complete my explanations of the manifesto promises and what was delivered.

You see, Madam Deputy Speaker—[*Interruption*]

Madam Deputy Speaker: Member for Port of Spain South, you have had the opportunity of speaking before and I am asking you to allow the Member to speak in silence because I want to hear what the Member is saying, if you do not want to hear. You may continue, Member.

Hon. S. Roopnarine: You see, Madam Deputy Speaker, they do not like to hear the delivery of this administration because they cannot account in their nine years. [*Desk thumping*] What we have done in four years, they cannot begin to scratch the surface, and so I will continue. Thank you.

Madam Deputy Speaker, we indicated that we have the police caravans now.

> "The aim of"—these caravans is to showcase the Trinidad and Tobago Police Service—"so that citizens can be educated on the activities, roles and functions of the various arms of the Police Service. This initiative…was launched in June, 2012 in Port of Spain. Since then the Caravans have been going into communities throughout the twin-island"—Republic —"and this outreach programme is expected to continue..."

Madam Deputy Speaker, with respect to:

> "Community policing—Officers of the Community Policing Secretariat made approximately fifty (50) school visits since October 2013 in its venture to

prevent crime in primary and secondary schools and to establish a positive relationship between the Police and teaching staff and students at various schools."

This is very important, Madam Deputy Speaker, because I think that we have to continue to reach out to our children at a very young age in order to keep them on the right path and away from a life of crime. I spoke also about the police youth clubs.

Madam Deputy Speaker, in our manifesto we gave a commitment to:

"Restructure the justice system (for swift justice and addressing matters separately)"

And so, we have had a number of pieces of legislation, some of which I mentioned before—the Administration of Justice (Indictable Proceedings) Act, 2011, the amendments to the Evidence Act, revision of the Jury Act, Criminal Records Bill, amending the Sexual Offences Act, amendment to the Legal Aid and Advice Act, and we continue with that agenda.

Madam Deputy Speaker, we also gave a commitment in the manifesto for the:

"Overhaul of the penal system

Some of the achievements to date include:

"Amendment of the Prisons Act

Introduction of New Prison Rules

Construction of New Remand Prison

Construction of Tobago Prison

The prison service has begun to increase its staffing by a proposed 554 Officers.

The Prison Service is also training and retraining staff to develop other competencies to improve service delivery.

In the area of capacity building, there has been a proposal for an accelerated recruitment drive for Probation and Parole Officers

The Prison Service is continuing to upgrade its Emergency Response Unit at Golden Grove…—and they continue to—"Upgrade"—the —"Prison Facilities in an effort to improve the conditions for humane treatment

> Measures have been put in place to help reduce the number of repeat offenders through the introduction of a series of Rehabilitative Programmes in Prison.
>
> Commencement of the Remand Prison Projects as of March 2012"

I spoke earlier about the:

> "…Administration of Justice (Parole) Bill, 2014"

We also have the: "Offender Management-Policy approved. Legislation"—is currently—"being drafted

> The Penal Reform and Transformation Unit (now under the Ministry of Justice) has developed and provided Restorative Justice Programmes for both victims and offenders"

I hope the Member for Diego Martin Central is speaking after me because he seems to be interrupting my contribution quite a lot this evening.

Dr. Browne: No, no, I was going through—[*Interruption*]

Hon. S. Roopnarine: So I look forward to hearing your contribution after I speak.

Dr. Browne: I will not let you down. I will give you an hour. I will not let you down.

Hon. S. Roopnarine: Madam Deputy Speaker, the last manifesto commitment that we made with respect to the fight against crime is the:

> "Response training in the area of National Disaster Preparedness for all citizens…"

And the achievement to date is that:

> "Disaster management plans with other key disaster agencies and municipalities have been developed.
>
> The ODPM's National Public Awareness and Education Programme on Disaster Preparedness and Emergency Planning have engaged the private and public sector and communities in disaster preparedness. Thus far, seven (7) presentations were made to the private sector while four (4) presentations were made to communities."

So you can see, Madam Deputy Speaker, that we have delivered on our commitments made in 2010, and this is really the difference in terms of the

leadership style that this country can see in a Prime Minister today, as opposed to that of the past. We now have accountability, we now have reporting to a population that put us into Government and I think this is very important. This is something that we are seeing happening globally, and I think the hon. Kamla Persad-Bissessar has shown her leadership and her strength in terms of delivery and in terms of reporting to the population.

I thank you, Madam Deputy Speaker, for the opportunity to contribute on this Bill. [*Desk thumping*]

Dr. Amery Browne (*Diego Martin Central*): Thank you, Madam Deputy Speaker. And I want to thank the Member for Oropouche West for a very specific invitation to participate in today's debate, which I had not intended, but fortunately or unfortunately, unfortunately for the Government, the debate has now been opened completely with a very wide-ranging, largely irrelevant and—[*Interruption*]

Hon. Member: And you will be equally.

Dr. A. Browne: Well I will be responding to some of the irrelevancies that have been now put on the *Hansard*.

Madam Deputy Speaker, I really wonder sometimes about the calibre of debate because—well, I should not wonder. It is one thing to prepare a submission and bring it into the House in preparation for a contribution, but Members are expected to listen to what came before, before jumping in and reading their submissions, and I think my colleague, young colleague, the Member for Oropouche West, was extremely guilty in this regard in simply regurgitating and delivering from documents without listening to the very well presented submissions from the colleagues on this particular side. [*Desk thumping*]

So, she found herself delivering those pre-prepared statements and comments and talking points which fell very flat, given the trajectory of the debate thus far. You heard submissions such as quoting from a former Attorney General, Mr. John Jeremie—[*Interruption*]

Mr. Deyalsingh: 2009.

Dr. A. Browne: Yes—giving an indication of a coming policy with regard to removing preliminary enquiries, when every speaker on this side has already set that as the PNM's policy intention, when Members on the other side indicated they

met drafts and preparations in train on their desks when they came into office. [*Desk thumping*] So making points like that, Madam Deputy Speaker—[*Interruption*]

Miss Roopnarine: Go and check the *Hansard*. The Member for Port of Spain South did not say that. Go and check your *Hansard*.

Dr. A. Browne: If you wish for an extension, it is a little late for that now. Madam Deputy Speaker, I continue.

There were some additional points that were made that really deserve some response. The Member for Oropouche West had the audacity to challenge the measures that were put in place prior to the existence of this current administration to deal with crime in Trinidad and Tobago. And, Madam Deputy Speaker, if it is one thing that this current UNC-dominated Government should have learned, is that they made a grave mistake in dismantling the anti-crime measures that they met when they came into office. [*Desk thumping*] And I am very, very worried that there are Members on that other side that would be seeking—some of them are already seeking re-election.

I remember my colleague, the Member for Caroni Central, launched his re-election campaign a long time ago. I do not know the status of that now, but these Members would be seeking re-election some of them in their own minds. But they clearly have not learned some very basic lessons, and one of those lessons, Madam Deputy Speaker, is when you come into office, you are not mandated. It is not an expectation to dismantle programmes that are working. Unfortunately, that is exactly what this administration did.

Mr. Peters: You were not here when the PNM dismantled everything they met, including people.

Dr. A. Browne: Madam Deputy Speaker, the Member for Mayaro, his voice is rusty because he has not spoken for this entire session of Parliament, but he now wishes to interrupt my contribution. I want to assure him and reassure him that this will be a brief intervention, but that does not justify the interruptions that he is seeking to make.

8.45 p.m.

Madam Deputy Speaker, back to the response to our young colleague, the Member for Oropouche West who, I think, was really out of her depth in some of her—[*Interruption*]

Hon. Ramlogan SC: Outstanding, man.

Dr. A. Browne: [*Laughter*] And the Attorney General is back. So I am going to be brief and pointed. [*Interruption*] Yes, certainly. So, in trying to challenge what was met before, the Member for Oropouche West did not acknowledge that we are currently facing a record acceleration in homicides in Trinidad and Tobago during the year 2014, and I listened carefully to discern any response from this mammoth Government with all of these documents and other things, any response, any policy position, that would assist us in treating with that national emergency, given what has happened with Dana Seetahal and all the other murders and losses that we are having as we speak and there was none; reading from those empty documents and failed manifestos provides no comfort to a single citizen in this country.

The Member for Oropouche West went on audaciously, in a very cavalier fashion, to refer to the safety of children in Trinidad and Tobago and, on this issue, I can speak for the next hour if I was so minded this evening. The children of Trinidad and Tobago have never been less safe than they are as we speak in this country. [*Desk thumping*]. Definitely!

You had an administration that—a brief administration, two-and-a-half-year administration, that went previously, and there were Members here, including the Member for Arouca/Maloney and the Member for Diego Martin Central, speaking right now, who took the responsibility of laying a foundation for the protection of children very, very seriously. In that brief time, we worked together with technical officers and prepared, reviewed every single child protection Bill in this country, including some that had been dormant for a very long time admittedly. Hard work! Brought all of those Bills to Parliament. The Attorney General was nowhere around at that time. Brought them to the Parliament; they were all unanimously passed in this Parliament except for the Children Bill which was referred to a special select committee of Parliament. Yes? Put in place a board and initial arrangements for a children's authority of Trinidad and Tobago, 2009.

Yes, an election was called thereafter. What has happened in the last four years? And then for a Member to stand here and talk as if they are boasting about the safety of children when we have nine-year-olds being executed, 10-year-olds, 13-year-olds, losses all around us. Today, a child of a national hero was—I received a report—well, died in a nursery, Madam Deputy Speaker, when by now, given the work that was done before, the foundation that was laid, every single nursery in this country should be licensed and registered and monitored by now, by the year 2014.

But, we had Minister after Minister dancing all over the place, "gallerying" in the media, the work not being done; children's authority still in its embryonic stage. I want to acknowledge the Member for Moruga/Tableland who has been demonstrating some interest in this regard, I will be very fair. But, in terms of what came before his advent, deplorable in terms of the effort, energy and resources that were being put into something that they had already met. It was born already, and neglect in that sector.

We are seeing the results of this now. We are seeing the evidence all around us in the daily newspaper, and then to come here, in this debate, and to make some of those audacious statements and pronouncements, it cannot be allowed to rest on the record, and if it is a contribution that I would make is to ensure that contribution from the Member for Oropouche West is put into the context of prepared-talking points, irrelevant to the debate that is taking place today—[*Interruption*]

Mr. Deyalsingh: Filibustering.

Dr. A. Browne: Filibus—well, I cannot use that word, I might be accused of being guilty, but irrelevant to the debate at hand today, and also not in keeping with the realities of Trinidad and Tobago that every citizen of this country faces on a daily basis. Madam Deputy Speaker, I thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you very much, Madam Deputy Speaker. I have listened attentively to the contributions on this Bill from both sides and there are a number of issues that have been raised that I would like to address. I think the first point, which has been a common thread throughout the contributions from my colleagues on the opposite side, is: why are we shifting from the 2011 legislation? I had adverted to this during my speech in piloting the Bill and I took great pains to outline the difference in the conceptual models between two Caribbean countries that have abolished preliminary enquiries, and those countries are Antigua and Barbuda and St. Lucia.

In St. Lucia, when they abolished preliminary enquiries, they adopted a system of criminal masters and they had sufficiency hearings. That was the 2011 Bill that we had brought to the Parliament. I explained, however, upon reflection, that several things prompted a policy change on the part of the Government and they are as follows: the super imposition of criminal masters in the criminal justice system added a bureaucratic layer to an already heavily layered and bureaucratic administration of justice. What is the function of the criminal

master? The role and function of the criminal master at the sufficiency hearing is to see whether there is sufficient evidence such that a case is made out on the paper committal to decide if you should commit the accused person to stand trial before a judge and jury. That is the function and role of the criminal master.

That is the same role and function that is in fact performed, as we speak, by the magistrates. In fact, I think my colleague, Member for St. Augustine, Minister of Legal Affairs, pointed out that the term "abolition of preliminary enquiries" is, perhaps, not as accurate because it really is a restructuring of the preliminary enquiry because one is not doing away with that filter because you have that filter which will be preserved, except that it will not be performed by the criminal master, it will be performed by the magistrates.

Why do we favour the magistrates? In my discussions with the practitioners at the criminal bar, there was almost unanimous opinion and consensus among the practitioners that the magistrates are oftentimes underestimated and perhaps undervalued; in that right now, the magistrates are performing preliminary enquiries on a full-scale basis where they listen to evidence, they receive the cross-examination, and they have to decide if a *prima facie* case is made out. So the magistrates have the knowledge and the experience and training to perform that very function of filtering out cases that are so unmeritorious, devoid of merit that they do not deserve to go forward before a judge and jury. In other words, they do not meet the minimum evidential threshold to justify engaging the resources of the High Court to have a trial before a judge and jury.

Since that function is already competently performed by the magistrates without question, without complaint by anyone, we did not see for ourselves that if you abolish preliminary enquiries and you give the magistrates all this free time, then why is it we are going to now incur the expense of hiring criminal masters to bring them to perform the same function when these are going to be new people that you are going to have to hire, pay and train. It made no sense, and indeed, when we discussed this matter with stakeholders, it was generally found to be a very good idea. So that is the first and one of the main reasons we have shifted the models.

The second reason is that the Antiguan model has been proven to be much more simple and effective. It is as simple as you can get. It sends a ballistic missile at the heart of the preliminary enquiry by cutting out what costs the most time, and that is the cross-examination or the presentation of the oral evidence in

chief. And this ballistic missile is directed at that specifically to say, "Look, let it be done on paper". It is a paper committal. With that in mind, and that was even further justification to not go the route of the St. Lucian model.

The third reason was the Antiguan model has been tried and tested all the way to the Privy Council. So you have had final appellate judicial pronouncement by the highest court in the land on the question of the constitutional validity of the Antiguan model of the legislation. The St. Lucian legislation has not undergone the rigorous testing in our court system as the Antiguan legislation and you are, therefore, taking a risk. Whereas in the St. Lucian, no one has challenged that, when you introduce that in Trinidad, someone may very well challenge it. We are a more litigious society. So, with that in mind, why—if you have two models, one that has been tested and subjected to judicial review and scrutiny by the highest court in the land and the other which has not—would you, for a country, choose one that is going to take you into virgin territory and uncharted waters as opposed to the other? It makes no sense.

The fourth reason is that from an economic standpoint, it makes no good sense to have trained, experienced magistrates who are fully equipped to deal with this on standby in neutral or park, while you are going in search of criminal masters which will take about two to three years to hire, train and get up to speed to fully implement the Act.

So, it was for those reasons, in addition to the obvious shortcomings in the Act that I referred to during the course of my speech when piloting, which dealt with, for example, the fact that the Act did not contain a provision to resolve a dispute or a disagreement among the parties, or between the parties, so that if, for example, the prosecution wanted to elect that a matter be tried summarily, and the defence counsel did not agree, what was going to happen? That was, in fact, a grey area.

The second grey area was, if you had multiple accused and one person agrees to trial before a judge and jury but the other accused—his co-accused—wanted a summary trial, what then?

The third grey area was the procedure to be followed if the sufficiency hearing was not completed, and then we had, of course, the lacuna with respect to the witness statements for children.

So, in addition to the five policy reasons I had given, there was a sixth reason and that is the 2011 Bill was found to be impractical and it contained several

flaws which, upon reflection, notwithstanding the unanimous support of everyone in this House, it was felt we should, in fact, address by way of a new Bill.

Now, Madam Deputy Speaker, the Member for Diego Martin North/East, during his contribution, raised the question of what really is the Government doing apart from just bringing this Bill.

Mr. Imbert: I said that?

9.00 p.m.

Sen. The Hon. A. Ramlogan SC: You know, Madam Deputy Speaker, as the line Minister for the Judiciary, we have been taking steps to strengthen the Judiciary as an institution like no other Government. In fact, in the last three years, the budgetary allocation for the Judiciary has gone up consistently under this administration, crossing into the $300 million mark, and climbing up to, I think, close to $365 million or $375 million. So the first thing we have done for the administration of justice was to increase the budgetary allocation consistently every year since we have been in office; that is the first thing.

The second thing we have done for the Judiciary as an institution, was to enhance the remuneration package for judicial officers by accepting the recommendations in the SRC Report. And those recommendations provide meaningful and substantial improvements to the terms and conditions of judicial officers across the board.

The third thing we have done for the administration of justice, was to deal with the unattractiveness of a career in the Judiciary as an option for lawyers.

In England, a judicial appointment is seen to be the pinnacle of achievement. It is the high point of one's career. It is the place to go to when you have distinguished yourself and you are at the apex of the pyramid. In Trinidad and Tobago, that has not necessarily been the case. It is a huge sacrifice that people make to serve in the Judiciary and sometimes at great financial, personal sacrifice.

It is for that reason, that I have taken a Note to Cabinet to decrease the 10-year constitutional disqualification and restriction on judges' ability to return and resume the practise of law. [*Crosstalk*] From 10 years, we have proposed to bring it down to at least five, and I think the Law Association has, in fact, proposed that it should be brought down even further maybe to two or three, but we certainly—[*Interruption*]—sorry? [*Crosstalk*]

Mr. Imbert: Why do you not just make it one and done, "nah"?

Sen. The Hon. A. Ramlogan SC: Sorry?

Mr. Imbert: Make it one and done, "nah".

Sen. The Hon. A. Ramlogan SC: I am sorry?

Mr. Imbert: Make it one and done, "nah". [*Crosstalk*]

Dr. Rowley: Bring it!

Sen. The Hon. A. Ramlogan SC: Yes, we will bring it. We will bring it, yes. We will bring it. In fact, in the same way we brought this legislation, while they can mumble and grumble, the fact of the matter is since—for 97 years, this has remained the law, and whilst the PNM was in office for almost half a century, they did not bring a Bill like this to abolish preliminary enquiries, to restructure it or to improve the criminal justice system. And today they sit here and hypocritically mumble, grumble and point fingers. You know, they are characterized by opposing without proposing. Not a single speaker, as noted by my colleague from Oropouche West, not a single speaker made a proposal to tell the nation, well, what is their plan, what is their proposal. Nothing! All they do is oppose and criticize with glib, empty rhetoric.

Madam Deputy Speaker, the next thing we have done to strengthen the institution of the Judiciary is to address the question of the retirement age for judges. We have before the Cabinet a proposal to make it optional for judicial officers to go past 60—from 60—65, and that will be optional with the approval of the Judicial and Legal Service Commission.

So you have the increase in the remuneration package, the increase in the budgetary allocation for the Judiciary. You have the disqualification, post retirement being reduced. You have the retirement age going up, and then you have on the Order Paper, a Bill that we have put on the Order Paper to enhance the retirement and pension benefits for judges, so that they will be able to retire comfortably and live a life of dignity. Madam Deputy Speaker, those are six revolutionary, important measures that this Government has on the agenda, that we are bringing to strengthen the institution of the Judiciary.

So when they ask, well, what are we doing about the criminal justice system, and the Judiciary? I am telling you what we are doing. We have brought six—we

have six measures that are designed to enhance and augment the institution of the Judiciary, and no other Government has, in fact, even [*Desk thumping*] had the political courage to bring that kind of legislation.

[MR. SPEAKER *in the Chair*]

My colleague from Port of Spain South, I think, joined the Member for Diego Martin North/East to ask: "Well, who is going to be responsible to implement this? Is it the Ministry of Justice?" Is it the Ministry of the Attorney General, and so on? And you know, they asked about, you know, why I am bringing the Bill and so on.

Mr. Speaker, the Office of the Attorney General is, in fact, the administrative conduit with ministerial accountability and responsibility for the Judiciary. And we have the Judiciary and Justice Sector Committee which is an inter-ministerial committee that meets with the Judiciary to deal with common problems that affect the implementation of legislation. That committee comprises my learned colleague, the Member for St. Augustine, Minister of Legal Affairs; my colleague, Sen. Emmanuel George, the Minister of Justice, and the Member for San Fernando West, the Minister of Public Administration, along with the Minister of National Security. When a high-level subcommittee of the Cabinet like that meets with the administrators in the Judiciary to iron out the kinks in the system, then we say that is where the responsibility lies. So it is not about one-upmanship. It is really about a partnership and a team effort, partnering with the Judiciary to get these things done.

You know, now, Mr. Speaker, they then asked about: "Well, what is new in the Judiciary"? Mr. Speaker, I want to tell you what is taking place and what is new. The Judiciary has, in fact, been seeing rapid improvements with a lot of innovation designed to improve the administration of justice. The first thing is we have the Drug Treatment Court Pilot Project.

Mr. Speaker, for years in this country we have treated drug addicts as pure criminals, without recognizing that the crime they have committed is a response that is symptomatic of a much deeper problem. And what is that deeper problem? That they are addicted to drugs. So instead of treating the problem, we treat a symptom and you will have a high rate of recidivism, because the person who steals from his uncle to feed the cocaine habit, when he comes out of jail, he will steal from his mother, to feed the same cocaine habit. So what are we doing? The drug treatment court is targeting the source of the problem, by instead of sending them to jail, we are sentencing them to rehabilitation. So that we are treating the

root cause of the problem, so that we will produce a different, more constructive and a revised citizen, a reformed citizen, who will not repeat the offence, because we have taken care of the problem at source.

Mr. Speaker, the Drug Treatment Court was launched in 2012, in partnership with the Ministries of National Security, Health, Justice, the DPP, the National Alcohol and Drug Abuse Prevention Programme, the Legal Aid and the Inter-American Drug Abuse Control Commission of the Organization of American States. It has been an outstanding success, and it is a programme that we intend to actually expand.

The second, is the Court-Annexed Mediation and Judicial Settlement Pilot Project. Mr. Speaker, we have to come up with innovative ways to tackle the backlog in the court system, and mediation and judicial settlement is one of those innovations that can assist in that process. We have, in fact, embarked on an aggressive initiative to deal with mediation and judicial settlement conferencing, and we are seeing the benefits of it in the court system. In fact, the deliverables would include draft practice direction, court processes, feedback from stakeholders, including the Bar, mediation participants and members of the court, and this alternative dispute resolution mechanism, is one that we are placing heavy reliance and emphasis on, and it is working as it has worked in other countries.

The Family Court of Trinidad and Tobago, has been an outstanding success and, of course, we are now rolling out a new family court in San Fernando.

The policy document that guides us with respect to the improvements in the administration of justice, is the "Partnering for Justice", a brief on the inter-agency collaboration for improving the administration of justice in Trinidad and Tobago, with emphasis on the criminal justice system. This was, in fact, a brief presented to the hon. Prime Minister by the hon. Chief Justice, and it has been our guiding document in terms of the work that we are doing in partnership and collaboration with the Judiciary.

That is where the proposal for the establishment of a forum or standing committee, where the partners and stakeholders in the justice system can come together to agree on justice policies, measure and evaluate progress, and actively develop strategies for improving the administration of justice, in addition to making recommendations for the use of information, and communications technology, developing and resolving information-sharing issues in the justice sector. This inter-ministerial justice-sector committee is a first of its kind. Mr.

Speaker, it is that committee that will be charged with the responsibility for partnering and collaborating with the judicial arm of the State to ensure that we implement this legislation.

Now, Mr. Speaker, in terms of information and communication technology, the Judiciary and the Government, we have been working hard because we have a shared common vision of a justice system in which, within minutes of arrest, the magistrate can have all of the necessary information that he needs to make a decision in the interest of justice, at the very first hearing, as to whether or not bail should be granted.

To this end, the vision is to allow the magistrate to have access to a complete fingerprint-based, standardized criminal history record, including juvenile record, outstanding warrants, probation status and conditions, schedule of all pending matters, drug treatment status and test results, outstanding protective orders and history, alimony and child support orders and sexual offence registration status.

Mr. Speaker, we have even gone so far to look after the employees and the public officers who work in the Judiciary. And to this end, we are looking at an after school vacation centre, employee assistance programme, occupational health and safety committee, health and wellness for the workers, and all of this in the context of modernizing the Judiciary's governance, organizational staffing and structure. So, Mr. Speaker, the Government has been looking at strengthening the judicial arm of the State like never before.

The other point raised, had to do with the question of, well, what really has the Government been doing about the criminal justice system? I think, the Member for Port of Spain South said it was a piecemeal approach, that we have not done anything, and this Bill is, you know, just, you know, up in the air and so on.

Let me remind this honourable Parliament of some of the Bills that have come and been debated and passed, to deal with the transformation of the criminal justice system. The first one, the Electronic Monitoring Bill, to give you the ankle bracelet to monitor your movements, so that you do not have to be put in jail either when granting bail with a condition or after conviction as part of sentencing.

The second one and—[*Interruption*]

Miss Mc Donald: May I?

Sen. The Hon. A. Ramlogan SC: Sure.

Miss Mc Donald: Thank you AG, through you, Mr. Speaker. AG, just one little point. I do not want to interfere with your presentation, but can you tell me what majority is this Bill? Is it a three-fifths majority? Is it a simple majority? Could you tell me?

Sen. The Hon. A. Ramlogan SC: Sure. This Bill is a simple majority Bill.

Miss Mc Donald: Okay.

Mr. Imbert: And why is that?

Sen. The Hon. A. Ramlogan SC: Because it is a simple majority. Because it is a simple majority.

Mr. Imbert: Why is that?

Sen. The Hon. A. Ramlogan SC: Because it is not a special majority. [*Laughter*]

Sen. A. The Hon. Ramlogan SC: The parole Bill, Mr. Speaker—[*Interruption*]

Mr. Imbert: Why?

Sen. The Hon. A. Ramlogan SC:—is a Bill that seeks to deal with the prisoners and the rights of prisoners to be granted parole in certain circumstances. We also have the Miscellaneous Provisions (Prisons) Bill, and that Bill will amend the Prison Act, to increase penalties and fines for offences against the Prison Act and creation of an inspectorate of the prisons. And most importantly we have, in fact, new Prison Rules which have come after a century, over a century. This is the only Government after a century, will be introducing new Prison Rules to deal with the conditions in prison and the rights of prisoners. So we are trying to strike the balance in terms of the prisons.

Then we have, of course, the Administration of Justice **(**Miscellaneous Provisions) Bill, which seeks to amend—and we are debating that, the DNA Act, the Jury Act, the Criminal Offences Act, to create new offences like obstruction of justice, and the amendments to the Police Service Act to deal with fingerprinting. And may I pause to say that we have, in fact, been receiving some assistance through the auspices of the American embassy, with respect to the implementation of the DNA database, and that is proving to be very helpful, and we are grateful for that assistance.

So—[*Interruption*] yes, thank you. And, of course, we have had amendments to the—we are going to have amendments to the Evidence Act that will speed up

the process. We have had—we are going to have amendments to the Bail Act. And, of course, in fact, as the Minister of Legal Affairs quite rightly reminded me, in tandem with all of this, we are in the process of drafting a new plea bargaining law, that will allow for plea bargaining to actually take root as part of the legal culture.

9.15 p.m.

In the United States of America, Mr. Speaker, plea bargaining accounts for 90—95 per cent of the criminal trials. In fact, only 5 per cent of the cases where someone has been charged, only 5 per cent actually go to trial. Ninety to 95 per cent of the defendants who have been charged in the criminal justice system of the United States of America, they plea bargain, so it never even reaches the stage of a trial. We have had a delegation of experts in plea bargaining—I invited them and partnered with the American Government. We had them here in Trinidad and we had an exciting forum at which we had the President of the Criminal Bar Association, the office of the DPP, the office of the Commissioner of Police and criminal justice consultants. We all had a wonderful seminar; arising out of that will come a plea bargaining law that will be simple, effective and practical and one that will work.

That is just a brief overview of what the Government is doing because when they seek to make out that we do not have a vision and we do not know what we are doing, I think they are the ones who are really looking at the mirror and speaking.

Mr. Speaker, they asked the question—I think the Member for Diego Martin North/East raised the question—why is it that you are not putting back things from the 2011 law, like asking a man, do you have a lawyer; how do you wish to plead? There is a simple reason for that, you know. Those things are an entrenched part of the practice and procedure and when we looked at the 2011 Act we thought it really was not necessary to put them in. In fact, there are criminal rules of procedure that will be drafted to facilitate the implementation of this law, and if it is felt necessary, it can be put there; but quite frankly none of the stakeholders who commented on this Bill, which included the Judiciary, the office of the Director of Public Prosecutions, the Criminal Bar Association, et cetera, not one of them made that point because it is understood that that is part of the practice and procedure. There is no deviation from that because that practice and procedure is derived from the fundamental rights enshrined in sections 4 and 5 of the Constitution.

In fact, the very section 5(2)(h) of the Constitution, which gives the rights to procedural protection, it is pursuant to that very section in the Constitution that this practice and procedure has developed and been devised over the past decades. *Whiteman v the Attorney General, Thornhill v the Attorney General* and so many other cases have dealt with it, so that there is no need to codify it and put it in legislation. In fact, there is a danger in doing so.

When you go as if by rote to say, "The magistrate asked him; say good morning; do you plead guilty; do you have a lawyer", when you do that, you cannot cater for the multitude of unforeseen circumstances that may confront a court. And then some lawyer will say, "Ah, the law does not allow you to ask him that question, you know. The law does not permit it. Show me in the Act where it says—" and then the man will say, "That is common sense". And the lawyer will say, "If it is common sense, why they number it 1, 2, 3, 4 and they put what you could ask?"

The irony is in law, that which is expressly provided for, there is by implication the intention to exclude what is not provided for and, therefore, the danger lies in putting it in when it is already part of a flexible practice and procedure in the criminal justice system that is administered quite competently without complaint or reservation by the magistrates and judges over the years.

The other point made by the Member for Diego Martin North/East was with respect to the DPP having the power to refer the case back. I do not think the Member quite realized, but that was in fact the exact and identical wording from the current law, section 27 of the Indictable Offences (Preliminary Enquiry) Act. It is in fact the same thing.

Having said that—[*Interruption*] I do not think anyone had challenged or questioned that law—perhaps because it is saved law—but there is in fact a legitimate concern as to whether or not the Director of Public Prosecutions should be in a position to give a direction to a judicial officer or a court of any kind. It is with that in mind, I have asked the Chief Parliamentary Counsel to look at it to modify it a bit, so that we can in fact put the discretion and the power back in the hands of the judicial officer rather than to leave it with the DPP. So that amendment will be circulated and will come.

Permit me now to take you through some of the amendments that we have considered arising out of the very lively debate that we had today. In clause 13(4) of the Bill, we have:

> "Where a Magistrate is satisfied that an accused person who has been remanded is, by reason of illness or accident, unable to appear before the

Court at the adjournment pursuant to section 18, the Magistrate may, in the absence of the accused person, order him to be further remanded for no longer than twenty-eight days."

The proposal for the amendment here is to not confine it to illness or accident, but rather to expand it to say, "by reason of illness, accident or other sufficient cause". So we will insert the words "or other sufficient cause" into 13(4).

In clause 15, we come to the alibi and clause 15 states that:

"(1) Where the accused has been served in accordance with…14(3) he may in reply, within such period as may be specified by the Magistrate, file:

(a) statement of any evidence that he wishes to give on his own behalf at the trial;

(b) any statement of his witnesses; and"

We are now going to add a copy of the documentary exhibits and we will now add in "and a notice of alibi if any in accordance with section 21", so that they will have to file, in addition, the notice of alibi.

I take you to clause 18:

"A Magistrate may from time to time adjourn committal proceedings if he considers it expedient to do so and the adjournment shall be made to a certain date and place."

We are going to change that to read:

A Magistrate may adjourn committal proceedings if he considers it in the interest of justice.

and remove the word "expedient". So if he considers it in the interest of justice to do so, as opposed to if he considers it expedient.

I then take you to clause 19(6). This clause states:

"Notwithstanding section 19 of the Children Act, where a statement is made by a child under fourteen years of age, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child, to the effect that the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth."

The concern raised by the Judiciary is that the Judiciary performs this function and the way it is drafted it could be interpreted that that function is now being jettisoned. To deal with that and to establish that this is in aid and in support of the exercise of judicial discretion, it will now read:

> Notwithstanding section 19 of the Children Act where a statement is made by a child under fourteen years of age, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child, to assist the court to determine if the child is possessed of sufficient intelligence.

I think it will have to be to determine if the child is possessed of sufficient intelligence. So that is clause 19(6).

We go now to clause 20 and clause 20(3) says:

> "All other exhibits other than those referred to in subsection (2) shall"—on the direction of the Magistrate be taken—

Sorry, subclause (3) reads:

> "All other exhibits other that those referred to in subsection (2) shall be taken charge of by the police and shall be produced by them at trial."

I believe the Member for St. Joseph alluded to the contradiction in having this provision and the earlier provision that allowed the magistrate to have any appropriate state agency take custody of the non-documentary evidence.

Permit me to address some concerns raised by the Member for St. Joseph. In illustrating who the judicial officer can allow to retain custody, care and control of the evidence, I used the example of the Central Bank. [*Interruption*] I said Central Bank as well. I said Central Bank first and then I said, by way of illustration, or even a commercial bank, depending on the circumstances. But that is used for illustration.

It would be a matter for the judicial officer to determine which is the best state entity that can have custody, care, possession and control of evidence, such that it can be protected and preserved for the trial. That is not for us to determine, but judicial officers are in fact quite—Sure.

Mr. Deyalsingh: Thank you for giving way. Would the rules of evidence have to be amended in any way?

Sen. The Hon. A. Ramlogan SC: I do not think so, but in any event, bear in mind it will be done pursuant to an order of the court. If it is being done pursuant to an order of the court, then that will take care of the problem.

So we would be changing that subclause (3). It would now read:

> All other exhibits other than those referred to in subsection (2) shall, on the direction of the Magistrate, be taken charge of by the police or another appropriate body and shall be produced by them and it at the trial.

I take you next to clause 27(c):

> "where a person is charged with serious or complex fraud;"

We are going to insert the words:

> where a person is charged with an offence involving serious or complex fraud;

to make it clear.

I take you next to clause 33, which deals with the DPP's power to refer back a case to be dealt with summarily and this is another point of where the DPP can give directions. What we are going to do here is to remove that power, as I red-flagged it as a concern of the Judiciary, and it will now simply read:

> If after the receipt of statements and other documents mentioned in section 29 or 31, the DPP is of the opinion that the accused person should not have been committed for trial, but that the case should have been dealt with summarily, the DPP may, if he thinks fit, refer the case back to the Magistrate for reconsideration.

So that the power will reside in the Judiciary as opposed to the DPP. So that takes care of that concern.

Clause 45, I think this is the last change. In clause 45—this is the clause that I think caused some consternation about the publishing—that is in fact the current law. It has always been so. We did not plan to change it because it is the current law and there has not been any concern or any problems with it. But to the extent that the climate has changed, what I propose to do is to introduce a specific power to the court to be able to impose restrictions in appropriate cases if it considers it prudent and just to do so.

So clause 45 will now read:

> No person shall print, publish, cause or procure to be printed or published in relation to any committal proceedings under this Act any particulars other than the following:
>
> (a) the name, address and occupation of the accused person and any witness;

(b) a concise statement of the charge;

(c) submissions on any point of law arising in the course of the enquiry, and the decision of the Magistrate thereon; and

we will simply insert: unless the Court orders otherwise.

So that if the court, in an appropriate case, having regard to the circumstances and the facts or defendants, antecedents, associations and social ties, felt that there should not be any such generalized publishing, the court can simply give it an appropriate direction and that will deal with it. But we are not prepared to impose an absolute restriction because that will carry implications for the constitutional right to freedom of the press, and it will also carry implications for the concept of open justice which is at the heart of our justice system.

9.30 p.m.

So those are the amendments that we have managed to crystallize based on what was said during the course of the debate. I want to point out as well that Legal Notice No. 91 on July 03, 2013, we published the Administration of Justice Rules, and the rules committee of which I am a Member, chaired by the hon. Chief Justice; we will also have to make rules to facilitate the implementation of this law. Some of the points raised with respect to the procedure and administration, the place that would be addressed is in the rules that would come but it does not belong in the substantive law, and that is why we have not in fact made it out here.

Mr. Speaker, I think this is, in fact, a Bill whose time has come. I think we have had some mature reflection and consideration of it. There is no point in pointing figures. The fact of the matter is, almost a century has passed since we have had preliminary enquiries, and this Government has had the political strength, commitment and fortitude to do something about it. [*Desk thumping*] There are others who complain, while we act and while we do, and they will continue to complain from where they sit for a very long time to come because the country is not blind. At the end of the day, whilst they talk, we deliver and perform, and they will continue to talk while we deliver and perform because they wish to only oppose without proposing, and the country is fed up of that.

Today I want to ask the Member for Diego Martin West: what is your vision? What is your plan? How do you plan to transform the criminal justice system? [*Interruption*]

Dr. Rowley: Mr. Speaker, ask him to leave me alone, please. I am not part of the diatribe.

Sen. The Hon. A. Ramlogan SC: Yeah. I know. He is part of a tribe, not even part of the diatribe. That is how they operate. That is why they have placard-bearing people that they try to deflect attention from things.

Mr. Speaker: Take your seat. All right. Withdraw that, please.

Sen. The Hon. A. Ramlogan SC: That is withdrawn, Mr. Speaker, but I could not help but see the kind of diatribe that passes in the course of the debate, at the end of the day this is a very significant and important measure. [*Desk thumping*] One would have thought that in a significant measure like this where the country is going to revolutionize the administration of criminal justice, after close to a century of inertia being mired in a system of bureaucratic morass in the preliminary enquiry stages, after such a significant measure comes, one would have thought that a prime ministerial aspirant would have contributed to the debate [*Desk thumping*] to say what his vision was, to say what his proposal was, but instead you hear nothing, you hear absolutely nothing. So, Mr. Speaker, what you get is the diatribe.

You see, we are here today as part of a package of legislation, coming on the Order Paper, enhancements to the retirement pension benefits for judicial officers. We have accepted the Salaries Review Commission Report, significantly enhancing the remuneration package and terms and conditions for judicial officers. We have increased the budgetary allocation for the Judiciary four years consistently and consecutively. [*Desk thumping*] We have considered lowering the 10-year post-retirement constitutional bar from 10 years to five years. We have considered giving the option of the retirement age being increased, with the approval of the JLSC, from 60 to 65.

This is the package of measures designed to augment and strengthen the judicial arm of the State, and whilst they talk we are doing, we are performing and we are delivering. [*Desk thumping*] So the vision for improving the administration of justice in this country is very clear. We wish to fashion a modern, efficient and effective system of criminal justice because we understand that an effective and functioning justice system is the best weapon in the fight against crime. It is the most potent deterrent to criminal activity and that is why we place priority and high emphasis on this Bill.

With those words, Mr. Speaker, I say, I beg to move and ask for the support of all in this Chamber. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Mr. Chairman: Members, are you ready? May I propose or suggest that, seeing that the Bill has six parts, we shall take the clauses according to parts and we shall stop when there are amendments, okay? Proposed amendments.

Clauses 1 to 5 ordered to stand part of the Bill.

[*Interruption*]

Mr. Chairman: Please, Member, I find you are very disrespectful to the House. Not because you are not happy with the measures, you have to use language that you could better—you know that you are not supposed to use that kind of language. So I appeal to you, even though you feel very hurt about whatever is taking place, please constrain yourself.

Clauses 6 to 12 ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Sen. Ramlogan SC: I beg to move that clause 13 be amended as circulated, please, Chairman:

In clause (4) delete the words "or accident" and replace with the words "accident or other sufficient cause".

Mr. Chairman: Yes, I think that what I have before me, I would like to suggest that after the words, that is—[*Interruption*]

Mrs. Persad-Bissessar: Delete the words "or accident" and replace the words—

Mr. Chairman: Right. We are inserting immediately before the word "accident"—AG?

Sen. Ramlogan SC: Yes, Sir.

Mr. Chairman: A comma.

Sen. Ramlogan SC: Well, no, we will delete the words "or accident" and replace with the words "accident or other sufficient cause". It is circulated.

Mr. Chairman: All right, so we have after the word "illness", we take out the word "or"—AG?

Sen. Ramlogan SC: Yes, Sir.

Mr. Chairman:—we put a comma after "illness, accident or other sufficient cause". Okay? Right, you did not put a comma after so we are just inserting that. Okay?

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill

Clause 14 ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Sen. Ramlogan SC: I beg to move, Mr. Chairman, that clause 15 be amended as circulated, just to change the (d) after the (c), "(d) a Notice of alibi…".

In clause (1)—

A. In paragraph (b) delete the word "and".

B. In paragraph (c) delete the word "." and replace with the words "; and".

C. Insert after paragraph (c) the following new paragraph:

'(d) a Notice of alibi, if any, in accordance with section 21.".

Mr. Chairman: Right. So we had also seen that as well.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

9.45 p.m.

Clauses 16 and 17 ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill. [*Crosstalk*]

Mr. Chairman: AG.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 18 be amended as circulated:

Delete subclause (1) and replace with the following:

"(1) A Magistrate may adjourn committal proceedings in the interest of justice and the adjournment shall be made to a certain date and place."

Mr. Chairman: Please, please, Members, you are using language that is not permissible in this House.

Mr. Imbert: I said "bad". "Bad" is a bad word? [*Interruption*]

Mr. Chairman: Please, please. Let us have some discipline. No, I am not saying "bad" is a bad word, but I am saying just allow us to have quiet. Member for Diego Martin North/East, would you be silent, please. [*Interruption*] Yes, I know, you are.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 19 be amended as follows:

A. In subclause (6) delete the words "to the effect that" and insert the words "to assist the Court to determine whether".

B. Delete subclauses (3) and (4).

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Sen. Ramlogan SC: I beg to move that clause 20 be amended as circulated:

In subclause (3) delete all words after the word "shall" and replace with the following:

"on the direction of the Magistrate be taken charge of by the police or another appropriate body and shall be produced by them or it at trial."

Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill. [*Interruption*]

Clauses 21 to 26 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 27 be amended as circulated:

In paragraph (c) by inserting after the word "with" the words "an offence involving".

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clauses 28 to 32 ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 33 be amended as circulated:

A. In subclause (1) by deleting all the words after the word "Magistrate" and substituting the words "for re-consideration".

B. by deleting subclause (2) and renumbering (3) and (4) as (2) and (3);

C. in subclause (3) as renumbered delete the words "(3)" and replace with the words "(2)".

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

Clauses 34 to 44 ordered to stand part of the Bill.

Clause 45.

Question proposed: That clause 45 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 45 be amended as follows:

A. in subclause (1), delete the full stop and substitute a comma and insert in the line below the words "unless the Court directs otherwise."

B. in subclause (3) delete words "ten" and "six months" and replace "one hundred and fifty" and "two years" respectively.

Question put and agreed to.

Clause 45, as amended, ordered to stand part of the Bill.

Clauses 46 to 50 ordered to stand part of the Bill.

First to Fifth Schedules ordered to stand part of the Bill.

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

House resumed.

Bill reported, with amendment.

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

Miss Mc Donald: Division.

The House divided: Ayes 18 Noes 10

AYES

Moonilal, Hon. Dr. R.

Persad-Bissessar SC, Hon. K.

Ramadhar, Hon. P.

Gopeesingh, Hon. Dr. T.

Peters, Hon. W.

Rambachan, Hon. Dr. S.

Seemungal, Hon. J.

Khan, Mrs. N.

Cadiz, Hon. S.

Baksh, Hon. N.

De Coteau, Hon. C.

Khan, Hon. Dr. F.

Douglas, Hon. Dr. L.

Indarsingh, Hon. R.

Roopnarine, Hon. S.

Alleyne-Toppin, Hon. V.

Partap, C.

Ramadharsingh, Dr. G.

NOES

Mc Donald, Miss M.

Rowley, Dr. K.

Cox, Miss D.

Hypolite, N.

Imbert, C.

Jeffrey, F.

Deyalsingh, T.

Thomas, Mrs. J.

Hospedales, Miss A.

Gopee-Scoon, Mrs. P.

Question agreed to.

Bill accordingly read the third time and passed.

10.00 p.m.

ADJOURNMENT

The Minister of Housing and Urban Development (Hon. Dr. Roodal Moonilal): Mr. Speaker, I beg to move that this House do now adjourn to Friday, June 13, 2014 at 10.00 a.m.; it will be a very hectic day. The Government serves notice that the following Bills would be debated on that day: The completion of a Bill entitled, "An Act to amend the Administration of Justice (Deoxyribonucleic Acid) Act, and other pieces of legislation; Bill No. 7 on the Order Paper, "An Act to amend the Judges Salaries and Pensions Act, Chap. 6:02"; the Retiring Allowances (Legislative Service) (Amendment) Bill, 2014. We expect, Mr. Speaker, to debate Bills No. 8 and 9—sorry, Bills No. 9 and 10, "An Act to provide for the creation of offences related to cybercrime and related matters",

and its associated Bill, "An Act to provide for the establishment of the Trinidad and Tobago Cyber Security Agency and for matters related thereto"; and finally Bills entitled, "An Act to amend the Prisons Act, Chap. 13:01, the Criminal Offences Act, Chap. 11:01, and the Mental Health Act, Chap. 28:02". [*Crosstalk*] Mr. Speaker, I beg to move.

Mr. Imbert: All that?

Mr. Speaker: Before I put the question for the adjournment of the House, may I advise hon. Members that there are several matters on the Motion for the adjournment, and I understand that one, there is some agreement on, and it has to do with the fact that—well, first of all, the matter deals with the Government's failure to deal effectively with the current foreign exchange crisis. Now do you have somebody—

Dr. Moonilal: Yes—

Mr. Speaker: The hon. Minister of Finance and the Economy here?

Dr. Moonilal:—is here to respond.

Mr. Speaker: That is the only one that we will be debating today.

Dr. Moonilal: Correct. Correct.

Foreign Exchange Crisis

Mr. Colm Imbert (*Diego Martin North/East*): Thank you, Mr. Speaker. Mr. Speaker, obviously Members on the other side have some way of getting foreign exchange that other ordinary citizens "cyar" get. [*Crosstalk*]

Hon. Member: What? Getting foreign exchange. There is a point of order?

Mr. C. Imbert: What is the point of order? [*Crosstalk*] Which Standing Order is it, Mr. Speaker? Which point of order? [*Crosstalk*]

Dr. Gopeesingh: 36(5).

Mr. Speaker: No. No. Apparently you made a statement that gave the House the impression—

Dr. Rowley: By getting up and saying, "a point of order".

Mr. Speaker: No. No. No. I am saying that the Member rose on a point of order, which the Member is entitled to.

Dr. Rowley: What point of order? [*Crosstalk*]

Mr. Speaker: Yes. I am ruling. I am ruling on the point of order. And I am saying that the Member was of the view, having regard to what you had said, that you were imputing improper motive. Okay. That is what was—so, I am simply saying, continue, hon. Member, please.

Mr. C. Imbert: Mr. Speaker, they are touchy. They are jumpy.

Mr. Speaker: Please. Please. Please.

Mr. C. Imbert: So touchy; so jumpy. [*Crosstalk*] Let us deal with the facts, Mr. Speaker, because in this country a new phenomenon has emerged in last—[*Crosstalk*] Mr. Speaker, there is a babble of noise on that side. Mr. Speaker, noise on that side.

Mr. Speaker: Hon. Members, please. Please, allow the Member to speak in silence. He has my—AG. The hon. Attorney General, when I am on my legs, you sit.

Hon. Member: You leave.

Mr. Speaker: Please. Please. Please. Hon. Members, please. The hon. Member for Diego Martin North/East has been given clearance and approval to raise a matter on the Motion for the Adjournment. He needs full protection from the Chair, which he has, and he needs your full attention, which I plead with you to provide. Hon. Member for Diego Martin North/East, please.

Mr. C. Imbert: Thank you, Mr. Speaker. Mr. Speaker, the issue that I am dealing with today is a very serious matter. A new phenomenon has erupted in this country whereby when you see things that are obvious, and you hear things that are obvious, you are told they do not exist by the Government. But there is a problem. It has been described as a crisis by the vast majority of people in Trinidad and Tobago, Mr. Speaker, with respect to the availability of foreign exchange, in particular United States dollars.

Now there is so much noise outside there, and the Central Bank has been so defensive and disingenuous in dealing with this matter that it is necessary for me, Mr. Speaker, to educate the public with respect to the true facts regarding this current foreign exchange crisis.

Hon. Member: Just facts. [*Crosstalk*]

Mr. C. Imbert: Yes. "True facts" is a term of art—go and read the dictionary.

Mr. Speaker, if one goes to the *Newsday*, Thursday, February 13, 2014—February—one will see the genesis of the current fiasco. The *Newsday* reported in February of 2014, that:

> "…the Central Bank…"—is going to—"…take steps to address the problems which arise regarding occasional shortages of US dollars in the country."

And this was an assurance given by the Minister of Finance and the Economy Larry Howai—February 13, 2014.

In the article, Mr. Speaker, it was reported that the Central Bank has said that the foreign exchange market had experienced some "tightness" since December 2013 due to higher seasonal demand and unexpected lower levels of foreign exchange conversions from the energy sector. So the Minister of Finance and the Economy gave an assurance that the Central Bank would take steps to address the shortage of foreign exchange. This was in February, Mr. Speaker. Let us see what happened after that.

In April of this year, Mr. Speaker:

> "The Trinidad and Tobago Manufactures' Association…expressed its dissatisfaction with the continued…"—shortage—"…faced by" members "in accessing foreign exchange for their business operations.
>
> The TTMA said…"—that they had been—"…advised that…"—the matter—"…would have been regularised by the end of February"—but obviously it was not.
>
> And they said that their members continue to be affected by the situation—"…with commercial banks maintaining a queuing system, and even…"—with the queuing system "…banks are only able to supply a small percentage of the requirements of local manufacturers'…
>
> The TTMA said"—in April—"this situation cannot persist as it will destroy the non-oil manufacturing sector, which serves as the catalyst for the diversification of the economy of Trinidad and Tobago."—April, 29.

What does the Central Bank say? Everything good, man. This is like Don Quixote, Mr. Speaker. You know the story of Don Quixote? "Tilting at windmills". The Central Bank comes on the same day, April 29, and said it has kept its word and has been steadily implementing:

> "…'a series of new and improved mechanisms to enhance…"—the distribution—" '…of US…' "—currency in the local foreign exchange—"market.'"

Now the facts, as the Leader of the Opposition said on a platform in the Croisee last night. [*Crosstalk*]

Hon. Member: Nobody takes them on.

Mr. C. Imbert: You could say that. Somebody went to the bank to get US $15—one, five—and was told, none available. [*Crosstalk*] Mr. Speaker. Mr. Speaker. Mr. Speaker, they have started up again.

Mr. Speaker: All right. Well you have my full protection.

Mr. C. Imbert: I am not sure about that, you know. They are still making noise, you know.

Mr. Speaker: No. No. No. You are questioning me, man. You do not question the Speaker. I am giving you the assurance of my full protection. Look my arms are open.

Mr. C. Imbert: Thank you.

Mr. Speaker: You have my full protection—

Mr. C. Imbert: Thank you.

Mr. Speaker:—and you are querying that. [*Crosstalk*] Hon. Members, allow the Member to speak in silence, please. You started at eight minutes past 10, so you have some time. Continue.

Mr. C. Imbert: Thank you, Mr. Speaker. So, we have a situation where the manufacturers' association is saying there is a crisis. They are saying that the sector will be destroyed. Ordinary people are going to the bank, and I read now from a story in the *Newsday*, again, Mr. Speaker, May 22:

"Bank ration foreign exchange for travellers US$500 per person".

Hon. Member: Very true.

Mr. C. Imbert: It is a fact.

Dr. Rowley: If you could get it.

Mr. C. Imbert: If you could get that $500, Mr. Speaker.

So the reality of Trinidad and Tobago today with foreign reserves of US $10 billion, import cover for 12 months, when the average throughout the Caribbean is

three months, we have import cover for 12 months, $10 billion [*Desk thumping*]—[*Interruption*]

Hon. Member: Very good.

Mr. C. Imbert: You see, there is nothing good about that. What is the point of having an imaginary figure of US $10 billion—which is what we have had for some time—but you cannot get US $5 when you go to the bank? What is the point of that? And this is what ordinary citizens are experiencing in Trinidad and Tobago. And it has been mentioned in editorials. It has been mentioned in newspaper articles. What is the point of the Government and the Governor of the Central Bank stating that we have US $10 billion in reserves, when you cannot get $200 from the bank when you want to travel, Mr. Speaker? And these are facts.

Mr. Speaker, the Minister of Finance and the Economy indicated some time ago that he was injecting US $200 million into the system to deal with the problem.

10.15 p.m.

Mr. Speaker, I went to the bank to get a small amount of foreign exchange and I was told, "sorry, yuh can't get any". So I said, "what is going on"? The Minister of Finance and the Economy said that they had injected US $200 million into the system and the backlog would be cleared. They said that was for trade only. So, persons who are travelling, persons who have to pay tuition expenses for their children abroad, none for you. And this is an oil-rich country, US $5 billion in the Heritage and Stabilisation Fund, US $10 billion in reserves and you cannot get $500 when you want to travel, Mr. Speaker. And everybody is dodging and ducking, and I am hoping that the Minister is not going to come today and try and fool us, because I would tell you what is going on in this country.

Because the Minister does not want to tell you, the Government does not want to tell you and the OJT trainee that they have in the Central Bank—[*Laughter*] OJT (On The Job Trainee). He is an OJT, no experience. When you have no experience you go on the job to get experience. The Governor is an OJT. He has no experience managing people, managing a bank and managing a complex financial system. [*Desk thumping*]

Mr. Speaker: Hon. Member for Diego Martin North/East, now, I cannot tell you not to describe a member of such importance within our system in those terms. [*Interruption*] No, in such terms, but I just want to appeal to you that if you are describing somebody in such a manner, you bear full responsibility.

Mr. C. Imbert: Yes, Sir.

Mr. Speaker: Good.

Mr. C. Imbert: Yes, Sir. The Government hires OJTs, Mr. Speaker?

Mr. Speaker: No, I am not saying "no", but I am saying to describe the Governor as that, I am just saying that you—[*Interruption*]

Mr. C. Imbert: Yes, Mr. Speaker, I take responsibility for saying that the present Governor of the Central Bank is training on the job. I take responsibility for that, because those are the facts and that is the truth. He is training to be a manager on the job. He has no experience of managing a complex organization. [*Desk thumping*] I am speaking the truth and I take full responsibility for that.

Anyway, let us move on to what is going on. Mr. Speaker, what the new Governor of the Central Bank has done, is introduced a system where previously the Central Bank would inject money into the system and apportion and allocate US dollars to the commercial banks in terms of their customer base and in terms of the breadth and scope of their business. So that the Central Bank would inject money into the system and would give money to the largest commercial banks, Republic Bank, RBC, et cetera, because they have the largest customer base and the largest reach in terms of dealing with businesses, and indeed, in terms of dealing with foreign purchases and foreign travel.

The Central Bank Governor has decided to abandon that system, so no longer the banks with the largest customer base and the banks with the greatest demand for foreign exchange historically for the last 21 years—no longer these large commercial banks where people go to get their foreign exchange to travel, to do business and so on, no longer would they be allocated money in accordance with the scope of their business and their customer base.

Now, the Governor of the Central Bank has introduced a system where 90 per cent of the available foreign exchange is auctioned to 12 foreign exchange dealers including foreign exchange dealers who have a very small customer base and have minimal contact with the local manufacturing sector and local business sector. So, the Governor of the Central Bank is now giving large sums of foreign exchange to financial institutions that do not need it. They have no customers, they have no relationship with the business sector, they have no relationship with travellers. Now, why is he doing that? "He get up in de morning and he ketch a vaps" and decide to give scarce and valuable foreign exchange to financial institutions that do not need it, that do not have customers, that do not have any connection with the industry.

No, wonder, Mr. Speaker, that Republic Bank, RBC, Scotiabank, all of these banks that have all the customers in the country, cannot satisfy their customers' needs. For 21 years the Central Bank injected foreign exchange into the system in proportion to the customer base of the commercial banks in this country. One bright morning in April of this year, our new Governor of the Central Bank get up, "ketch a vaps" and decided he would just distribute by auction to everybody in the system regardless of their size, regardless of their customers, regardless of their contacts with the industry, regardless of their experience, regardless of anything. "Just ketch a vaps" and it is auctioned. So you are auctioning to the highest bidder, so the banks with the least customers could, in all probability, get the most amount of foreign exchange, and the banks with the most customers could get the least amount of foreign exchange. That is what is happening.

The Governor has tampered with the system for God knows what reason and I am asking the Minister of Finance and the Economy to deal with the situation. Do not leave this to work on autopilot. Do not do a Pontius Pilate and wash your hands. This is too serious, it could crash our economy, it could cause a loss of confidence and it could lead to hoarding of foreign exchange, Mr. Speaker. This is a very, very serious matter, and that is why I made my statement that we do not need someone who is training on the job. That position is for a wise old man, somebody who has a lot of experience, who has vast experience in dealing with a complex financial system, not for an inexperienced person.

And I hope that no Government would ever make that mistake again and put an inexperienced person to be in charge of such a tremendous portfolio. The Government has all kinds of people available to them, all kinds of distinguished citizens. You could have picked anybody from within your political party. It did not matter to me, but at least pick somebody with experience, somebody with wisdom, somebody with the necessary skill and expertise. Do not pick an inexperienced person and put them there to experiment, to wreck this economy.

So, I expect that the Minister of Finance and the Economy, instead of the usual words, "oh we are dealing with it, we inject money in the system, we go fix it. We doh want to hear that." We want to hear that the system that obtained before April of this year is going to be restored, because that system worked for 21 years. It worked well, and this new system is going to spell disaster for this country.

I thank you, Mr. Speaker. [*Desk thumping*]

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai): Thank you, Mr. Speaker. Perhaps I should start by making a very clear statement on this matter. There is no foreign exchange crisis.

Mr. Imbert: What!

Sen. The Hon. L. Howai: Let me repeat it again, Mr. Speaker. [*Interruption*] There is no foreign exchange crisis. [*Interruption*] I am not just talking about US dollars, I am talking about euro—[*Crosstalk*]

Mr. Speaker: Please, allow the Minister to make his statement in silence. Okay? Hon. Minister, continue please.

Sen. The Hon. L. Howai: So, Mr. Speaker, I am not just speaking about US dollars. Reference was made to US dollars, but I am not just talking about US dollars. I am talking about yen, euro, sterling, Yuan, whatever currency you are looking to acquire, there is no foreign exchange crisis.

There are some issues around the timing of getting funds which is something that has been ongoing over the past 20 years. It is not something that is new, that did not exist, that is suddenly appearing on the horizon. It is something that had existed, and that is why over the years the Central Bank has continually tweaked the system, continually massaged and managed and amended the system, because as the economy grows, as the economy expands, as the economy changes, the system by which the foreign exchange gets into the market has changed.

Just for the purposes of the *Hansard* and for the public at large, I just want to give the facts about where we are, and the Member did allude to it and I think it is indisputable. The economy is growing and, of course, as the economy grows, the demand for foreign exchange increases. That is normal. [*Interruption*] But over and above that, the foreign exchange reserves of the country have continued to increase year over year. When this Government came into office the foreign exchange reserves were close to $9 billion. It was about $8.9 billion. Today foreign exchange reserves are $10.3 billion, and notwithstanding the growth and expansion of the economy and the growth in GDP, and the total value of GDP, we continue to have 12 months of import cover, and it is expected that that number will increase by the end of this year. [*Interruption*]

During the course of the last year, the balance of payments of this country was positive. In fact, it was over $700 million, and this year we expect it to continue to grow and that would continue to add to the growth in reserves of the country. The

Heritage and Stabilisation Fund continues to remain strong. Deposits in the financial system—US dollar deposits—continue to grow. It was about $500 million in 2008. As at the end of last year it was just over $3 billion, and this year, today it is close to US $4 billion. So, there is a lot of foreign exchange in the system. But I do recognize and say, and recognize the fact that there has been an increase in the amount of the shortages that have been occurring and that has happened recently.

The system has been managed by the Central Bank on an ongoing basis over the past 20 years, and as I said, it has had a number of periods of tightness where you hear these same cries. So, this is not new. These cries are heard on an ongoing basis over the last 20 years, and we deal with the issue and we have dealt with the issue and we will continue to deal with the issue as we go forward. Over the past few months, I would say in this fiscal year for the Government, we have injected almost three quarter of a billion US dollars into the system. In November $160 million; in December $40 million; in January $160 million; in February $140 million; in May I did say we were going to put $200 million in, about two weeks ago, and we did in fact do that, and this week, yesterday in fact we put another $50 million into the system to, again, deal with the issue.

I do acknowledge that there was an issue last week, or week before, when we did put the $200 million, and the Member is right, the statement was made by the Central Bank, that this is to deal with trade, and because of the restrictive nature of the instructions that were given, it did result in some tightness in terms of getting the funds, but that immediately, once it was recognized, was dealt with—[*Interruption*]

Dr. Rowley: How?

Sen. The Hon. L. Howai:—addressed. It was released. Instructions were given to the banks and the issue started, the foreign exchange started to be dealt with, and people started to get their foreign exchange.

So, Mr. Speaker, the fact is that what you are hearing is you have one or two small areas where there has been some queuing, and because of that it seems as if it is a much wider problem than really exists. But, at the meeting today that the Central Bank had with the chamber and with the TTMA, and a number of members in the business community, quite a number of members indicated that they have access to the funds and they have received or have been receiving US dollars. And, although some members did allude to the fact that the spreads were a "lil bit" wider than they would have liked and they think that, perhaps, there is

something that could be done around that, but to a large extent the issues that existed and had existed a few weeks ago, have, to a large extent, been ameliorated by US $250 million that has been brought into the system. [*Interruption*]

So, Mr. Speaker, as I say, there was, two months ago, the Central Bank did introduce some changes into the system and that did create some issues. But I want to say, as the adjustment process took some time to be effected, and I just want to say that some of the changes that were made. The existing system was left in place. And on top of that what happened is that the Central Bank did, as the Member indicated, decide to widen the net, and therefore include all authorized dealers in the allocation of funds where some had been previously excluded.

And again, the purpose behind that, was to help broaden the market to start opening up the market and freeing the market a "lil bit" more. We have what is being known as a dirty float. But over time as you go along, that dirty float could become an issue unless you continually—and the Central Bank has been doing that over the years, as you continue to loosen the system and continue to ensure that the system can reflect the changes that are taking place in the economy.

10.30 p.m.

There has also been a misunderstanding, Mr. Speaker, around this auction system. It sounds as if everything is being auctioned now. In fact, previously, 25 per cent was auctioned and 75 per cent was shared up in an agreed formula. Today, 50 per cent is auctioned and 50 per cent is shared up, so that approximately another 25 per cent was added to the sharing, and this is the information from the Central Bank. So they have moved, and gradually they will continue to move to a situation where you continue to free up the market and continue to open the market to the option system.

So the third change they have made, Mr. Speaker, is that the volumes of intervention have increased from smaller volumes to larger volumes. So, previously, they used to do between $20 million to $50 million, now they are doing between $50 million to $200 million.

Mr. Speaker: Could I seek your cooperation please.

Sen. The Hon. L. Howai: Thirdly, the timing of the market is now based on anticipated market tightness, as opposed to intervening when the market was tight. So this month is supposed to be a month where there is a lot more liquidity in the system. At the end of June, cash normally comes in as the energy-based

companies make their quarterly tax payments and so on. And as a result of that, you will expect this month—towards the end of this month the market to become very liquid. But in anticipation of the fact that over this next week coming, things will still remain a little tight, the Central Bank yesterday put another $50 million into the system.

So, Mr. Speaker, the fact is that the system has to continually evolve, the Central Bank has to continue to manage this process. The fact is that periods of tightness is something that has continued or had existed previously and will continue—has continued to exist, and will continue to exist for some time, as we continue to move towards a much more equitable system. I want to say that the Central Bank, in order to ensure that banks maintain a certain kind of probity in terms of how they deal with the market, does in fact do audits of the banks. They do, in fact, also ensure that each bank has proper anti-money laundering procedures, so that they are able to deal out or address any potential issues that may arise with respect to how funds come into the system and what is done with the funds and who purchases funds with what kind of money and so on.

So, Mr. Speaker, the thing is, we do have a robust financial system; we have a strong and robust Central Bank; we have strong foreign exchange reserves, the economy is strong and we will continue to manage the system. Over the short term, over the medium term, we will have a situation where we will continue to have a small number of sellers and a large number of buyers, and because of that you will find that there are periods of tightness in the market, but we have the financial strength to deal with this issue and to continue to manage this issue as we go along. This is not a situation which should result in any kind of issues of confidence; this is an issue where we have to deal with some administrative problems and the Central Bank is dealing with it, and we have every confidence that the Governor and the members of the Central Bank will deal with this problem and will have it sorted out.

So, Mr. Speaker, I end as I started. The fact is, the Trinidad and Tobago economy remains strong, the foreign exchange reserves are healthy as everyone has indicated; there is no question about that, the confidence in the economy is good and there is no foreign exchange crisis. Thank you, Mr. Speaker. [*Desk thumping*]

Question put and agreed to.

House adjourned accordingly.

Adjourned at 10.34 p.m.