SENATE

Thursday, June 08, 2017

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Rohan Sinanan who is out of the country. Hon. Senators, with your leave, we will do the swearing-in of the temporary Senator a little later in the proceedings.

URGENT QUESTIONS

Death of Elderly Citizen at POSGH

(Action Taken)

Sen. Wade Mark: To the hon. Minister of Health: in light of the treatment of an elderly citizen at the POSGH and his subsequent death on the grounds of that facility, what action does the Minister intend to take to ensure that officials involved are held to account?

The Minister of Health (Hon. Terrence Deyalsingh): [*Desk thumping*] Thank you, Madam President. First of all, I will like to offer on behalf of the Government and people, our deepest condolences to Mr. Christopher Phillip. He was in my thoughts and prayers last night.

Madam President, this question is based on a false premise in that it presupposes guilt. I will now read a preliminary report which I commissioned yesterday as supplied by Dr. Anthony Parkinson.

Mr. Phillip was admitted on June 6th, that is Tuesday June 6th at 10.09. He was 62 years old, not 82 years old. His vitals were taken and he was sent for an X-ray. His main complaint was that he was suffering at homebecause he had no one to take

care of him. He received the X-ray at 2.30 p.m. and the results of the X-rays were told to Mr. Phillip.

Mr. Phillip was then medically discharged and instructed not to leave the A&E department because it now became a social case due to his living conditions at home. He complained he had no one at home to take care of him, he had no meals, he was hungry, he had no money for transport. He then disappeared. So that was his first disappearance after being told to wait.

At 3.00 p.m. the same day he was observed by the MTS guard. He was then taken back into the A&E at 5.16 p.m. on Tuesday, again, where his vitals were taken and he was put in a wheelchair to be taken to an examination cubicle. Mr. Phillip then disappeared for the second time in the same day. The assumption was then he discharged himself against medical advice which as a patient you are entitled to do. On Wednesday 7th June yesterday morning after being treated—[*Interruption*]

Madam President: Hon. Minister, your time is up.

Hon. T. Deyalsingh: Thank you.

Mr. President: Sen. Mark.

Sen. Mark: Madam President, I would just like to ask the hon. Minister, what measures he intends to pursue to avoid such an incident reoccurring in the future?

Hon. T. Deyalsingh: Madam President, officials cannot detain someone and constrain someone and treat them against their own wishes, their own consent. The health authorities, the doctors and nurses treated Mr. Phillip twice on the same day. Mr. Phillip disappeared of his own volition. There is no guilt, there is no process to be fixed, protocols were followed and unfortunately, something happened in the intervening period between Tuesday afternoon and Wednesday when he then came back and presented on the lawn. We have no idea what happened in that

intervening 12 hours, but all protocols were followed and he received the best of treatment, but he disappeared twice after being told to wait. Thank you very much, Madam President.

Sen. Mark: That is an alien, he disappeared.

Madam President: Sen. Mark.

Sen. Mark: Madam President, may I go on?

Madam President: Second question?

Sen. Mark: Yes. I am going on.

Scarborough General Hospital

(Shortage of Chemical Reagents)

Sen. Wade Mark: To the hon. Minister of Health: having regard to recent reports that the Scarborough General Hospital is experiencing a shortage of chemical reagents, what urgent measures are being taken to rectify this problem?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you, Madam President. The Scarborough General Hospital did, in fact, have some challenges in the provision of laboratory services. As of today all routine tests are being provided and they have two months' supply on hand and another shipment is being received tomorrow; therefore, they will have three months' supply. They have now taken the decision, because I was in Tobago on Tuesday, to increase their supply of these reagents from the existing three months to six months so there will be no shortages. In view of the current challenges, the following have been done: one, expedited delivery of reagents; increased inventory levels from three months to six months; and if the services are not available in-house, these services are outsourced, so no one is disadvantaged or goes without treatment. Thank you, Madam President.

Madam President: Sen. Mark. Next question, Sen. Mark.

Fatal Police Shooting of Mentally Ill Person

(Training of Officers)

Sen. Wade Mark: To the hon. Minister of National Security: in light of another fatal police shooting of a mentally ill person and the admission that officers are not trained to treat with such persons, what is being done to address this situation?

The Minister of Foreign and Caricom Affairs and Minister of State in the Ministry of National Security and Acting Minister of National Security (Sen. The Hon. Dennis Moses): [*Desk thumping*] Thank you very much, Madam President. Firstly, allow me to convey our heartfelt condolences and sympathies to the family of the deceased person.

Officers of the Trinidad and Tobago Police Service, Madam President, are trained to treat with confrontation by all categories of persons including mentally ill persons. The Police Service Academy induction training programme offers training to recruits with respect to treating with mentally ill persons.

In addition, Standing Order no. 33 of the Trinidad and Tobago Police Service defines who is considered to be a mentally ill individual, as well as a person designated to deal with such individuals. It also provides guidelines for the handling of mentally ill persons who have breached the law and have been detained into custody and dictates a process to be adopted by police officers for such.

To augment these provisions, a reference guide to identify as quick tips and effective communication, de-escalation techniques and general interaction when treating with mentally ill persons. The Trinidad and Tobago police force will continue to train officers; notwithstanding the training and guidelines provided in light of the recent reports involving police officers and mentally ill persons, the following is being pursued: the Trinidad and Tobago Police Service is in the

process of reviewing its training programmes.

I should add, Madam President, that ongoing training continues apace and is applicable across all branches of the service. Thank you very much. [*Desk thumping*]

Sen. Mark: Is the Minister aware that Inspector Kerr at a news conference yesterday indicated that police officers are not trained to deal with mentally ill persons?

Sen. The Hon. D. Moses: Madam President, I would have responded to a like question in the past. I would reiterate, repeat, that training continues apace across the service. Thank you very much.

Madam President: Sen. Mark, next question.

Caroni Swamp Used as a Trafficking Hub

(Measures Taken to Confront Problem)

Sen. Wade Mark: To the Minister of National Security: in light of recent statements made by the Minister of Agriculture that the Caroni Swamp is a hub for trafficking human beings, drugs and guns, what immediate measures are being taken to confront this problem?

The Minister of Foreign and Caricom Affairs and Minister of State in the Ministry of National Security and Acting Minister of National Security (Sen. The Hon. Dennis Moses): Thank you very much, Madam President. The Ministry of National Security exercises ongoing vigilance and is involved in operational activities countrywide in support of the well-being of citizens and residents of Trinidad and Tobago, and more broadly to safeguard the national security interests of our country. As required and determined as necessary, operation activities are focused in particular locales. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam, can I go to the next question?

Madam President: Sure.

Increase in the Price of Chicken

(Government Protection)

Sen. Wade Mark: To the hon. Minister of Trade and Industry: given the announced increase in the price of chicken at poultry depots and the impact this would have on vulnerable citizens, how does the Government intend to protect said group of citizens from the effects of the increase?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): [*Desk thumping*] Thank you, Madam President. The Minister of Trade and Industry notes the statement by the President of the Pluck Shop Association of the increase in the price of chicken at poultry depots and we have addressed the matter. The Government recognizes that chicken, like all agricultural products, are subject to local market conditions and international conditions vis-à-vis the price of inputs. Based on the findings of the Consumer Affairs Division, the announced price increase by the industry is, in effect, we believe, a normal fluctuation in prices. For instance, for the first quarter of 2017 chicken prices were generally lower due to seasonal factors. On average, consumers paid $5.70 per pound over the period Januaryto March 2017. For instance, if I could go back to 2010—[*Interruption*]

Madam President: Minister, hon. Senators, the time for Urgent Questions has expired. Is it the wish that we will continue?

Sen. Khan: Madam President, if I should make an intervention here. When the Standing Orders were changed for Urgent Questions, it was urgent matters in the society that may have occurred prior to filing questions on notice. I mean, six questions obviously is an overkill. Okay? So what I will do, I will allow this fifth question into its finality and we would not want to extend the time.

Sen. Mark: We will decline and we will have a discussion with you on this matter. Thank you.

SENATOR'S APPOINTMENT

Madam President: Members, hon. Senators, at this stage I will revert to the Order Paper and we will now do the swearing-in of the temporary Senator.

Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona O.R.T.T., S.C.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T., S.C.
President.

TO: MS. ALISHA ROMANO

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

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, Alisha Romano, to be temporarily a member of the Senate with effect from 8th June, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Sinanan.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of June, 2017."

OATH OF ALLEGIANCE

Senator Alisha Romano took and subscribed the Oath of Allegiance as required by law.

MISCELLANEOUS PROVISIONS

(TRIAL BY JUDGE ALONE) BILL, 2017

[Third Day]

Order read for resuming adjourned debate on question [March 14, 2017]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Hon. Senators, 14 Senators have spoken already on this Bill including the hon. Attorney General who is the mover of the Motion. Sen. Small.

Sen. David Small: [*Desk thumping*] Good afternoon everyone. Madam President, it is with great humility that I acknowledge your graciousness in allowing me to speak this afternoon on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017, which is an Act to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02.

Madam President, we are here to look at this piece of legislation which, when I peruse the agenda circulated by the Government, it forms part of a package to try to treat with what everyone understands as some of the ills of the existing criminal justice system. So while this is a Bill that sits by itself today, it forms part of a framework of legislation to try to improve the current system. And I am fully supportive of that. I think that the fact that we in Trinidad and Tobago we continue

to talk about challenges, but recognizing that challenges require concerted effort and concerted action and some planning.

So when I looked at this particular piece of legislation, Madam President, I think that this is something that the Government should be congratulated for. I think that this is a move in the right direction. I am always one to [*Desk thumping*] say that no piece of legislation will ever be perfect. I think what is being proposed in this Bill provides an option for persons. It does not in any way, in my respectful view, challenge or take away anyone's existing rights to trial by a jury. All, in my respectful view, this piece of legislation does, it provides an opportunity for someone to have an additional option, and if I am in a place someone is giving me, leaving me what exists and giving me an additional option, I do not really have any—see how there can be any difficulty with that.

As with any system, nothing will ever be perfect. The existing system has significant challenges and I will outline some of those things because, I think, everyone probably has the view that trial by jury is perfect and I would like to say that it is not, it has its imperfections. And while I am sure trial by judge alone has its imperfections it also has its good points. So I will try to present a balanced argument for my view.

I will make it clear right now, Madam President, this is something that I support. I believe that this is something that while it may not fix the backlog of cases within the system, we cannot sit and say, well if it does not fix the backlog, well it is not going to work. We have to start to plan for the future and I think this is part of a system of planning for the future and it is something that I believe is the way we should go and it should really be a methodology that is applied across the board to other endeavours.

So, Madam President, if you would permit me after those couple of opening remarks, I just wanted to build my argument or build my contribution around helping us, outlining what my research showed about the origins of trial by jury. The origins of trial by jury where the swearing of 12 men to account for the facts goes back way past the Norman Conquest of 1066. The petty jury, as it was called, made its first proper appearance in the 12th Century and it became more prominent due to the fact that the church disallowed the practice of the 12—of water and fire ordeals.

Madam President, given the basic nature of many persons performing wrongful acts to lie when challenged, there had to be some basis upon which to adjudicate guilt or innocence. Prior to trial by jury, there was something called trial by ordeal. There is the ordeal of water which was to essentially take someone, cast the suspected person into a pond of water, and if without any action on their part they floated to the surface they were deemed innocent, and if they sank they were deemed guilty.

There was the trial by what was called hot iron. The person would be required to pick up a measure of iron weighing one pound after it had been heated in a fire and you would have to carry it nine feet measured in the steps of his own feet. And if he was able to—he had to carry it ninefeet and after three days if the wounds suffered in his hands became infected, then he was found guilty, and if it was not infected, he or she would be said to be innocent.

And finally, there was something called trial by hot water, where they would heat a cauldron, and again, you would have to dip your arm into a cauldron of boiling water up to your elbow and then, again, they would bind the wound and if after three days it was not infected you would be found not guilty. So that trial by

jury did not just appear, there were things going on before that. So that this ancient, these ancient modes of trying to adjudicate guilt or innocence, of course, are inadequate for a modern complex society in which we operate today. However, I would like to posit that given some of the heinous crimes that are happening in the world now, some of these options should really be back on the table because people are doing some crazy things.

Madam President, in 12th Century England, juries were a tool for the king to determine whether or not persons were guilty or innocent. And if you will permit me, Madam President, authors William Forsyth and Appleton Morgan in their 1875 book *History of Trial by Jury* called attention to the conflicting theories on the origin of the jury system, and I quote:

> They contend that jury does not owe its existence to any preconceived idea of jurisprudence, but gradually grew out of modes of trial in use amongst the Anglo-Saxons and the Normans.

—some of which I have just described. So, Madam President, trial by jury has traditionally been seen as the cornerstone of democracy and the rule of law. This led Lord Devlin to dramatically comment in 1956 that trial by jury, and I quote:

> …is the lamp which shows that freedom lives.

We have inherited this system, Madam President, from our colonial masters and there is nothing wrong with that; that is just part of our history.

Madam President, the Bill before us presents, provides the options for an accused person to opt for a judge, a trial with a judge only. I have no challenge with this, Madam President, in essence. The question may arise as to what process or pressure would be brought to bear to get this outcome. For instance, it may not be appropriate or correct for someone to choose this option where the overriding

factor or consideration in their mind is the likelihood of being incarcerated for years awaiting trial. Accused persons may find themselves making a life-altering decision, but however, they should be able to do so in a very considered, and what I would say, an advised and pressure-free manner.

So, Madam President, what are the benefits of a trial by judge alone? I would go through a couple of them. When a judge delivers a verdict they generally have to give reasons for their decision. A judge cannot sit and give a decision and say, "Well I support this party or I support having this person being innocent". A judge giving a verdict has to provide his reasons in writing, usually quite voluminous.

The process for a trial by jury means that the jury's deliberations are secret and they do not have to provide any reasons for making their decision. So that is a fundamental difference. So if a judge makes a decision he has to put it in writing. A jury deliberates and provides there, guilty or not guilty, that is it, there is no reasoning provided by the jury.

Another issue, Madam President. Knowing the reasons why a judge decided on a guilty verdict makes it easier for a defendant to appeal and makes the process more transparent. It can help also demonstrate that there was no bias at play and that the decision made was made solely on the basis of an objective analysis of the evidence presented. With jury deliberations being secret, Madam President, there is really no way to know whether their decision was made from a purely legal basis or for other reasons.

Madam President, as a typical jury is made up of members of the public, mostly or almost totally with little or no legal knowledge, it can be difficult for them to understand the complexities of challenging criminal matters. Judges on the

other hand have legal training and experience and are able to analyze evidence, know what to give priority to and assess the credibility of witnesses. Although jurors in jury trials are advised to leave their prejudices out of the trial, it is difficult to know the extent to which they are actually able to do this. In particular, when you are dealing with complex issues, expert evidence in many times is complex for a judge, let alone for jury, especially when there is a lot of scientific or forensic material to consider. This also applies to issues where there may be issues of sophisticated accounting or market transactions.

Madam President, a key issue here when I thought about this entire process is that fewer and fewer people actually want to serve on a jury and many have worked out how to avoid the task. I can give you personal experience of me, I have served jury service and after that first experience I did not want to do it again. I did not want to do it again, I am not going to lie. So that it is not a fun experience. I have served on a jury and it was not something that I wanted to repeat. And while I understand it is my civic duty, at the time when it came to me, you did what you could do to find a reason to not attend, and that is just what it is.

Madam President, the process of a trial by jury is, of course, longer and more procedurally complex than when a trial is heard by judge alone and, of course, more expensive by extension. Madam President, the glaring reality is that this kind of confected environment in which jurors are expected to operate may not be the most functional one. The capacity to closet jurors away from the real world of instant information and swirling prejudice perhaps is gone forever. The world in which we operate now, the technology that is available in these devices, I can sit here and get information from anyone all around the world in real time. You know, you closet a jury and the extent to which you can protect or block them out from

what is going on in the world, it is an interesting concept, the practicality or the ability to really deliver on that is questionable.

So, Madam President, what are the benefits of a jury trial? Advocates of jury trials generally see the benefits of having—there is a benefit of having a group of persons making a decision rather than putting the responsibility into the hands of a single person. So, I understand that logic. If you are thinking that if this one person is somehow infected with a particular view, whether you know or not, having more persons contributing to the decision would allow for perhaps some tempering of that view. So that this essentially could reduce the likelihood that a single person's bias or prejudices could influence the outcome of a verdict.

2.00 p.m.

Although judges are meant to be impartial and unbiased, if they do have a personal bias against a defendant it may mean that they do not give a balanced or a fair verdict. It is also believed by some of the researchers in the area, that a trial by jury can more accurately reflect the views of the community and society as the jury is taken from a sample of members that cut across the entire society. It could be argued that a single judge may be out of touch with the views of the society, and their decision may not reflect the values of the society that they serve as a whole. Another argument to support jury trials is that juries perform a valuable role in connecting the community with criminal justice, and in bringing into the process the community's values and standards. There is also the consideration of cases where defendants think that saturation via adverse media coverage will make it impossible for them to get a fair trial before a jury.

So, Madam President, what I have tried to do is to outline that yes, there are positives for having a trial by jury; and yes, there are positives for having a trial by

judge alone. This Bill provides for both. So, I struggled to try to say why this should not be allowed. And every system, just as there is positive there is "not so positives". That is just the nature of the world. I do not think that there is anything that is completely all positive and it is all good and wonderful.

Madam President, I want to quote in Australia, Queen's Counsel, MJ McCusker had an argument articulated in a celebrated paper delivered in 2009, entitled "Bad press: does the jury deserve it?" He delivered this at the 36th Australian Legal Convention on the 18 September,2009, and I want to quote—his argument was that in an era where:

> "…there is a demand for what is popularly called 'transparency'…the deliberations of juries, and their reasons for a verdict, are shrouded in total secrecy. Not only do juries not give reasons, but they are not permitted to do so. Hence, to appeal against a jury's verdict"—tends to be—"difficult.
>
> The only way of achieving 'transparency' is for all trials to be by Judge alone, possibly sitting with an assessor or assessors to assist the Judge in cases which may involve complex issues of a scientific or commercial nature, or perhaps by 3 Judges, each writing, without conferral, separate decisions..."

Madam President, it is in fact arguable that one is more likely to obtain the essential truth about a matter via the McCusker type model that I have just outlined, than through a traditional jury process. A judge is trained to analyze evidence, to give proper weight to some evidence over other evidence, and to assess witnesses, the veracity of the witnesses, and to probe the arguments put by counsel, and is less likely to be swayed by emotive rhetoric or other histrionics of colourful advocates. If we step back and examine many pieces of legislation that

have been brought here in the past period that I have been here, Madam President, such as the Procurement Act, important decision makers have to provide reviewable reasons for their decisions.

But when it comes to a citizen's liberty, reasons are not required, judges are accountable, jurors are not. Juries are an article of fate for the criminal defence system, and it is often trotted out like a mantra. Interestingly, in Australia, the Australia bureau of crime statistics has figures that show that judge-alone trials result in higher rates of acquittal than jury trials. In the data presented for the period when I went on their website, they had data up until 2011, they showed that defendants were acquitted 55 per cent of the time in judge-alone trials as compared to 29 per cent by jury trials. So that time-worn practitioners say this is because judges are busy people and to convince someone requires more detail and carefully written reasons than if they are acquitted. There is also, Madam President, the very real likelihood that judges would not be as easily swayed by juries by the wily exhortations of the skilful advocate.

Madam President, perhaps as our justice system evolves, we could examine other configurations, such as multiple-trial juries, trial judges sitting in panels or lay assessors deliberating alongside judges. These are some of the ways and some of the tools that have been applied in more modern democracies that have had long experience with this. Madam President, there has been a lot of faith placed in the trial by jury system in Trinidad and Tobago by the legal profession, and by persons in academia, and by the members of the general public. But, I believe, I strongly believe this should not prevent a more fulsome discussion in the community and in the legal policy-making arena about whether or not judges hearing the evidence and deliberating on criminal charges is the more preferable route to follow if we

want to ensure greater transparency in the justice system.

That is the essence of the debate today. On balance, Madam President, anyone who has been following my contributions in the short period that I have been here in this Senate would know that one of my clarion calls has been for transparency in all that occurs. I think that everyone knows that I strive to understand systems. I want to see and understand system. But, for me to understand how it works I need transparency. When it is all shrouded in secrecy it is difficult to make an intelligent call.

Perhaps, Madam President, this well-intentioned Bill will allow some accused person to take the view that a judge-only trial at the very least gives them some deep stated insight into the reasons for any judgment, whether it is positive or negative on their behalf. Prof. Jodie O'Leary of Bond University in Australia, in a 2011 article entitled, "Twelve angry peers or one angry Judge: An analysis of judge alone trials in Australia." Based on her studies, she says that she concluded that the experiences have, and I quote:

> "…reignite the debate as to the value of jury trials as opposed to decisions made by professional judiciary."

She goes on to state that:

> "…there is still little consensus in the Australian judiciary or the legislature as to whether the accused's choice is to be preferred or whether there is a presumption of a jury trial due to the community's interest."

Madam President, that is where we are today. We seem to not have consensus on whether or not there should be a widening of the scope of the existing system to allow persons the option to choose a trial by judge alone. I cannot see any significant mischief in that. There is going to be some administrative issues inside

of there to support someone wishing to go that route. But, I cannot see—you are an accused person, the current system allows you to have trial by jury. The new provision gives you the option to have trial by judge. You can still have a trial by jury, so that you are not negatively affected. And I understand—I have reviewed the Bill and I think there are some issues in there, but I do not see anything in there that should stop us from moving forward. I strongly support the move. [*Desk thumping*]

Madam President, I also have a view, because we have as a country to make decisions about whether to entrench the status quo or to make a modification to the existing system. Throughout my short time here in this Senate, people, entities, and certainly when I listen to some—I am firmly on the side of trying to make modifications and improvements going forward. And it is not that the current system is bad, there is always room for improvement. There is always room for improvement. If you think that a system is perfect, then we need to check the extent to which our brain cells are functioning.

No system is perfect. It has flaws. But, this Bill allows for providing accused persons or persons before the courts having the option to decide that they want to have their matter treated by a judge alone, I do not see the mischief in that. To be clear, Madam President, the Bill before us does not discard jury trials, and I always tend to lean towards ways of improving or optimizing systems, insofar as such changes bring a broader or more noble or additional benefits to the citizens of Trinidad and Tobago. It is my considered and respectful view that this Bill does just that.

Madam President, as I begin to wind up my short contribution—because I did not think that this matter warranted from my own view a long contribution—I

think that the matter is, from where I sit, respectfully, well considered. I think that, again, the Attorney General and the team who have packaged this as part of a whole system of legislation, because I have looked at the Government's legislative agenda and I have seen some additional pieces that are going to try to plug some of the gaps within the existing judicial system, it is a part of a package of legislation to try to improve the system. I cannot, respectfully, resist that. I think that that is something we should be supporting and moving forward with. We have challenges in the system. The only way to fix it is to say, okay, let us see how we can, and there is no way you can change the system from one system to a new system overnight. You go in stages.

And I think this is the approach that has been adopted by the Government, and certainly with regard to this Bill, I understand, and I even have a couple of issues inside of there, but I think those are administrative things about making sure that persons who want to choose trial by judge have proper—someone guiding them, they have proper or independent persons to guide them in terms of making that option and helping to understand what it really means. But, I do not see that as something that should prevent me from thinking through and saying, what is the overall good? Is this for the overall good of Trinidad and Tobago or not? Madam President, I tend to support the former view. I believe this is for the better good of Trinidad and Tobago. And, Madam President, as is my wont, having you giving me the wonderful opportunity to speak, I wish to thank you very much for bearing with me through my contribution. Thank you very much. [*Desk thumping*]

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you, Madam President, for the opportunity to join in this debate today. Madam President, this Senate treats with the amendment

of both the Offences Against the Person Act, Chap. 11:08, and Criminal Procedure Act, Chap. 12:02, and for related matters.

Madam President, through my contribution here I intend to show thefollowing:

1. The jury causes a great waste of time;
2, The jury is often said incompetent to determine many of the complex issues before it;
3. The jury is swayed by emotional appeal;
4. The jury cannot in many instances understand complicated transaction, or the various legal terminologies used and involved in many cases;
5. Juries are costly;
6. Juries are tedious;
7. Juries favour the accused; and
8. 20th Century challenges to jury trial, particularly the influence of modern technology.

Madam President, while it is a fairly—this Bill is a fairly straightforward one—it is a very important piece of legislation, and most not be treated in any trivial manner, as this is not the time for political games or any other games.

Madam President, clause 3 of the Bill seeks to amend the Offences Against the Person Act to accommodate trial by judge without a jury. With clause 4 of the Bill seeking the amendment of the Criminal Procedure Act, to give an accused personthe option, and I think that is what has escaped a lot of my colleagues through the various contributions of many of them. It gives the accused an option. It does not really remove the option of trial by jury.

Madam President, permit me to reiterate the point that this Bill presents an

option to accused persons. Its aim is not to abolish trial by jury, but to merely add another option for the accused, and as part of the larger criminal justice system in this country. So, the obvious question is, what is wrong in presenting more options to an accused person? Absolutely nothing is wrong. We are living in a time that is so pervasive, when crime is so pervasive. I dare say that even if one had their head buried in the sand one would know that we in this society, we have a very serious problem with crime in this country, and various forms of criminality among persons in the society.

Madam President, the option that this Bill presents may, in the years to come, redound to the benefits of the citizens of this country, who, we, all of us, all of us in here, even my colleagues who would have spoken against this piece of legislation, would end up serving them and their families in time to come. Madam President, there has been much representation by my colleagues on the other side, and others, that this Bill attacks a constitutional right to a trial by jury. I beg to differ with that school of thought. I have looked at the Constitution of this country, and I have noted that there is the constitutional right to a public and fair trial before an independent and impartial tribunal at section 5(f).

So then, is trial by jury the only manner in which a fair trial before an independent and impartial tribunal can be afforded to the citizenry of Trinidad and Tobago? We, this Government, say that the right of a citizen to a fair trial before an independent and impartial tribunal can be afforded to the citizens of this country, and is actually enhanced by the provision of an option in this piece of legislation. And I find myself having to say, I think the third time now, this Bill does not serve to replace trial by a jury with a trial by a judge. Instead it provides an option to the accused person. How then is providing an option to an accused

person determined as being unfair? How does one, in an attempt to enhance justice in this country, how can that be considered to be wrong or unfair?

Madam President, it takes little attention to notice that as a society we are tackling a very grave crime situation in this country, and crime affects us all. Because when we leave here, we go back to our various homes in various communities. So, it impacts on us. This Government, our Government is about taking action, and not looking back and mourning lost opportunities. We are looking ahead, and the challenges that lie ahead, and how do we combat these challenges? Madam President, this Government would not be begging citizens' pardon because we failed in our duty when we had the opportunity to act.

In doing what is needed to address the crime situation, our Government has set out a package of legislation to address the crime situation, and this Bill forms part of that package. And I dare say, Madam President, despite what the naysayers have said, and would continue to say in the future, I want to commend our Attorney General for doing a fine job in bringing this piece of legislation to this House. [*Desk thumping*] He works very hard, and we are seeing the benefit of his hard work. Well done Mr. Attorney General.

Madam President, trial by jury is a feature of our criminal justice system, but it is an old construct we will all agree, having evolved over centuries as part of the English common law system. I was particularly interested in my colleague Sen. Small in some of the examples he cited. I mean, I am quite sure our collective blood crawled having one's hand immersed in boiling water and all other such forms of barbaric kind of testing, as was done so many years ago. I am quite happy that I was born when I was.

So Madam President, as outlined by the hon. Attorney General in his

presentation to the debate on this Bill on March 14th, we are now 173 years into the utilization of trial by jury system, and therefore, self-reflection is appropriate and healthy at this point in time, but action is fundamental to bring about change. And, we are a fundamentally different society today from over a century ago. For our laws and systems to be effective, we must modernize our various pieces of archaic law, because we are an evolving society, becoming more and more modernized, and if we do not keep in tune with the times, I shudder to think the outcome.

Madam President, a jury refers, at least in the common law tradition, to which we belong, to a body of ordinary persons who are selected from a larger number summoned by the State—and I say summoned, and I recall my colleague Sen. Small, sharing with us that he would have served as a juror and did not have the enthusiasm to do so subsequently. A feeling, an emotion that is shared by quite a substantial amount of citizens of this country. Madam President, jury trial is one manner of determining the guilt or innocence of a person accused of an offence. It is reputed to have a lengthy lineage, and its history precedes the European rediscovery—well, let me not use that word "rediscovery", because Christopher Columbus, I hold the very strong view, never discovered us. We were always here. He just happened to see us when he came here, but we were always here.

It is sufficient to say that it is a function of the jury to find the facts in a given case, and the function of a judge is to interpret the law relative to those facts. So that when, Madam President, it has been convincingly pointed out that a trial by jury usually requires from two to three times the amount of the time required when the jury trial is waived, and the case is tried by a judge. From my understanding, trial by jury causes considerable delay and the courts get so far behind trying ordinary cases that it becomes impossible to obtain justice in a given case within a

reasonable time.

Madam President, we are all familiar. You, yourself, your profession as a lawyer, would be very much aware of the statement, "Justice delayed is justice denied", especially when an accused person's freedom is restricted due to an ongoing criminal matter. At the 2016 opening of the law term, the Chief Justice of this country made a clarion call for the abolition of the jury system, citing undue delay as one of the two primary reasons for his position. He drew our attention to the fact that about 15 to 20 per cent of sitting time is lost owing to jury management issues such as illness, exams—take note Sen. Small—family funerals, lateness, and many other forms of inconveniences. But, Madam President, the reality is, as much for some, the ability to serve as a juror is viewed as a privilege, there are many, many persons who simply do not wish to be jurors, and therefore they are unwilling to serve. And I recall several experiences that drew the humour out of it, even some of my own relatives trying to escape the jury experience.

Madam President, in small societies like Trinidad and Tobago, individuals are sometimes summoned for jury service several times. Not once, not twice, not three times, several times. And some have come to loathe the imposed obligation as well as being sequestered or separated from the rest of the population, especially their families. In several Caribbean cases, jurors are known to have asserted that they do not like to judge other people. The *Bible* tells us, those of us who have the Christian belief, "Do not judge if you don't want to be judged". Or that they do not understand the instructions given to them. There is also the questionable practice of "praying a tales". That is when in a situation where there are insufficient jurors, the marshal is commanded by the court to bring any duly qualified person he can find to serve in order to complete the panel of jurors.

Sen. Gopee-Scoon: Dole Chadee.

Sen. The Hon. J. Baptiste-Primus: I am coming to that, you are so correct. Madam President, I do not know if you can all recall, but this occurred in the case of Dole Chadee where several of the original jurors were challenged for cause and then the marshal's search for jurors was the subject of much national media coverage.

Madam President, admittedly there are other reasons for the long delays in the criminal justice system in this country, including a lack of resources, frequent adjournments, or just too many accused with the system bursting at the seams as a result. Because of other pieces of legislation may have a greater positive impact on the criminal justice system than this Bill, should we then proceed to ignore this Bill? Should we lose an opportunity to make a difference in the lives of the citizens of this country, even though some of them may end up being accused? Madam President, this Government is not about shirking our responsibilities. It is not about shirking our duties towards the citizens of this country, and we will continue to make every effort to improve the quality of life for the citizens of our beloved twin-island state.

Madam President, there is also an economic cost to trial by jury. Although the precise amount of this cost remain unquantified, in Caribbean jurisdictions the cost includes the money expended by the State to hold the trial, the personal economic cost suffered by jurors hearing the matters, particularly where those jurors are self-employed, so they have to leave their businesses and attend court thereby losing several days of earning capacity. And we all know that the compensation ordered by the State for jury duty does not come close to matching the actual economic loss suffered by the individual juror. So, we cannot ignore this

fundamental and important factor, the impact it has on a self-employed earning capacity.

My colleagues on the other side, Madam President, have spent a tremendous amount of time telling us that trial by jury does not cost that much. But have they factored in the time spent and placed a value on such time? We are all very much aware that time means money, and we all know that we have very precious little money these days to go around, but despite the cost, we are not saying do away with trial by jury in its entirety, in one fell swoop. What we are actually saying, let there be another option, and that option is going to save us time and money. Jurors are men and women taken from everyday life, unfamiliar with courtroom procedures, and courtroom language, as any attorney-at-law who practises at the courts of this land. These jurors can be easily misled.

2.30 p.m.

These jurors can be easily misled; they can be easily misled by the language used, by the judge's instructions and they may give inadvertent, unfair or prejudice decisions. As my learned colleagues in this House have demonstrated, lawyers are equipped with very agile enticing arguments and personalities, and the reality is that the jury is likely to become intrigued by the two contesting lawyers. I mean, we have eminent Senior Counsel with us, for whom we have great respect and whose point of view we welcome and we pay attention to. I would love to see Senior Counsel in action in the court. I am quite sure she will do an excellent job in swaying whomever it is to her point of view, but I digress too much, Madam President.

Madam President, in such a situation, it is very likely that jurors are likely to decide the case, according to what they think of the lawyers, rather than what they

think of the rights of the parties involved. Madam President, another charge made against the jury is that they cannot understand the complicated transactions or the terminology involved in many cases they are asked to decide. A major problem is a disadvantage of the jury system, is compounded by the fact that most professionals are exempt from jury service, where an accused person asks for a trial by judge alone, the matter is heard by someone who is an expert in law.

In the trial of Vicky Pryce in the UK on allegations of perverting the course of justice, the jury failed to reach a verdict and was discharged. The judge claimed the jurors had posed ten questions to him, which suggested that there was a fundamental deficit in understanding the trial process. Among the questions, Madam President, were, whether the jury could make their decisions on the basis of facts for which there was no evidence and what was meant by reasonable doubt? It may be too much to ask lay persons to determine issues of fact, when the facts themselves are complicated and the evidence complex.

So therefore, Madam President, trial by a judge is speedier and the judge who is an expert in law has been trained to analyze the facts and can be very objective in assessing what really is the truth in the matter here. As I said earlier, our world has changed fundamentally, and with the increasing length and complexity of jury cases, this has led to concern about the continued viability of this system. Madam President, we live in a world of increasing terrorism and highly organized crimes and therefore we must consider the harm of jury intimidation. I mean, we have read in the newspapers, jurors being killed to prevent them from giving evidence in the court of law.

It is well known that juries do not provide reasons for their verdicts, therefore it is impossible to review the path that the jury took in finding facts and

whether it correctly applied the law to the facts presented. As such, the option of trial by judge as presented in this Bill makes the system more transparent and all parties have the benefit of a judge, giving a written decision outlining his or her reasons for his or her decisions. We cannot ignore the reality that jury service may also be a very stressful experience with lingering consequences depending on the length and nature of the trial in question and the personality of the juror involved. Jurors who have deliberated on trials, where detailed descriptions of gruesome crimes were given, have reported suffering from anxiety and nightmares, simply because of what had been seen or what had been heard.

Madam President, in winding down, I am going to look at some of the "Twentieth Century Challenges to"—trial by jury.

> "In the inaugural Distinguished Jurist Lecture delivered"—in 2011—"Sir Shridath Ramphal, quite aptly, called this period of our history"—and I quote—"an age of rapid and often bewildering transition. Each day we encounter seemingly endless technological inventions and improvements aimed at making our"—collective—"lives…easier, information and ideas"—are—"more accessible, communication…more convenient. The rapid rate at which technology"—continues to evolve, lead to—"a corresponding continuous evolution in societal norms and behaviours."

And therefore those are issues to be considered very seriously, Madam President.

> "The tentacles of technology threaten to transform what we regard as trial by jury into "trial by Google", a term…borrowed from a speech given by the"—then—"English Attorney-General, the RT Hon Dominic Grieve, QC, MP, in a lecture delivered at the University of Kent"—in 2013. Trial by Google or twitter or tumblr or facebook or Wikipedia, to say nothing of

Youtube, encapsulates the influence that the internet may have on jurors who either inadvertently encounter material or deliberately attempt to research the case on which they sit."

Madam President, it therefore:

"…has the potential to become a serious problem that challenges our own conception of"—what really is—"a fair trial. The dangers which our criminal justice system is likely to face"—due to the increasing importance of technology in our lives have already become an issue—"albeit in other jurisdictions."

Yes, I would agree. But, Madam President:

"The *Queen v Barry Medlock,* was one of the many criminal trials that took place in England"—in 2011. It was one of the few criminal trials that occurred by jury that year.

Medlock was charged, along with two co-defendants, with causing grievous bodily harm. One of the jurors in his trial at the Luton County Court was a former university lecturer in Psychology, 34 year old Theodora Dallas. Perhaps because she was intent on taking her civic duty seriously or perhaps because she was simply distracted when the judge gave his directions, Ms.Dallas, despite repeated warnings from the Court, decided to research certain terms she heard being used on her own."—she used—"Google"—to search for—"*grievous bodily harm*"—and another—"search term—*Luton*—the name of the area where the trial was occurring."

Madam President, through this search Ms.Dallas discovered that the accused had a prior charge of rape but was acquitted.

"This…information that had no bearing on the trial and was…not

disclosed."

However:

> "Ms. Dallas shared"—the information—"with her fellow jurors"—and this came to the attention of the court.

A mistrial was then ordered and Miss Dallas was sentenced to six months in prison for contempt of court.

> "Juror misconduct of the type in which Ms. Dallas engaged makes a mockery of the rules of evidence and taints the evidence on which the jury chooses to rely when arriving at a verdict."

This case is not:

> "an anomaly…but"—it is—"one of a number of cases occurring within the last five years where the use of the internet search engine or social media platform by a juror has either lead to the removal of a juror, halted a jury trial in the midst of proceedings or caused a conviction to be set aside."…jurors have also misused facebook and twitter to the detriment of the right to a fair trial."

Madam President, in another case:

> "…a multi-million pound drug trial that occurred in August, 2010, a British juror not only friended on facebook a defendant with whom she allegedly felt a certain empathy, but proceeded to have online discussions with the defendant about the charge against her. The juror's action caused the complex ten-week trial that was on its third attempt and involved multiple charges and multiple defendants and that was nearing its conclusion to be abruptly aborted. Both the juror and defendant in question were found guilty of contempt, with the juror being sentenced to eight months in prison.

Another facebook user posted details about the trial in which she was acting as a juror"—and proceeded—"to hold a poll"—among—"her friends simply because she was not sure which way to vote during oncoming deliberations."

So she decided to rely on her friends.

"Although such behaviour has not yet been reported in our jurisdictions with the increasing access of our citizens to the internet and the tantalizing services it offers, these cases foreshadow what is soon likely to come. Such behaviour by jurors, which is often contrary to the clear and specific instructions of the judge, is"—rather—"worrying. It can only lead to the wastage of governmental resources and precious judicial time, while exacerbating systemic delays that already exist"—in our system. Madam President—"it also seriously threatens the right to a fair trial—of an accused person.

There is another, perhaps less evident, risk posed by technological innovation that does not bode well for the jury trials of the future, should they continue in the same manner in which they do today. In part"—possibly—"because of technological innovations we have now…a large and growing body of citizens with ever shortening attention spans who find it difficult to sit down and listen"—as patiently as you do here, Madam President, when you preside in the august Chair in which you sit, arguably due to the world that we now live in.

But the dangers of this difficulty, Madam President, in sitting and listening, can be especially dangerous in the case of jurors whose function is to do just that, sit and listen to the facts.

Madam President, in closing, I believe that as a Government and as a

Parliament we have a responsibility to the citizens of this country and therefore we must act in their best interest when we address matters at this level. At times the matters engage our attention will require fundamental changes and I urge all of us in this Chamber not to be afraid of change but to embrace it as it is only one of the two constants in life, change and death.

In keeping with this guiding belief, Madam President, I am grateful for the opportunity to have participated in the debate on this Bill, for the opportunity to reiterate the dedication of this Government to the citizens of this country, but more so, Madam President, having emerged from the women's movement in this country, my experiences in the women's movement, I am particularly pleased with the Attorney General for the enlightened approach he took in recognizing the existence of post-partum depression. And as a mother myself and as a grandmother and knowing and understanding that women—some women do go through post-partum depression. And it is highlighted, provision is made for such a situation and I want to commend the Attorney General.

Madam President, the presentation of this Bill demonstrates this Government's resolve to fulfill our commitments to the people of Trinidad and Tobago, our commitment to making the lives of the citizens of Trinidad and Tobago a better one.

I thank you, Madam President, for the opportunity to have so participated. [*Desk thumping*]

Sen. Wade Mark: [*Desk thumping*] Thank you. Madam President, I want to begin by saying that as lawmakers, our first duty and the responsibility is to protect, defend and safeguard the rights and interests of the majority against the terror, aggression and tyranny of the minority, [*Desk thumping*] and especially corrupt

governments wherever they may exist.

Fortunately for us in Trinidad and Tobago, Madam President, we do have a Constitution, which is the supreme law of the land and trumps the Legislature when legislation is passed that seeks to deny the rights of the citizens to justice and fair play.

Madam President, I want to indicate that many of my colleagues who have spoken today, both, Sen. Small and the last speaker and also "Sen. Toppin"—the hon. Sen. Jennifer Baptiste-Primus and my good friend, Sen. Coppin. They all made statements to the effect that this Bill that we are debating, seeks to add, seeks to offer options to the citizenry and not to take away any option and who can argue against that? They advanced their different points of view.

Madam President, I will debunk completely those ill-conceived thoughts that have emanated from the lips of our colleagues and to demonstrate during my contribution where the Government has, in fact, brought changes to both pieces of legislation, particularly the criminal procedure legislation where they are removing trial by jury and replacing it by judge alone trials.

It is clear that many of us could become distracted by the smooth talking Attorney General whose utterances, if not carefully analyzed, dissected and critically disaggregated can easily mislead the uninitiated and innocent. But, Madam President, I want to say that the right or the attempt, I should say, to remove, a right—and I disagree with my honourable friend who said that trial by jury is not a right. It is a right. It is a constitutional expectation and that matter, if the Government does not listen, then we will take it where it has to be addressed and adjudicated. [*Crosstalk*]

I am saying, Madam President, and I will argue in my submission that there

is a constitutional, legitimate expectation in the Constitution in the law of this country that says that citizens have a right to a fair trial and a right to be tried by their peers, which is trial by jury.

Madam President, I want to indicate that I would not like Trinidad and Tobago to join the very limited group of countries that have introduced this particular method of determining guilt or innocence. I am not going to join South Africa, I am not going to join India, Singapore, I am not going to join Papua and New Guinea, Russia, Western Australia, Belize, Pakistan or Bangladesh. I prefer to stay with the United States and I prefer to stay with the United Kingdom with the exception of jury tampering and serious cases of fraud. That is the only time they have introduced trial my judge alone. Everything else is trial by jury. So, Madam President, I do not want to be part of those countries and we should never become and seek to become part of those countries.

Madam President, may I remind you it was a judge alone trial that placed in the cells of the Robin Islands, in South Africa, the iconic Nelson Mandela. [*Desk thumping*] It was under the racist, Apartheid regime that established in ’69, trial by judge alone for racist reasons. They used a judge alone in ‘64 to convict Nelson Mandela and issued a life sentence to Nelson Mandela. Judge alone, judge alone, Madam President, we do not want to be part of that experience. And we are hearing all kinds of arguments as to why the jury system is so negative and jurors are this and jurors are that. In fact, it was the Chief Justice himself who said that they are functionally illiterate. That is the content in our country that we are for the ordinary working people of this land. [*Desk thumping*] And then you have the Sen. The hon. Jennifer Baptiste-Primus, saying, so long, Madam President, telling us that juries favour accused. I have never heard that in my life.

Sen. Baptiste-Primus: So.

Sen. W. Mark: Where is the evidence? You make statements, Madam President, whimsically, capriciously, openly without any evidential basis and say, jurors favour the accused. Where is the evidence for that? You cannot make these kinds of statements in order to raise your argument in favour of judge alone, trials by judge alone. You must have evidential material information to support that.

Sen. Baptiste-Primus: And where is yours?

Sen. W. Mark: I have said to you, Madam President, may I address you, please, because I know the hon.Senator is trying to distract me. So, Madam President, judges are unavoidably subjective and their reality is socially constructed. So I am not in no favour of no judge alone by trial in Trinidad and Tobago ever. We are not in favour of that. This is an evil piece of legislation that we are dealing with here today and it is being piloted by an administration that is dangerous and deceptive. [*Desk thumping*]

And, Madam President, this judge alone by trial, if you do not carefully analyze this, this could be used as a weapon by an administration that is so insecure, that they may use this to eliminate who they perceive their political enemies in this country. [*Desk thumping and crosstalk*]

Madam President, I want to make it very clear, there is no distraction of public relation gambit. This is a well thought out, well calculated and diabolically designed plan to silence Government's critics. That is the start of the thin edge of the wedge.

Madam President: Sen. Mark—

Sen. W. Mark: Madam President.

Madam President: Sen. Mark, please. Could you just—some of the language that

you are using is getting a little intemperate so I would ask you to please just be aware of that as you proceed.

Sen. W. Mark: So, Madam President—

Hon. Al-Rawi: Madam President, 46(6) in particular. I know that you have risen on that, but it is in my view, I am asking you to consider it has gone beyond the course in the imputations.

Madam President: Sen. Mark, continue. Attorney General, I have already spoken to Sen. Mark.

Sen. W. Mark: Madam President, we are aghast by the irrational emotionalism coming from many who ought to know better. It is clear from the references made by the Attorney General, by some of our colleagues here that they are in complete support and that is their right, they made extensive reference to the Chief Justice who they support and who apparently, Madam President, supports the abolition of the jury system.

Sen. Gopee-Scoon: And Sat Sharma too.

Sen. W. Mark: No, I am saying that is what they say.

Madam President: Senator, I know what you are saying, Sen. Mark. I am listening. Just put what you are saying differently. Any reference to the Chief Justice in the way I just heard it, I am asking that we steer clear of that in our contributions. Continue Senator.

Sen. W. Mark: Madam President, there are people in this Senate who said and it is on record, I have it in the *Hansard* where the Attorney General quoted extensively from the address of the Chief Justice in which the Chief Justice of this country said, he is in favour of the abolition of the jury system. He also said that that is not a right. I am disputing that and I am saying I do not support that. And I am

responding to what the Attorney General had said, Madam President; that is what I am doing.

Sen. Gopee-Scoon: Also Sat Sharma.

Sen. W. Mark: Listen, do not disturb me, please.

Madam President: Sen. Mark, please have a seat. Members, please, we have had occasion in this Chamber when the crosstalk has gone too far. Crosstalk is a feature of Parliaments, but I am really going to have to step up on that now and ask Senators to please remain silent when Members are speaking, because clearly we cannot—some of the things I am hearing I do not want to hear. Sen. Mark, please, I have cautioned you and I ask you to heed that caution as you continue.

Sen. W. Mark: Yes, so, Madam President, as I said, we beg to respectfully and humbly disagree with the learned and distinguished Chief Justice on this matter. In another incarnation the distinguished Attorney General was in full support of the jury system when, now today he seems to be violently opposed. I want to quote for the record what the distinguished Attorney General said on Thursday, June 28, 2012 in the Trinidad *Guardian*. And I quote:

> "Justice Minister Herbert Volney's proposal to abolish"—that is when we had brought it. We had brought something to abolish trial by jury—

Sen. Gopee-Scoon: True.

Sen. W. Mark: Yes, yes, but we pulled it back because when we went out there the public said they are not in favour of it. So we had to withdraw it, Madam President. So when that was brought the:

> "PNM Senator Faris Al-Rawi and Senior Counsel Israel Khan yesterday rejected the proposition, saying to do away with such a system would be to infringe on citizens' constitutional rights."

That is what Faris Al-Rawi then Senator of PNM said on June 28, 2012 in the Trinidad *Guardian*. He went on further to say:

> "'Al-Rawi, who also accused Volney of merely making a statement without making recommendations to improve the justice system, said: 'It is dangerous to offer that proposal in a mere vacuum. Care is required.' He said a trial which included a jury signaled a trial by one's peers but the difficulty in the criminal justice system was the 'bottlenecking' when matters reached the High Court.'"

So, in other words, Madam President, here it is, the former Sen. Faris Al-Rawi, PNM Senator, now Attorney General, was advocating for the retention of jury by trial—

Hon. Senator: Trial by jury.

Sen. W. Mark: Trial by jury. But today, a different tune is being sound by the distinguished Attorney General.

3.00p.m.

Madam President, I have evidence here today, where even the distinguished Director of Public Prosecutions, that is Roger Gaspard, when he appeared before the Finance and Legal Affairs Committee back in 2016/2017. It was on the 9th of November, 2016, and in this particular report, Madam President, on page 121, I want to quote what Mr. Gaspard said on record:

> "Well, there has been some discussion about the doing away with the jury system. I know that is not a discussion that has been embarked upon by some members of the criminal bar with any degree of joy. So discussions are taking place. I think more discussion needs to take place. Some people are of the view that a large part of the delay…"

—and that is what we have been told by the hon. Attorney General and the Chief Justice,

> "…is because of we have jury systems. I am not of that view."

That is the DPP.

> "I am of the view that in this system there must be a certain degree of nexus and connectivity between the man in the street and the dispensing of justice. I am of the view…"

He goes on, Madam President, to state:

> "…that a wholesale doing away of the jury system is tantamount to severing the umbilical between the man in the street and the dispensers of justice. I understand, and I would agree, that for complex fraud matters you would need a certain type of juror—special jurors—but I do not think that in the normal matter—the average matter, the usual matter—you need to do away with the jury system.
>
> You also have to look at how that might be perceived."

Madam President, he goes on:

> "Many persons who go on to become judges may come from a particular background. They may come from a particular type of school, whether you call them prestige schools or otherwise, and there might be the perception on the ground…"

That is, the working man and woman.

> "..that the dispensers of justice are 'them' or 'they' and the people on the ground are 'we'. And that is not a perception that you might want to cultivate."

End of quote.

Madam President this is what the Director of Public Prosecutions said to a joint select committee who brought him before them on the whole case management flow system, in the criminal administration of justice process, Madam President. So you have a situation, Madam President, where that is being argued against completely, and where the DPP, the distinguished DPP, is calling for more discussions on this matter.

The Attorney General has brought this Bill, there has been no discussions with the population of this country, apart from a round table discussion, and that he told us about involving the Judiciary, but the masses of people do not know anything about this particular Bill that we are now debating.

I go on further, Madam President, at a guest lecture at the Hugh Wooding Law School on March 14th this year. Senior Counsel Israel Khan had this this to say about the constitutional right to be tried by a judge and jury, Madam President. And I quote from page 12 of his lecture, Madam President, and he says:

> Thus, it is of paramount importance to recognize and acknowledge that the supreme law of the land, the Constitution, enshrine the right of the individual, to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof, except by due process of law. It is my considered opinion that all criminal offences which were triable before judge and jury, before the commencement of the respective constitutions in the Commonwealth Caribbean, remains intact. That is why I spoke about constitutional legitimate expectation via existing law, and I make this particular submission in spite of the legal authorities.

And he quoted *Hinds v The Queen* and *Stone v The Queen*. He goes on:

> Thus, I submit, for your consideration, that a legitimate expectation that a

> constitutional right exists to be tried by judge and jury for those serious criminal offences which were triable in the Commonwealth Caribbean jurisdiction before commencement of the various Constitutions, and no law, including this one, may abrogate, abridge or infringe that right, unless Parliament, by a special constitutional majority, which is a simple majority, enact legislation which demonstrate it is reasonably justifiable in a society that has a proper respect for the fundamental rights and freedoms of the individual.

End of statement.

Madam President, so we have distinguished Senior Counsel, Israel Khan. You had Pamela Elder on record as saying she is not in support of this measure. And then, Madam President, I have also quoted for you, other very important personalities on this matter.

Madam President, where rights are being removed as the present case before this honourable House, the Government has an inescapable obligation, Madam President, to include and to attach a special certificate requiring a special constitutional majority, and this is not contained in the present legislation where rights are being taken away, Madam President. And, therefore, we argue that it is an affront to sections 4 and 5 of our Constitution, and a subversion of the separation of powers principle and, as such, unlawful, illegal, and unconstitutional, and therefore must be withdrawn by the Attorney General. That is our argument here this afternoon.

Madam President, apart from not having any meaningful consultation with the national community on such a far-reaching measure, with ominous implications and dangers for our citizens, human rights, and constitutionally-enshrined

freedoms, the Government has introduced legislation, Madam President, which has run afoul of the High Court decisions of several provisions which were deemed unconstitutional and which are still in the legislation today and they are seeking our support to give endorsement to, what I would like to describe as, bad law, and we will not do that, Madam President. We will not respond to that.

Madam President, may I say, before I examine in some detail, these offensive clauses in the current legislation, fully endorse the call by the President of the Criminal Bar, for judges and magistrates to declare their assets, income and liabilities to the Integrity Commission before any meaningful discussion could commence on trial by judge alone. [*Desk thumping*] That is a statement that has been made by Senior Counsel Pamela Elder and I endorse it. No one is above scrutiny, and no one is above the law, Madam President.

So, Madam President, I think I read somewhere where a UWI lecturer, in law, Faculty of Law, Rose-Marie Belle Antoine, and it was in the *Express*, Saturday 15, 2016, Madam President, where the lecturer is saying that judges, and I quote:

> Judges make serious errors.

The same judges that we are saying, Madam President, that we must now put the life of the citizen hands in, we are being told by a senior lecturer, and the Dean of the Faculty of Law, in an article entitled "Better Justice with no juries?"

> Judges make serious errors in dispensing justice, causing mistrials. They misdirect juries, intervene when they should not intervene, and therefore the question is being asked: would a judge-based system mean better justice?

Madam President, these are legitimate questions, Madam President, that are being raised. So when our colleagues on the other side said: "The judges are the best

thing after sliced bread, let us put all of our hopes, all our dreams and aspirations in the hand of one individual. And let that person determine life and death." Madam President, that is so preposterous, ludicrous, and offensive, that no right-thinking, rational citizen will support such a provision. No one will support that in their right mind.

Madam President, let me just journey along quickly. Madam President, we have heard, as I said, many submissions being articulated by our colleagues here concerning this matter before us. And it is as if, Madam President, we are getting from our colleagues, that there is, in fact, no attempt by the Attorney General and the Government to remove a right that people currently enjoy.

Madam President, if you can follow me, I will take you to the Bill that is before us and you will be able to see, Madam President, that when you look at, it is under, well, we are dealing with the amendment as you know, Madam President, of both the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02. Madam President, this section 64 of this Bill, if you go to section 64 of the Bill and you go to the Criminal Procedure Bill, Madam President, you will see where the Government, under section 64 of the Criminal Procedure Act, the Government is repealing, Madam President, deleting in some areas and repealing in others under 64. So if you go to, as I said 64:

"by repealing section 64 and substituting…"

—a new section 64, which would provide for the procedure of a judge to take if an accused person appears on arraignment to be insane.

So hear what is being done here, Madam President, with this piece of legislation called the Criminal Procedure Act. The Government is removing the following. The Government is repealing the following.

> "Where there is no trial jury, or where a jury have disagreed as to whether the woman is or is not pregnant, or have been discharged by the Court without giving a verdict on that question, the jury shall be constituted as if to try whether or not she was fit to plead, and shall be sworn in such manner as the Court may direct."

It goes on in subsection (6) to say, Madam President,

> "The question of whether the woman is pregnant or not shall be determined by the jury on such evidence as may be laid before them either on the part of the woman or on the part of the State and the jury shall find that the woman is not pregnant unless it is proven affirmatively to their satisfaction that she is pregnant."

Madam President, you know what the Government is proposing to do? And I want to direct this to Sen. Coppin and Sen. Small and the hon. Baptiste-Primus. What the Government is seeking to do in this section is to provide for a procedure after repealing this section to have a judge, Madam President. A judge will be responsible for determining whether an accused person that appears before him is insane, as the case may be. So in the legislation, Madam President, we have a situation where you go to this section, page 7, I have the old one, where we talk about the pregnant woman, it says, Madam President:

> "in subsection (2), by deleting the words "a jury" and substituting the word "a Judge";"

So the Government is removing the word "a jury" and putting in the words "a judge", Madam President. And they go on further:

> "by repealing subsections (3), (4) and (5);"

And later on:

"by repealing subsection (6) and…"—they substitute it with following:

"The question whether the woman is pregnant or not shall be determined by a Judge, on written or oral evidence of at least two medical practitioners and the burden of proof shall be on the person"—

Madam President,

"alleging pregnancy."

And it goes on:

"in subsection (7), by deleting the words 'jury find' and substituting the words 'Judge finds';"

So Madam President, what we are seeing is that the Government has made an incursion into the right of citizens to a trial by their peers. By removing "jury" in this Act called the Criminal Procedure Act, and replacing it by "a judge and two medical practitioners" who will now advise that judge. So no longer, Madam President, will the jury have the power to determine a person's pregnancy state, that is, with medical support, of course. That is now being left to a judge to determine, Madam President. How can we support that? You are taking away, Madam President, a right that currently exists in the law of Trinidad and Tobago; a right that people are entitled to. [*Desk thumping*] And you are now replacing it with a judge? And you are telling me that we have options? There is no option here, Madam President. The Government has repealed and they have replaced. That is what the Government has done. And I was surprised that a lawyer, an attorney-at-law, Sen. Coppin, did not see this. I am surprised. I could understand the hon. Sen. Baptiste-Primus; she is not an attorney-at-law, and even my friend, Sen. David Small, but I cannot forgive a lawyer, Madam President, because this is clear and I am warning if there is an attempt to deceive, to hoodwink, Madam

President. I am not saying anyone deceived, eh.

Madam President: No. no. Please. You cannot put it the way you are putting it. All right? Find a different way to present that argument.

Sen. W. Mark: Where we are going, I will have to create a new English dictionary. [*Laughter*]

Madam President: No problem.

Sen. W. Mark: Because it seems like I—anyway I have another method of dealing with this matter. "Ah want tuh tell yuh dat eh."

Madam President: Sen. Mark, please have a seat. I do not know what your method is. All I am saying to you is just respond to what I am asking you to do. Okay? Thank you.

Sen. W. Mark: Madam President, I would not engage you.

Madam President: Thank you.

Sen. W. Mark: I would leave that for another occasion.

Madam President: Sen. Mark!

Sen. W. Mark: Sorry Ma'am. I sorry. Okay.

Madam President: Sen. Mark, I do not respond well to any sort of implicit sort of statement about—[*Interruption*]

Sen. W. Mark: I withdraw.

Madam President: Okay, thank you.

Sen. W. Mark: I will hold my fire. [*Crosstalk*] Madam President, may I continue please without any interruption, please? Please, protect me from this lady.

Sen. Baptiste-Primus: From this lady? Madam President, 46(5).

Sen. W. Mark: This lady is only disturbing me, disturbing me. That is all she does—disturbs me.

Sen. Baptiste-Primus: 46(5), Madam President.

Madam President: Sen. Mark, please. All Members—you know better than that, Sen. Mark. When referring to one of your colleagues—[*Interruption*]

Sen. W. Mark: The hon. Member.

Madam President: When you are referring to a colleague in this Chamber [*Interruption*]. Okay?

Sen. W. Mark: The hon. Senator, Ma'am.

Madam President: Continue, Sen. Mark.

Sen. W. Mark: And you will protect me, please. Madam President, so I am saying, Madam President—[*Interruption*]

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

Sen. W. Mark: Yes. I am saying, Madam President, that the Government requires a special majority to deal with this matter, whether it is dealing with a pregnant lady or a pregnant woman in the law that they have now changed from jury to judge; whether it is dealing with an insane person who has that right, as we speak right now, to enjoy that benefit of a jury, that is being removed by this Government. We cannot support that. We cannot support that. How can we support that?

Madam President, I will tell you revolutions have been created in countries where repressive governments seek to undermine and repress and overthrow and subvert the rights of the people. They rise up. [*Desk thumping*] They rise up against governments.

And, Madam President, I want to tell you in closing, that for us trial by jury—I want to tell you for us in the alternative government, we are not easily giving into any threats by any Prime Minister or anybody. We stand firm and we do what we

have to do. If it means we have to die, we stand firm. [*Desk thumping*] Madam President, let me indicate to you that for us in the United National Congress, trial by jury is a constitutional right. I want to put that on record. It is a Constitutional right. Trial by jury, Madam President, is a part of our system that creates checks and balances.

Madam President, outside of voting in this country, the only right that the ordinary people have in this country to participate in the system of democracy is through trial by jury, as jurors. That is the only other. This oppressive Government wants to take that away?

Madam President: Sen. Mark, please have a seat. Your language, and I am not going to ask you again. Now you have three minutes. Please use them wisely.

Sen. W. Mark: But if I consider this Government to be oppressive, what you want me to say?

Madam President: All right, Sen. Mark, take your seat. That is it.

Sen. W. Mark: That is it.

Sen. Taurel Shrikissoon: Thank you, Madam President, for recognizing me and allowing me to make an input into this debate at this critical time. Madam President, a lot has been said about this particular Bill before us, and I would like to add my perspective, it may not be grounded in that of a legal mind, but I appreciate the opportunity to present a perspective from a citizen's perspective looking in at the law that is being created. So I thank you for this.

Madam President, the Bill before us contains five clauses. Clause 1 of the Bill provides for the title of the Act. Clause 2 provides for the commencement of the Act. Clause 3 amends Chap. 11:08 and clause 4 amends the Criminal Procedure Act. What is very clear before me today—and there is clause 5, which seeks to

refer to the timing of the implementation of the Act. What is very clear to me, Madam President, coming out of this Bill before us is that an option is being provided. So clause 4 of the Bill repeals section 6 of the Criminal Procedure Act and introduces an option for the mode of trial. And I think that speaks volume to me as an option is being created. [*Desk thumping*] And if it is that I am to interpret the word "option", that means that which exists before is not removed and still available as well. And therefore I am—my thinking is one of leaning towards an option, given that the accused has an additional option available to him or her.

The new section 1 introduced the option to be tried by judge alone. The Bill also provides for—through subclause (e) of the Bill which refers to sentencing of an expectant mother, the introduction of evidence that was written or oral from a medical practitioner. So too, a similar right is given to someone who is being presented or is on arraignment and therefore medical views are also being allowed or permissible to be able to pronounce objectively on the condition of the accused.

And therefore, I would like to say that given the option that is being included, coupled with the medical evidence to support the condition, such as, to determine the person's capacity or wherewithal of his mind upon arraignment, as well as a mother's position whether or not she is pregnant upon sentencing, I would like to say those three things, in my mind, are strengths of this piece of legislation. [*Desk thumping*]

Madam President, clause 3(a) of the Bill refers to section 4 of the Offences Against the Person Act. Section 4 of the Offences Against the Person Act states:

"Every person convicted of murder shall suffer death."

And this clause here seeks to amend the law with respect to those who are accused of murder but can be convicted through a diminished responsibility. Section 4A is

saying:

> "When a person kills or is a party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind..."

4A(2) says that it is the defence's responsibility to prove that point, and it says here:

> "On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section..."

But unlike where we had an issue of someone being presented or could be insane upon arraignment, or whether or not that mother is pregnant upon sentencing, in my mind, in this case, I am not sure how a judge without having that information, can pronounce on the mental health of someone in terms of reducing the conviction to a lesser responsibility, given that abnormality of mind is being presented for the offence as a condition of the accused when he committed the offence.

So I am asking the question: How can a judge in trial by judge alone, be sure that the person who is—or a verdict that is being pronounced because of a diminished responsibility, how can the judge be sure? That is what I am asking. How can the judge alone be sure if it is being presented before a judge alone?

Clause 3 of the Bill makes an amendment to 4B of the Offences Against a Person Act where murder was committed due to provocation. It says here:

> "Where on a charge of murder there is evidence on which a jury can find that person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury;..."

In this judge of case judge alone, provocation would have to be determined by a judge.

Section 3C of the same Act concerns the administering of a dangerous substance. Section 3C of the Bill refers to sections 17 to 19 of the Offences Against a Person Act and deals with murder that has occurred. Section 17 says:"

> Any person who unlawfully or and maliciously administers to, or causes to be administered or taken by, any other person any poison or other destructive or noxious thing, so as to thereby endanger the life of that person…is liable to imprisonment..."

So section 17 is saying if a poisonous substance was administered and it endangered the life of the person you have imprisonment. Section 18 is saying:

> "Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or destructive or noxious thing, with intent to injure"—with the intent to injure—"aggrieve, or annoy, such person, is liable to imprisonment for five years."

So section 19 is saying if there was injury or inflicted injury, there is a conviction. But if upon administering the substance, there is the intent to injure then a lesser sentence is being provided.

I am saying all of this to say, Madam President, that when you consider these factors which say the first one saying that you have an incident or you have an accused being presented before a judge, and the judge has to make the case of whether or not that person suffers from abnormality of mind, the judge is placed in a position where he has to determine and his interpretation is obviously subjective.

My second point, with respect to provocation, provocation speaks of the intent to do. And, therefore, I am also saying that requires some level of

interpretation.

And the final section that I spoke of just before, which refers to the administering of a noxious substance or poisonous substance, is saying that if it was administered with the intent to. And I am saying these three sections, in in my mind, there is an element of subjectivity where in a judge alone trial, the judge may have to make a decision. I am saying now, in the context of these subjective issues whether or not an accused being presented before a judge alone, having evidence where there is an element of subjectivity, where someone's future is being decided upon the interpretation of results by a single person really represents the best interest of justice.

And, therefore, Madam President, with respect to this, I am asked to look, or it required me to look at the flipside of trial by judge alone versus trial by jury. And in trial by judge alone, as I just said, or I just alluded to, that there are some areas of subjectivity that a judge will be confronted with and has to make a decision. How can the best interest of justice be administered there?

But on the flipside, with respect to trial by jury, we have heard in the House before, through other Senators in their contribution, we have the issue of pre-trial publicity affecting the selection of jurors. We may also have the situation of jury tampering, I think, that Sen. Small referred to. You may also have the situation where the evidence being presented in court is of a highly technical nature and a jury, however it is composed, may not have the best knowledge to interpret technical data. And you also have a situation, in my mind, where the length of trials are so long that jurors, I should say, could become frustrated with respect to the process, especially having heard Sen. Small's experience.

So I am asking the question here: In a situation where trial by judge alone,

there could be issues being presented before the judge, where he is required to make a decision that is most certainly subjective and based upon his interpretation with no hard empirical or scientific data, and compare that to a situation with trial by jury where you also have shortcomings and possibility, as I listed before, pre-trial publicity, length of trial, technicality of evidence and length of trial times. So you have a decision where both situations, as Sen. Small was saying, they both have advantages and disadvantages. Then how is the accused to make the best decision in light that both trial by judge and trial by jury can have both advantages and disadvantages to him or her? And that is the point that really confronts me in my mind. How can the best decision be made to offer the accused the best option available to him or her? And the law or the Bill before us says in section 6 of the Act says:

> "Every person committed for trial shall be tried on indictment, and subject to the provisions of this Act, shall be tried by a Judge and jury unless he elects to be tried by a Judge alone."

And I am asking the question, given the accused would have the option, how can the best decision be made? The accused is looking at it and I have heard from hon. Senators who are in the field that sometimes the best legal advice may not be given to the accused at the time, given the person offering it.

And I am asking the question today: In terms of affording the accused the best option, can there be a system where the accused outlines his rationale for opting for trial by judge alone and probably the court, upon looking at the situation, rules as to whether or not trial by jury or trial by judge is befitting the circumstances. And so I am asking. I am asking. While he has the choice he may not be fully aware, fully informed, and I am just asking: whether or not a process

can be included, so as the accused applies to the court outlining his/her reasons for opting or for choosing this option and the court pronouncing, given the facts and the evidence so far submitted on both sides? That is my request: whether or not it can be considered, rather than leaving the sole option to that of the accused? Can the institution responsible for justice evaluate it on a case-by-case basis and determine whether or not? I am unsure. So I am asking.

The second point I want to raise, Madam President, concerns sections 6(3) and 6(4) of the Bill, with respect to time and choice. It is said here that once the accused elects to be tried by a judge alone he or she is unable to change that plea. I am unsure of the length of time it takes when a person is charged with an offence and the time taken for that person to appear before a judge.

In Trinidad and Tobago, I am so informed that on certain occasions that can have a significant time lag. And, therefore, given the conditions of the court and if that is true, then I am asking rather that saying, in the clause, or giving the accused the option or having said to the accused once you have chosen upon being charged, then you cannot change again, can we consider allowing that person to still have the option and prescribe a deadline, in terms of a certain number of days whether 30, 60 or 90, I am just using numbers here, before the commencement of the trial? That is my second point: whether or not the accused can still exercise the option of judge, trial by judge or trial by judge and jury up to whether 30 or 60 days before the date of trial, rather than making a decision upon being charged? That is my second point.

The third point that I want to raise is more one of consistency in the legislation and I am unsure if I am interpreting the amendment correctly and I am guessing that the hon. Attorney General or someone would help me here.

Clause 4(g) to (k) deal with the arraignment and trial of insane persons. Clause 4(h) amends section 65 to allow for a person to be tried before a judge or a judge and jury.

Clause 4(i) amends section 66 to allow for a special verdict where the accused person is found guilty but insane before the judge or the jury and they are saying here that a special verdict can be recorded against this person if they are tried before a judge or judge and jury; 4(i) amends section 66 to allow for a special verdict where the accused person is found guilty but insane before a judge or judge and jury.

4(j) does the same, but 4(k) in section 68 and the amendment is:

"by deleting the word 'jury' and substituting the word 'Judge'."

But section 68 says:

"The Court shall as soon as practicable, report the finding of the jury..."

And we are changing that word to "Judge". I am asking if in the previous sections where we included judge and jury or judge, whether or not the change for 68 is consistent because if the finding in 67 of the judge or judge and jury should be reported, I am thinking that in 68:

The court shall as soon as practicable, report the finding of the judge or judge and jury...

I am asking whether or not this is correct or whether or not my interpretation is wrong.

Madam President, with respect to clause 5 of the Bill, clause 5 of the Bill speaks specifically to the implementation of this Act upon its passing and does not affect prior cases.

Madam President, in the hon. Attorney General's opening remarks to this

Bill, he clearly indicated that there is a backlog of the systems at court. I am unsure of whether or not this amendment can assist in that, given that it has to be applied from here going forward and not address the backlog. But I am still willing to say, at this time, that while I cannot see it improving the efficiency of the court, given the backlog, I am still willing to say something different is worth a try and whether or not this can effect change and have a positive impact into the future is to be determined. But I am leaning towards at least those who occupy governance and in those offices having a full view or more information than myself. Recognizing this to be a possible option, I am still saying that I am willing to at least see whether or not it will bring about a difference. And in so doing, I am asking whether or not, into the future, a review of this law could be done to determine its impact and then we will be able to make an assessment of it.

And finally, Madam President, as I come to the end of my contribution, there is a point that was raised and I choose from my position not to engage in any political debate or points with respect to the party politics but I would really like clarity on an issue that I think if I lay it here can be answered. Sen. Ramdeen, in his contribution, Madam President, if you allow me to refer to the contributions in the House, referred to two clauses of the Bill that he deemed through a judgment of a court that those clauses were unconstitutional. I am unsure of the proceeding as to how that—as to what occurs at a juncture like this.

But those exact clauses that Sen. Ramdeen presented are in the Bill and if you allow me, Madam President, to quote from an article, Saturday March 18, 2017, it says here:

> Ramdeen said a July06, 2009 ruling by Justice Gregory Smith in the matter Evelyn versus the Attorney General deemed all of section 4A and 7 of the

> Bill invalid in relation to the Offences Against the Persons Act. He said section 4A(6) was declared unconstitutional and the judge ordered that the section 4A(6) of the Offences Against the Person Act be modified.

So Sen. Ramdeen in his contribution alluded to two clauses that he deems unconstitutional supported by a judgment of the court.

In this same article, the hon. Attorney General also rebutted and he said:

> These consequential amendments seek to merely include the word "Judge" wherever reference to the word "jury" is used in written and published laws of Trinidad and Tobago.

So we are seeing that one contribution is saying unconstitutional and another contribution is saying it is inconsequential, and I am confused by that. Because it is either, in my mind, constitutional or not and that law is before us and I am unsure of, in passing the Bill, included in it, a clause that has the potential or has been ruled upon as unconstitutional, whether or not it sounds to be good law. I am unsure.

But in the same article it says here:

> In a written report the Chairman of the Law Reform Commission, Lorraine Lutchmedial explained that the Offences Against the Person Act was last updated and published in 2011 and the Commission should have taken the opportunity to expunge the words from section 4A(6) and 4A(7).

I would like to take my leading from the Law Reform Commission and saying that if the Commission has indicated that an element of the law needs to be changed, I am not comfortable with the clause in its exact form forming part of a Bill that is before us here which requires my support. And so I am asking, if it is, according to the Chairman of the Law Reform Commission that if this clause needs to be

amended, given that the clause is before us, in this Bill, at this time, can we not make the necessary change to the law so as to reflect the judgment that was given concerning it, as well as include the amendment to make it applicable to this piece of law?

And so I am asking because I feel a bit uncomfortable supporting a piece of legislation which is my intent to do so, given the possibilities or advantages that it may bring, given that embedded in this piece of law that there is a clause that was deemed unconstitutional and staying away from the party politics acknowledged by the Law Reform Commission. And so I am asking that this amendment be considered.

Madam President, with those few words, I thank you. [*Desk thumping*]

Sen. Paul Richards: Thank you very much, Madam President, and thank you for the opportunity to rise and contribute to this Bill to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters and also for clarity, Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017.

It has been quite an interesting and protracted debate so far, and to be very honest very compelling contributions have been made on both sides, given what I have heard so far. In principle, I have to say another option, if that is the case, is always a good direction in which to go if it does not take away the initial premise.

So, you know, in doing research for the contribution this afternoon, as a matter of fact three weeks ago when the Bill first was piloted by the hon. AG, I looked at several jurisdictions like many of you and one thing struck out in a couple of them and I have a question for the hon. AG, is that many of the jurisdictions started with jury and the judge systems. They went with an option at

one stage and then they moved totally to judge alone at another stage. And for clarity in my mind and I would gladly give way, is it the hon. AG's vision that this be our path also, in terms of if this is established as a pilot sort of project, to one day remove the jury option and go totally to judge alone?

Hon. Al-Rawi: I thank you hon. Senator. The purpose of this Bill is only to allow an option where the accused himself agrees and consents to go for trial by judge only. In Trinidad and Tobago, we have had a lot of talk pro and con but we have had no data. And, therefore, the exercise is intended to introduce a route, analyze the system, bring the evidence to the society after we have information, and then as a country make a decision. But right now, we just have anecdotal "ole talk" and no hard data. This is intended to start that conversation.

Sen. P. Richards: Thank you, hon. AG. I am glad you brought up the issue of data and anecdotal data upon which to make decisions. You know, this debate, in many jurisdictions, has gone in so many different ways, you know. American writer intellectual humourist, entrepreneur and publisher and lecturer Mark Twain said, and I quote:

> Jury trials are the most ingenious, infallible agency for defeating justice that human wisdom could contrive.

That is Mark Twain.

On the other hand, we have heard several quotations from Lord Devlin that it is the lamp that shows that freedom lives, and the interesting thing about that Devlin also observed that each jury is a little Parliament, he added that:

> "'The first object of any tyrant…would be to make Parliament utterly subservient to his will; and…next"—would be—"to overthrow or diminish trial by jury,'…"

So we have notable speakers on either side of this debate.

And we have seen many countries that would have started with judge alone, in some cases countries we consider dictatorial, moving towards what has been described as the democratization of jurisprudence, including South Korea, Mexico and Japan.

China has recently appointed 50,000 so-called people assessors, which we know as juries and we all have a tendency to think China is more in the past anyway of that type of dictatorial society. For all but minor criminal offences, Japan in mere 2009 moved in that direction also. South Korea in 2008 started to move towards a jury system. Russia, in 2008 abolished jury trials for cases of treason and terrorism. So we see, you know, the pendulum swinging to and fro in many instances, in many different jurisdictions.

You know, one of my concerns about this, though, in principle, I agree with the option of jury trials, given the stated objective to deal with the backlog of cases and the delay in cases in our criminal justice system, one has to ask, you know: Is this the real problem? Is the jury the main problem? What are the other issues here that we may not have looked at? The hon. Jennifer Baptiste-Primus indicated, in her contribution earlier on, that the data suggests that 15 to 20 per cent, according to the honourable Chief Justice, in terms of the delays, can be attributed to jury issues.

So if 15 to 20 per cent of the issues is attributable to jury issues, what is the other 80 per cent? What are the other elements that we may not or are not willing to look at, in terms of what is causing? And while this is a noble attempt to add some movement forward, I think options need to be against a backdrop and a context of us being realistic, given the track record of the particular institution, the

resources available, and looking at the actual problems or challenges. It is like, to give an analogy, Madam President, and again I like the principle, but principles need to be based in context. It is like having a car with bad pistons, poor brakes, terrible tyres and I thinking that well, adding diesel instead of super will make a difference in the car's operation. We may not be looking at the real problem. Or we would be adding a solution and not, at the same time, addressing the real issue. And that is part of my concern in this.

I agree with hon. Attorney General that, well, another option and an assessment of that option down the road will give us more anecdotal data, in terms of whether this adds relief to the situation we are trying to deal with. I am not sure that I am seeing us looking at the 80 per cent, according to Member Jennifer Baptiste-Primus, in terms of the issues that may be affecting the criminal justice system in Trinidad and Tobago and that is where one of my big concerns lies.

When we look at this debate, Madam President, you know, in the context of Trinidad and Tobago and the challenges that we are facing, we really need to have a clear idea of what we are facing and how we are to deal with it effectively. And we have had so many contributions, in terms of over the last couple months of many of the possible contributors to challenges in the criminal justice system and delays from law enforcement, the penal system, the abhorrent criminal prison system in Trinidad and Tobago, the slow pace at which cases go through the courts in Trinidad and Tobago, the inhumane length of time and conditions under which prisoners are housed in Trinidad and Tobago, in contravention of basic human rights, in contravention of many of the UN Conventions that we have signed, in contravention of any idea or concept of what should be a fair trial in any jurisdiction, and you have to ask yourself, when it comes down to it: Is this option

going to deal with all of those, and holistically deal with the objective? It may add some relief. But if we do not address all the other elements in the criminal justice system we may just be spinning top in mud, as we way.

So what constitutes a fair system in any jurisdiction? Well, due process, impartiality, in a reasonable time a case going through the system. I think we can all agree that 8, 10, 12 and 15 years on Remand, we have gone past the idea of a fair trial. And this judge alone option will not deal with the cases that have already been, in anybody's reasonable estimation, gone past that person's right to a fair trial as enshrined in our Constitution.

And, as a matter of fact, and I want to be very careful because I have heard Madam President's guidance to many other Members before, if elements of our Judiciary were a private sector company we probably would have shut it down already, given its track record, when you think about it. The track record of that institution, which is a critical institution, in this and every and any other country, is abhorrent at best, and we seem to be willing to look, settle one for what the status quo is there.

So the 3,000-plus people on Remand in X place and the 2000 in the other place are just collateral damage. So what we do is forget them, pretend they do not exist, pretend we have not wronged them in our criminal justice system itself and move and look to the future. That is not the way to solve the problem. We need to look at this holistically and try to deal with all the elements in an equitable manner so that we can have a holistic solution and a sustainable solution at that.

Another element of any properly efficiently running criminal justice system is the issue of justice for families of the victims, and restorative justice and rehabilitation for the accused and those found culpable themselves. Because I will

tell you, part of what I see the problem is in that we have such a revolving door of criminality in Trinidad and Tobago that the same system is being burdened by possibly the same 5,000 to 7,000 people over and over and over, causing burden on the system and also costing taxpayers millions of dollars every year.

I recently was made to understand it costs the prison system $1,000 per prisoner per day in Trinidad and Tobago. Does that make any sense? Someone stays on Remand, and this is somebody who has not been found innocent or guilty, for eight, 10 and 15 years in one case of somebody I have heard. How is this, and I keep saying, because I think it is a noble intention by the hon. AG, going to help that person who has now lost eight, 10 ten or 15 years of his life in a system this seems shut? I do not think that is fair in any situation and it certainly does not reflect what should be a civilized progressive country.

So, we have heard so many contributions, Madam President, about what are the advantages of a jury trial, what are the advantages of a judge alone trial. And yes, there are advantages and disadvantages to both of them. So I would not burden this honourable Senate or yourself by going over all of after those.

But I came across an interesting article recently, and it spoke about a situation. So when we think—and we have heard quite a bit about disadvantages of jury trials and the shortcomings of them. An interesting situation where, it is listed in the *Guardian* an American newspaper, Sunday 18 October, 2015, where corrupt justice, what happens when a judge's bias taints a case. It tells the story of a divorced mother, Margaret Besson, and her five-year struggle to get justice and one story of hundreds of judicial transgressions across the US revealed in this *Guardian* expose and what happened in that situation, and this is just one case, because, as I said, there are arguments for and against on both sides.

4.00 p.m.

And one of the outcomes of an investigation in that situation is, I said that and I quote:

> "Judges in local, state and federal courts across the country routinely hide their connections to litigants and their lawyers. These links can be social - they…have been"—many—"law school classmates or share common friends - political, financial or ideological. In some instances the two may have mutual investment interests."

And these should be taken into consideration when we are thinking—especially they said—in smaller jurisdictions where everybody seems to know everybody as we are in Trinidad and Tobago. So the argument in that case, Madam President, was that the situation where one is adjudged by a panel of 12 of one's peers, supposedly, is in that case, in their estimations, the more prudent way to go.

One of the issues that Lord Devlin raised is that while some may assert that, well, the members of the jury are not intellectually equipped,—which I do not agree with; that is a broad generalized statement—or educated in law, it gives that person a chance to learn the law. It gives them a chance to understand at a cursory level anyway because they are not going to be legally trained in a three-month or a two-month or a two-week trial. Some aspects of what the law entails and what their responsibility as a citizen entails. It breeds a sense of commitment to country, it breeds a sense of responsibility, and to take it away or to add it to that sort of scenario, in terms of a judge-alone system, kind of confuses the element if we eventually go all-judge. But the hon. AG has debunked that so I am glad to hear that.

Madam President, the situation to me—and I am tending in the direction of

supporting this amendment in terms of the judge-alone option. My concern with moving in that direction is that we use that as a possible panacea for what we are facing now, and I do not think that is going to work in any way, form or fashion. I think we need to look at the holistic situation, particularly with reference to our prison systems that have now become universities of crime, bastions of inhumane treatment and uncivilized treatment of inmates, whether they be innocent or guilty, especially those on remand, and also subjecting our prison officers to unhealthy, insecure situations because of the overcrowding situations.

When you think of eight, 10 and 12 men from different criminal backgrounds or alleged criminal backgrounds being housed, some for two marijuana joints and three marijuana joints and some murder accused, what you are doing is exacerbating the situation, and while we look at these options that are before us today, we need to place equal attention and fervour on that penal system in Trinidad and Tobago which is abhorrent. I wish I could go into more details about a recent experience but I cannot right now because of the regulations that exist.

But I will tell you, when you read the Daniel Khan report, the Ramesh Deosaran reports or any of the other reports into our prisons, it is one of the few times when you could actually be ashamed to be a national of a country because of the way those individuals are treated. And sometimes it is very easy for us to sit out here because we have not allegedly broken the law and cast judgment and say, "Well, yuh break the law, yuh do the time and yuh face it". But in thousands of those cases, Madam President, thousands of them, they have not been adjudged innocent or guilty, and what is even more reprehensible to me, from my understanding of our criminal justice system, is that they are being housed in those

sub-human conditions at the behest of the courts of Trinidad and Tobago. [*Desk thumping*] Something has to be wrong with that and we need to pay particular attention to that.

Fortunately, I will tell you—because so much has been said before, I can keep my contribution short and while. As I said, I agree in principle with the idea of adding a judge option. I do not know that, given what we are presently seeing in Trinidad and Tobago—and again, I will be careful where this is concerned—that many persons in our population are going to have confidence in several aspects of our Judiciary. And to me, that lies at the heart of anyone choosing to place themselves in the hands of a judge alone or being advised by their attorney or lawyer to do so, given the controversies we are presently seeing play out in local media.

I do not see that confidence in what is a critical institution in Trinidad and Tobago, helping to imbue confidence of someone saying, "Well, that institution is being run properly; the principals are doing what they are supposed to do". And I am hearing a kind of unfortunate chatter in society that, "Well, if dey cyah run dey own business, how dey go run my business", where that critical institution is concerned, and that to me, is the cornerstone of either the success or the failure of this noble intention by the hon. Attorney General. [*Desk thumping*]

And, I am not in any way laying this at the feet of the AG because there is a separation of the Executive and the Judiciary in this country, but certainly, when we are proffering solutions, we need to take all the elements that will either add to success or failure into consideration. As I said before, "yuh cyah put diesel in ah car with piston problems and hope it will fix the car". You have to look at all the problems with the car and while diesel may work if you change the engine

construction, you have to make sure you make the changes that are necessary to facilitate success in this regard.

A judge-alone option needs to stand on the foundation of confidence of the public in the Judiciary of Trinidad and Tobago. If that confidence—it will end up, unfortunately, if it is not stymied, in the same situation that we have with the police service where, while there are primarily great police officers, honest, a few bad apples have now led to a significant depreciation in confidence in the police service and cooperation, and we do not want that to spill over into a critical institution like the Judiciary. I think that we need to be very careful with that in Trinidad and Tobago. Because when you hear the talk shows and you sit and listen to people on the street, there are some institutions that are and should be considered almost sacrosanct in any country, and when those institutions start—in a public manner and critical elements and personal in those—to be questioned, we have started down a slippery slope to anarchy. As an old saying goes, "ah slide down the hill to perdition begins with but one stupid stumble" and we cannot afford these steps at this time.

In terms of closing because I do not intend to be long because so much has been said already, one of the issues I have and I will be very firm about this and I am adamant that the jury system remains alongside any judge-alone option in Trinidad and Tobago because I think, very often, we all talk about the five-year circle in Trinidad and Tobago where the population seems disconnected and dispassionate about being involved politically or otherwise, and that jury system is critical in maintaining that option for participation in what is a critical operation in our country.

Madam President, democracy means, you know, literally, the rule of

commoners. In modern usage, it is a system of Government in which the citizens exercise power directly or elect representatives from amongst themselves to form a governing body such as a Parliament. It is sometimes referred to as the rule of majority, originally conceived in classical Greece where political representatives were chosen by a jury from amongst the male citizens, rich and poor—unfortunately, no females were involved at that time. The English word dates back to the 16th Century from the older middle French and middle Latin equivalents. According to political scientist Larry Diamond, democracy consists of four key elements: a political system for choosing and replacing governments through free and fair elections; the active participation of the people and citizens in politics and civic life; the protection of human rights for all citizens, and the rule of law in which the law and procedures apply equally to all and all have a chance to participate. And I think—and that is a definition of democracy.

I think it is important for us to continue processes and institutions like juries even if we are adding judge-alone options in a bid to remedy a situation, but as indicated before, I am glad the hon. AG chimed in earlier on in terms of explanation. We need to move more from subjective to empirical assessments of our operations and our ideas and our institutions and our initiatives. We cannot just say, well this administration did it so let us all follow and follow the unfortunate road of tribe division that we have seen in Trinidad and Tobago. It has to be done like any properly operating system, a system of careful thought, consideration of what is at stake, possible solutions, determination of the best way forward and an assessment on a regular basis of what is working and what is not working and not subjective interpretations of same. With that said, in principle, as I have said before, I agree with the option of adding the judge alone but I also am very

adamant about maintaining public participation through a jury system.

With those few words, Madam President, I thank you. [*Desk thumping*]

Sen. Stephen Creese: Thank you, Madam President. I want to begin by posing a question to the Attorney General and I am willing to give way on this because I am in two minds to be quite frank about the introduction of trial—the option of trial by judge. Would the Attorney General be amenable to having a sunset clause put on this so that we can review it at a fixed point in time and determine whether this is worth the trouble?

Hon. Al-Rawi: Sen. Creese, I will do some consultations in the meanwhile. I do not have a policy prescription on that but certainly, as I come towards wrap-up, I will be able to answer carefully.

Sen. S. Creese: Well, that will be it for me, Madam President. I thank you.

Madam President: Sen. Mahabir.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President. This particular Bill before us really is amending two pieces of legislation: the Offences Against the Person Act and the Criminal Procedure Act. And let me, before I move on to the substantive points I wish to make, commend the hon. Attorney General with respect to the Criminal Procedure Act as amended with respect to what exists on page 7 of the Bill, when we are dealing with the mental health issues of mothers and we are changing the crime from murder to infanticide, I think we are moving in a very progressive step to recognizing that mental health issues in any society ought to be brought to the fore and to be dealt with professionally. And I want to commend the Attorney General for that. Just yesterday, the Committee on Social Services that I chair, the report, of course, is pending but we did, of course, investigate mental health issues and we are learning a great deal now about the

mental health status of our population.

And also on that issue on page 7 of the Bill for the consideration of the Attorney General, of course, when there is a review of the legislation, it says:

> "If any accused person appears, on arraignment, to be insane, the Judge on written or oral evidence of at least two medical practitioners may, find whether such person is or is not insane…"

I would have thought that you would want medical practitioners with specialization in mental illness because it is reading here that any two medical practitioners can certify and we are learning that mental health issues is a speciality and you would want to tighten up the law to make sure that you have medical practitioners with specialization in the diagnosis, care and treatment of mental illnesses. Those are just, Madam President, by-the-way points.

Madam President, I am having some difficulty with the trial by judge alone provision and like my colleague Sen. Chote, I reviewed the Preamble to our Constitution. For nowhere was I able to discern that according the Constitution of Trinidad and Tobago, an individual has a right to a jury trial. I was not able to see that. But when I examine the Preamble to the Constitution, which gives us the spirit of the overarching law of Trinidad and Tobago—Sen. Chote quoted from Preamble:

> "Whereas the People of Trinidad and Tobago –
>
> (c) have asserted their belief in a democratic society in which all persons may…play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;"

I thought was valuable in providing for us the spirit and the intent of the framers of the Constitution with respect to citizen participation in the national life of the

country, and the respect for lawfully constituted authority.

But, Madam President, I want to refer to subsection (b) of our Preamble, looking at the spirit of the Constitution or at least my own interpretation of it:

"Whereas the people of Trinidad and Tobago –

(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, and that there should be adequate means of livelihood for all…"

When I read subsection (b) which refers to our economic system, not our judicial system but really our economic system, and our belief as a society that the operation of such system should result in the distribution of our resources so as to service the common good, I asked myself, when reading (b) and (c) together, whether the framers of the Constitution did not understand that while we believe in a fair and equitable distribution of income—we believe it—we know it will not happen. And since we know there will be inequity in the distribution of income, I see subsection (c) as coming in even, so individuals, despite their income status, should still play a critical role in the institution of national life.

And I raise this problem, (b) and (c) of our Constitution in the Preamble, to focus on what I consider to be the spirit of how we administer and how we dispense justice. There are problems, in my mind, with this judge-alone trial when I look at (b) and (c), to which, when I am coming to conclude, I will conclude with them. The first question I asked myself was this. I know it gives a choice and choice is much to be expected and admired and welcomed in the economic sphere. Greater choice to the consumer gives him an opportunity to maximize the use of

his income via something known as consumer surplus. But would greater choice in how one chooses or how one decides his mode of trial going to benefit the society as a whole? So I asked myself: Who will choose a judge-alone trial as opposed to a jury trial?

Madam President, a long time ago, when I was Chairman of the Public Utilities Commission, appearing before me were some eminent counsels, one of whom was the now Attorney General, very early, and one of the senior counsels there drove home a point to me—I was Chairman of a tribunal—and the point was if your case is strong on the facts, pound away at the jury; if your case is strong on the law, pound away at the judge, and if your case is strong neither on the facts and on the law, pound away at the table. [*Laughter*] And what really, it was mentioned to me, was that when your case is strong on the law and given my experience as a legislator, I have seen cases where there are going to be gaps in the law. Gaps in how we write the law. I have seen gaps that we inadvertently miss. And when the case is strong on that part of the exercise, the procedures which were involved in arresting a person or in taking evidence, when the case is strong on the law, you can refer that case to the judge and you can indicate to the judge that there were breaches of the law. And the question is who would normally request a trial via judge alone.

And I think it is someone who could retain legal counsel, just as it was advanced prior, Madam President, democracy is not cheap, getting justice is also not cheap; it is costly. And anyone who could retain or who has the means, who is a winner in economic system, who, according to subsection (b) of our Constitution, was able to gather via the certain opportunities, skill sets that he has, a larger portion of the social pie, may be able to recruit the services of a senior counsel or a

very competent attorney, and that competent attorney may then be able to argue his case via any infractions of the laws or interpretations of the laws which may occur. And this option is not available to the majority of people I saw last week on remand.

And when I ask myself who will opt for a judge-alone trial, I thought that this judge-alone trial would be very attractive to individuals with money. That is my problem. And if it is attractive to individuals with money, then it means that implicit in the Bill before us is a system where the options available are options which are available to those who are the winners in the economic system who will then also be the winners in the judicial system, [*Desk thumping*] and I think all should be equal when we are appearing before the courts. So this is a concern I have.

And the problem—I conversed with the people on remand, it was a telling story on another occasion. But you see, our judicial system must not only be fair, it must appear to be fair. Our judicial system is the foundation of social stability. Every individual who thinks he is wronged or has been wronged, I hope, in Trinidad and Tobago, will feel that he will get a fair hearing regardless of his economic circumstance, regardless of whether he was successful in (b) of our Preamble or not. And I, therefore, have that concern that this judge-alone trial may be an avenue for wealthy people who commit crime to find a mechanism because they are able simply to pay for the legal talent which will allow them to exploit any loopholes in the law and this, I think, is a matter that we have to have some concern with in a just and equitable society.

But, Madam President, I have also concerns with a judge-alone trial with respect to a judge being in a position, the sole position, to determine guilt or

innocence. The judge is in the best position to determine the law. He can read the Constitution, she can read the laws of Trinidad and Tobago, very well put together by the Ministry of Legal Affairs, and rule on that. But if someone were to appear on the witness stand, the judge, in my mind, given his range of experience, may not know whether to believe or not to believe that person. It is said some people can lie very well. I am, unfortunately, I am not one of those. But there are people whose veracity, to my mind, would best be determined by people who are similarly circumstanced like them, who would, therefore, be able to rule that "I hear the story of this accused person, I do not believe it because I live under similar circumstances, I grew up similar to how that individual lived and what he is telling me either accords or does not accord with my sense of what is happening in that society".

So I think the judge is not really in the best position. Judges, as we know, are individuals who tend to be apart from society, as they have to, but really, once you live apart, can you really understand the shenanigans which are going on, on the ground of the society? And I think, really, I have some concerns, therefore, with the kinds of mindset of a judge, his cultural experience—it has been raised before—and how that may bring to bear on whether he is in the best position to believe whether someone is innocent or guilty. I make these comments, Madam President, having never really been in the courts for any matter but I can just anticipate some of the issues.

I have a problem with the judge-alone trial in that since the judge is now going to determine the sentence, the issue of corruption of a judiciary has not arisen in any major way in Trinidad and Tobago but I think the potential certainly will now exist—it is a position that Sen. Mark alluded to—where the members of

the Judiciary, like Members of Parliament, will also have to reveal their assets to the Integrity Commission. But given that the judge is now the sole dispenser of justice, it does not have to go a group of 12 individuals, there is a possibility of corrupting the Judiciary. Wherever there is a supply and wherever there is a demand, a market will exist. And again, it comes down to who will be doing the corrupting, individuals with means; and individuals with means, I think, will benefit tremendously from a judge-alone trial.

There are cases, in 2014 when we debated the Bail Amendment Bill. It was raised—it is on the *Hansard* by the then Attorney General that we needed to suspend the rights of certain prisoners for, I think, a period of 120 days, because many of the individuals, if out on bail, do threaten judges. So that, whether it is so or not, I cannot say but that was raised in defence of the Bail (Amdt.) Bill to have individuals incarcerated for up to 120 days. I recall I raised an issue and that was the response to the issue I raised. Now, if it is possible to threaten judges who are simply going to adjudicate, I think, a fortiori, it will be possible to threaten them more since they are also going to determine sentencing, [*Desk thumping*] and I do not wish to corrupt the Judiciary and I do not wish to have our judges threatened by anyone.

This judge-alone issue, Madam President, is also of concern to me because it imposes upon the judges the need to write judgments, I would imagine, on a timely basis, and we know the problems which exist with outstanding judgments. Every time I speak to people in the know, they always indicate that there are judges out there with outstanding judgments and we are adding another burden to the judges, so that this will be another part of the work that they have to do. Is this, therefore, going to impede justice or will it frustrate justice? I cannot say but really, I think

that we would be imposing an onerous task on judges.

So if I were to just organize, Madam President, what my concerns are: imposition of written judgments will impose more time on judges, more time requirements on the bureaucratic administrative side; the potential for threatening judges where such threats do not now exist and which we should not encourage; the potential corruption of judges; the fact that judges may not be in the best position to determine innocent or guilty, but most important, in my mind, it is the fact that we are providing potentially an avenue where judges may in fact—Madam President, may I ask if you are going for the tea break? Are we going for the tea break?

Madam President: We are going to suspend at half past.

Sen. Dr. D. Mahabir: Very well, thank you very much because I was going to run through. Okay. But so, Madam President, the concerns I have, therefore, is that we have some matters with a judge-alone trial. However—[*Interruption*]—Very well.

Madam President: Hon. Senators, at this time, we will suspend and we will return at 5.00 p.m. Sen. Mahabir, you have used up 17 minutes of your speaking time. So we are suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed*.

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

Mr. Vice-President: Sen. Mahabir.

Sen. Dr. D. Mahabir: Thank you very much, Mr. Vice-President. Mr. Vice-President, I had advanced the concerns I have with the judge alone trial, chief of which, is that it may be skewed towards individuals who can afford expensive legal talent, and for the same crime someone who is unable to afford that particular

legal expertise and who has to depend on a public defender may find himself adversely affected, and therefore, the one with the public defender alone may not elect to have a judge alone because maybe the public defender would not be as au courant with legal loopholes as a more experienced senior counsel. But there are benefits I need to emphasize of the judge alone trial, and we know that there are circumstances in which a judge alone trial is warranted, even though the law says you are entitled to a jury trial.

Pre-trial publicity is one that has been advanced during this debate; Jury tampering is another. When a trial is at a very late stage and there is any evidence of jury tampering, we will agree that you could continue alone with the judge having heard all the evidence. There is also a situation where it may be impossible to find a jury, or to empanel a jury, competent in the case at hand. In the case of white-collar crime, for example, where matters of complexity arise, accounting issues, you may not want to impose a jury trial, and one wishes to, of course, give the DPP—and according to the laws of the land—the option of having a judge alone trial.

A classic case occurred in the United States. Sergey Aleynikov was accused of stealing the computer code of Goldman Sachs on high frequency trading. The problem with that is that no juror knew what high frequency trading was, and even less of them understood computer code. One would have thought that this would have been a civil matter. It became a criminal matter, and to this date, Sergey Aleynikov was imprisoned for a number of months but no one could identify exactly what crime he committed. So that when the case is very complex—in fact, that is a very interesting case. If you google it, you would find that the defence of Mr. Aleynikov was that he got computer code in the public domain, he integrated

what he had written while employed at Goldman Sachs and, therefore, it was impossible for him to know what belonged to Goldman, what was on the public domain, and it was impossible therefore to find a jury.

So where it is difficult, or impossible, because of the complexity of the case, one understands that there is the need to suspend the jury trial. The problem with Trinidad and Tobago is that these types of cases do not arise. For the last 20 years, the Securities and Exchange Commission has not been able to bring a case to prosecution in Trinidad and Tobago, and therefore, no jury has been asked to investigate complex fraud. I am not talking only about Clico/HCU. We have had these issues arising since the early ’80s in the international trust fiasco. So we have had instances where a priori it seems as though individuals should have been brought to book with respect to serious white-collar crime. Clico being one of those that almost, or could bankrupt this country, and yet no one has been brought before the courts for any financial malfeasance. So that, if in fact, they work and a case was brought, you could understand that there is really a need to dispense with a jury because the jury of ordinary people may not be trained enough to handle all the accounting complexities in that particular case.

So that notwithstanding, there are still the concerns with the judge alone trial, and what would convince me that the judge alone trial as an option is something to seriously consider and to agree to, is the fact that the rich will not inordinately benefit from it—so making justice skewed towards one’s economic resources—but also there is a need to convince me that the problem we are trying to address is the fact that there are trial times which are inordinately long, and I am wondering what really is the problem. Is the problem in court system lengthy jury trials, or is it that the time it takes to get a trial is the issue? It is always said, when

it is time to move the piano, many of us are very interested in simply shifting the stool.

Now, we need to address the heavy weight of the piano, and if the problem is really trial time, then I know the hon. Attorney General will bring evidence for us to indicate that a jury trial takes a long time, it, of course, consumes a lot of the court's time. And if we were to simply add this option, we would free up some judicial time, we would free up some court time and we will be able to get a greater throughput, but from the evidence information advanced to me that does not seem to be a problem. The problem seems to be more time to trial and, in particular, the problem with respect to our remandees. This seem to be the issue that we always have to confront individuals for a number of reasons staying sometimes 10 years in a remand institution.

I have actually spoken to a number of individuals and their view is that we in society certainly ought to be doing something to expedite the problem, and the issue of a jury trial does not arise there. I would like to be convinced that we are moving with some alacrity to address this individual. There are individuals who are in remand because of—again and I want to emphasize this inequity in distribution of income. Individuals in there who cannot post bail of $70,000 because they have no relatives with land and they are incarcerated—because remand is just a nice word for jail—they are in jail, they are in prison, simply because they could not post bail. Guilt or innocence has not yet arisen. And so, I think that is a matter that we would want to address.

I know the hon. Attorney General indicated that there is a legislative agenda, but I cannot, according to the rules of the Senate, anticipate legislation. I can only deal with legislation that is before me, or legislation that has been approved, or has

passed, but I cannot speak about legislation to come because there are no rules which say it must come within a specified time period. So that there are these issues with respect to the trial time as opposed to the time to trial. One would have thought that if we are to really address some of the issues, that we would have brought data, information, to convince the Senate that jury trials really are time-consuming exercises, and if we were to reduce them by half, or by 25 per cent, we will be able to get so many more trials through the court system. That information is not available to me.

There were the suggestions that what we can do to solve the problem. We can have a night court—I advanced that—a gun court, a drugs court—a number of courts—petty claims court, which will certainly expedite the processing of individuals with some legal problems. It was advanced that there should be a recruitment of more criminal judges in the Judiciary of Trinidad and Tobago. The Director of Public Prosecutions indicated that he himself had some concerns with respect to the difficulties, challenges, in him not processing the cases that he has before him in a very speedy manner. So that there are a host of issues which, to my mind, seem to warrant some immediate and pressing attention, and the jury trial is something that I think is just an experiment which, at worst, to my mind, Mr. Vice-President, will result in avenues and opportunities for the wealthy to take advantage of—the wealthy commit crime; the poor commit crime. Just when I visited remand I did not see people who claimed that they were wealthy. The wealthy seem to be able to post bail and get out.

Mr. Vice-President, justice is the foundation of social stability. Every single person in our country, under the protection of our Constitution, must feel that the laws apply to him as equal as it applies to someone who has more resources, more

connections, more status than he has. I think that if we were to look at the Preamble to our Constitution, and we look at the Preamble, (c), as my colleague Sen. Chote has advanced in her own contribution, and the Preamble, (b), that I have indicated—(b) and (c) going together—it would appear to me that at least in spirit we must always ensure that there must always be a perception. Even if there may be a different reality, there must be a perception for good reason. Why is that perception important? That there is going to be the same law for the well off as for the least poorest person in the society.

It is important for there to be stability—social stability—it is important for there to be cohesiveness in the society. I think that a jury trial for all is something that will ensure that individuals, regardless of their means, will face the courts, and that giving choice to individuals—only a select few, in my mind, were selected—will create further discord in a society; a society in which when you visit remand you will see the inequalities in income in Trinidad and Tobago result in some people behind bars and some people out, and I think I cannot support this particular measure because of how I see it is going to be made use of by individuals who are not in remand, but made use of by people who can afford to so do, and it may be introducing in Trinidad and Tobago more by way of a perception that the society as so structured does not favour the poor, and given my position that the poor will not benefit from this, I cannot support this Bill.

Thank you. [*Desk thumping*]

Sen. Jennifer Raffoul: Thank you, Mr. Vice-President. I am so accustomed saying Madam President, that I almost call you Madam President. Forgive me. Thank you, Mr. Vice-President, I appreciate the opportunity to speak. Thank you colleagues for your attention and your time. The debate today is about the first suite of

package of amendments, of legislation, that is about reforming the criminal justice system, specifically about the trial by judge alone options. This makes it optional for citizens that are accused of crimes to have their case heard by a judge alone as opposed to a jury trial.

I would like to first start by commending the intention of the legislation. There is a massive backlog in the judicial system, the justice system, and the intention is to expedite that and to bring a greater sense of justice to our citizens. I see some advantages and disadvantages to the legislation proposed and I would like to go through this briefly, as well as to give my perspective on the wider justice system. In terms of the advantages, I see as mentioned there are cost savings to doing a trial by judge alone but, as Sen. Gerald Ramdeen said, just because there is a cost does not mean that that alone is enough validation to do away with the system. There is a cost to elections but we still have elections. The other advantage is that it can potentially expedite the justice system, but, as Sen. the Hon. Jennifer Baptiste-Primus said, it will only expedite perhaps 15 to 20 per cent of backlog because it is only 15 to 20 per cent of the backlog is estimated to be due to the jury system. That said, we do not have proper data, this is just anecdotal.

In terms of the disadvantages, I see them being potentially quite grave. I see that justice could be compromised because there could be subjectivity of judges, and the perception of justice is quite critical. I see a safety issue because I see that it is—for persons who have are accused of crimes and who are given a guilty sentence, I think they will be much more likely to accept it if it is coming from a jury than coming from one individual judge, and I think they will be more inclined to accept that it is not subjective. In terms of the safety, I think that there is more likely to be a potential backlash against judges and even defence attorneys. It was

mentioned during the first sitting that in Nigeria there was a trial run for doing cases that were seen as corruption cases by high profile, and after that some of the security of justices were put at risk. I think many of them were threatened thereafter.

In terms of what else could be done to expedite the justice system and the backlog, there are five reasons that I can see from having read in different reports about why the justice system is so slow. One of those points to a backlog in the DPP's Office, lack of staff, and a need to have greater numbers of staff; second, in terms of the police system not having evidence recorded properly, not having testimonials recorded properly, police not showing up in court; third, the existence of the death penalty on our books serves as a disincentive for persons to sometimes plead guilty out of fear of having the death penalty applied to them; fourth, again referring towards what Sen. the Hon. Jennifer Baptiste-Primus referred to earlier, that we have such a backlog because there are sometimes too many accused. Perhaps we have laws that are unnecessary. We recently—last week—discussed the motor vehicle amendments and commendably changed the way that we classified motor vehicle transgressions to make them no longer crimes but things we can apply penalties to. So in that sense, we have reduced the motor vehicle backlog from the Magistrates' Court. Sen. Richards always refers to our education system because of the inherent weaknesses in it. We have 5,000 students every year that either are not placed in secondary schools, or do not graduate to the CXC level.

I want to also comment on the wider role of the justice system itself, and that the aspect that we have in our Trinidadian society and Tobagonian of having repressed trauma leading to violence and criminality. The medical literature refers

to trauma having a link with violence and criminality. There are other factors in the mental health, but when it comes to mental health and the difference between mental health such as depression, anxiety, stress versus criminal behaviour, usually the link in the medical literature points to trauma and repressed trauma in particular.

Interestingly, we can have repressed trauma as individuals because of things that happened within our childhood, or within our lifetime, as well as things that happened to our ancestors. So the literature points to three to seven generations which trauma could be passed on through the DNA, and some literature even said three to 10 generations. So if we have trauma in our past that has not been addressed, this could be passed on to us.

I watched a really interesting tech talk yesterday by a gentleman name Marlon Peterson. He is a tech talker and an NGO founder. He went through the criminal justice system in United States. He spent 10 years in prison for a crime, and when he was talking he revealed that he was of Trinidadian parentage and the crime that he committed, it was himself as well as four other Trinbagonians that were committed for the crime. His talk was about rehabilitation and restorative justice and the trauma he experienced in his youth, and he said that just because he experienced trauma does not mean that it was an excuse, but it was something that later on he understood with much more self-awareness the roots of his own violence and his own axe. He said that he felt like garbage growing up. He said that where he lived in the United States there were more guns available than sneakers, and that when he was 14 he was sexually assaulted. He gave this great analogy between Trinidad and the steel pan being an instrument that was created out of garbage and then was transformed into music, and in his story he gave the

experience of feeling like garbage and then eventually being able to make something beautiful out of this experience and to create music with his life.

As I had noted, trauma can be passed on through DNA, through genetics, but there is a stream now at genetics which looks at how our DNA can be changed through different life style, habits, meditation, exercise, et cetera, as well as neuroplasticity which is regenerating the brain through different modalities. So there are ways in which we are not destined to be victims of our faith, whether it is our childhood, or our ancestry, and different therapies can be used through rehabilitation to help support us in helping other members of our society who have been criminal offenders to then be rehabilitated. I just wanted to bring up this point that it is really about us not seeing people as criminals, as monsters, but as people who are equal to us. It is about recognizing where we see separation, and recognizing where we see fellow humanity, and about the ability for all individuals to heal and to be regenerated, reintegrated back into the society over time.

On this Bill today, I do have my concerns. I said mainly about justice being compromised, the perception of justice being compromised and the safety of judges on defence attorneys. I have these concerns and I am still prepared to be open to debate. I appreciate Sen. Creese's question about if this could be done on a trial basis, and what Sen. Richards said about agreeing in principle, my concerns right now lead me to vote no, but I am here to debate, to listen, and to see what else can be suggested in terms of amendments so we can really address how we can expedite the justice system and also ensuring that there is justice.

Thank you.

The Attorney General (Hon. Faris Al-Rawi): Thank you, hon. Senators. It gives me great pleasure, Mr. Vice-President, to bring closure to this debate and then to

move to the committee stage to consider proposed amendments which the Government will be circulating for consideration by the hon. Members of the Senate. We, of course, had the first reading of this Bill on March 07, 2017, we had the second reading on March 14, 2017, the third reading on March 21, 2017, and today, June 08, 2017.

I would like to put onto the record that this Bill—I heard Sen. Raffoul a little while ago note that this is the first Bill in a suite of Bills. It is actually not. It is directly alongside what we did with the motor vehicle and road traffic, because hon. Senators did hear a while ago that one could be cautious, as Sen. Richards put forward, not to consider this Bill as the panacea, or the single magic bullet to deal with the criminal justice system. Indeed, Sen. Mahabir, Sen. Richards—many of our Senators—Sen. Shrikissoon, Sen. Raffoul, all reflected upon the fact that the system does not appear to work.

Now, the information which has been restated, the 15 to 20 per cent delay, and, as Sen. Shrikissoon or Sen. Richards put it, what is the other 80 per cent delay. For starters, the estimates of 15 to 20 per cent delay has come from the Chief Justice's speeches on the opening of the law term, by which there is an estimation that some 15 to 20 per cent delay, or expense, is involved in trials by jury. The Government is of the view that there is not reliable empirical data in Trinidad and Tobago which can conclusively speak to the reasons for delay.

Our tour of the system has involved the creation of a number of legislative and operational measures which we proposed that Trinidad and Tobago allow the Government to implement, and they have included the following: one, prison reform, which is why we started in the prisons, looking at the prison population, looking at the length of time, the expense because that was the litmus test by which

we could test where our criminal justice system is. We have discovered, and we have shared with the nation, persons in prison for 17 and 20 years plus, we have shared the cost of maintenance of prisoners, we have looked at the number of persons remanded, the number of persons convicted, we have watched the molasses pace with respect to remandees.

Just this week I received a letter from a prisoner on Remand Yard. In this letter the prisoner describes to me being guilty of killing his wife in his own handwriting. In this letter, the prisoner describes the fact that he wishes not to waste time on a trial, he wishes not to waste time on any measure of defence because he accepts his guilt. He says that he wishes for the State to spend no expense on a trial. I cannot speak to his mental competence, or what I know behind the letter, but he described being—and I have confirmed—incarcerated for seven years awaiting the ability to say, "Please take me to the gallows and I will not fight." That is a real example of where we are and in looking at this overall picture, we have said to the country, number one, let us not look at one Bill as a panacea. Sen. Mahabir is right, we cannot anticipate but we can connect dots in debates.

We have come to the Parliament, in both Houses, and said, "Let us remove 1000,000 cases from the Magistracy and free up judicial time." We have said to the country in the publication of the criminal proceedings rules, which were due to come in January 2017 and which were delayed till the 18th of April, 2017, that you ought to organize your criminal system so your start and rise times are known, you schedule cases, you computerize your registry. We have said to Trinidad and Tobago, let us engage in a discussion in relation to the abolition of preliminary enquiries which are a significant delay in our system, part of that 80 per cent that Sen. Richards was asking about. We have said to Trinidad and Tobago, let us

engage in a system of plea bargaining as it is used successfully in other jurisdictions where 90 per cent, or 95 per cent of matters are dealt with by plea bargaining.

We said to Trinidad and Tobago, let us deal with the persons who cannot come out of remand—and I heard Sen. Mahabir reflect a little while ago about somebody who was remanded and needed to find $70,000 to come out of remand but could not because the person was landless. And therefore, we have brought to the Parliament, which is now laid before this House, and which I will not go into other than by way of mention, to say we are dealing with the manner by which 80 per cent—70 per cent, forgive me—70 per cent of the remanded population who are granted the provisions of bail, have been granted bail but cannot accept it, and we said let us come with a different system.

5.30 p.m.

We have said to Trinidad and Tobago, let us reform the Legal Aid Authority, which is no need for legislation; let us instead put in a public defender system so you do not have to wait for a lawyer to be ready for you. We have said to Trinidad and Tobago, if you cannot have a lawyer of your choice available, then the State will provide you with a lawyer so that your trial can start.

We have said to Trinidad and Tobago, let us reform our forensic system which is part of the 80 per cent delay. Is the evidence ready? As a result of which we made sweeping amendments to DNA, banking, et cetera. And I am very pleased to report that Minister Young in his recently concluded trip to China, in fact, is advancing a turnkey operation for a brand-new forensic centre to be put down by the Chinese Government if things work out.

We have said to Trinidad and Tobago, it is unacceptable that you have 53

prosecutors that handle 95 per cent of your backlog, and your case management—95 per cent of the cases in the Magistracy are dealt with by the police prosecutors, eight of whom alone are qualified attorneys-at-law, and there is no case management facility going on there, so delays happen because you are not ready because you are under-resourced, and so we are treating with that.

So, far from this Bill being a panacea or magic bullet, it is squarely connected to all of the operationalization measures that we are implementing right now. They go alongside with having created a new division for the Children and Family Division Court, which will be opened in September of this year—judges, employees, courtrooms—[*Desk thumping*] so that we now shunt out the load—Magistrates' Court, High Court Division, Family and Children.

We have created the Child Protection Unit of the Trinidad and Tobago Police Service. We are operationalizing the electronic monitoring so that you can have conditional release. So we have not taken as a Government, a narrow, single-minded approach to dealing with our criminal justice system. Far from that be the case, we are in fact dealing with it in a cohesive matrix.

Let us add on to that now where we stand as a jurisdiction in terms of our statistics, because you will note hon. Senators that in Trinidad and Tobago, you have a Government that has come forward to the country and has given statistics for the first time, at least, in the seven years that I have been around in the Parliament. It is the first time a Government has told us who we are, what we are, what the numbers look like, what the cost of doing it is and what the cost of not doing it is.

In providing those statistics we have received criticisms, in particular from the Opposition, a most outlandish criticism that the Bills that we bring are money

Bills, because we are talking about the value for money considerations. Outlandish—drivel, if I find a parliamentary word. Amazing that people could say that with a serious face. But the mere fact that we are talking about value for money is an absolute necessity because justice delayed is expensive, on the financial end yes, but it is expensive to the people that are in the system—the victims, the accused, the people who want to have their rights dealt with and there is an expense of emotion. Sen. Raffoul says that that emotional scar in terms of literature, in terms of scientific evidence can last as long as seven generations. You spoke to the Trinidadian descendant on the TED Talk that spoke about the living example of going from garbage to value. So we acknowledge that.

But in our statistics, we see, we are only dealing with 226 indictable matters per year—those are listed every year—but out of them only 116 get dealt with. We are at a 33 per cent disposition rate. The rest of it goes into backlog and backlog and backlog.

[MADAM PRESIDENT *in the Chair*]

In terms of the number of people that have their matters disposed of—not cases, people—it is 6 per cent of people who every year get relief, 6 per cent. In terms of where we go in backlog, the Judiciary tells us there are 2,337 pending matters. We are told that there are 200-plus matters 15 years and older. We are told that there are 100,000 cases in the Magistrates' Court on traffic offences alone. We have not ignored these statistics. We have come forward and instead, we have said let us examine every piece and element.

I wish I could bring an omnibus Bill that can marry access to bail, motor vehicle amendment, trial by jury or judge only, the abolition of preliminary enquiries, plea bargaining, special court access, as Sen. Mahabir says, for a Gun

Court. I wonder if Sen. Mahabir remembers that a Gun Court requires a judge-only route, Sen. Mahabir. Since 1974, in Jamaica, the very thing which you think you may have a difficulty with today, and that you have proposed requires a judge-only route. So I was rather surprised to hear Sen. Mahabir's views in that regard.

But the point is, we cannot come to Parliament and do it all in one go. We dealt with the motor vehicle amendments, Madam President. You know, it crossed my mind when I checked, five Members, five Ministers of two successive Governments try to pass the amendments this Senate past, five, and not one did it. But this Senate did it [*Desk thumping*] because it was taken in pieces that could be achieved and operationalized at the same time.

So what do we come here to do? We came here to advance to the nation, through the Senate, through the House, a proposal to broaden options available to an accused of his own volition. What we say is, far from the nonsense volunteered by Sen. Mark, we do not say—[*Interruption*]

Sen. Mark: Madam President, could you control—[*Interruption*]

Hon. F. Al-Rawi: Perhaps, I will rephrase, Madam President.

Madam President: Please, have a seat. Attorney General, please withdraw that and rephrase.

Hon. F. Al-Rawi: Yes, I accept that I—I meant to say, the lack-of-sense argument. I meant it in the actually work. [*Desk thumping*] What I mean is in the sense of the logic of the argument that it made no sense.

Sen. Mark: Madam President, you have asked the hon. Attorney General to withdraw and he has not withdrawn.

Hon. F. Al-Rawi: What is the point of order?

Sen. Mark: 46.

Hon. F. Al-Rawi: What is the point of order?

Madam President: Attorney General and Sen. Mark, please take your seats. Attorney General, please withdraw it, as I said, and let us just proceed. You can choose different words to say whatever you have to say.

Hon. F. Al-Rawi: I have withdrawn it, and I withdraw it again. The argument offered by Sen. Mark lacks in sense completely. There is no other way to say it. I mean, I am sorry the English language is that way open to abuse, but I meant not to be pejorative to the individual, but to the logic behind the argument.

The fact is that it makes no sense at all for someone to come with a serious face and say the Government proposes to abolish the jury system. That belies an ability to actually read the Bill, because what the Bill says is to introduce a method to elect a judge-only route, and no one is forcing the accused. What one is invited to do is to offer to the accused the opportunity to select it of his own volition—no more, no less.

We have heard today, argument that the Bill is unconstitutional. I mean, again, there is a constant refrain on the part of the Opposition that everything requires a three-fifths majority, everything is unconstitutional, we will meet you in court. No problems. The courts of the Republic of Trinidad and Tobago are there to be accessed. You can win in first instance or you can take a five-nil licks in the Court of Appeal on the matters that you take forward. [*Desk thumping*] The point is the courts are there to deal with the matters that come before it.

But, Trinidad and Tobago, if it takes the Opposition seriously—again, Sen. Mark "going to town" on it—recognizes the Constitution is the supreme law, section 2; recognizes section 53 of the Constitution says that we make Orders effectively, essentially, for the peace, order and good governance of our country.

But the fact is there is no express right to a trial by jury in our Constitution, and that circumstance that we find ourselves in is not unique.

It is no different from Jamaica. It is different from Belize and Bahamas where there is a constitutional right to a trial by jury. It is different from Canada and the United States where there is an express constitutional right to a trial by jury. But in our jurisdiction, much like Malta, much like Jamaica and much like other jurisdictions, there is no constitutional right to it. Hon. Senators had the opportunity to traverse the law, be it in *R v Stone* coming out of the Gun Court experimentation in Jamaica, started in 1974, which went to the Privy Council expressed in 1980 dicta there, All England Law Reports, in that case where the Privy Council was at pains to say that it is merely a method of approach, that there is no right to a jury and that it does not infringe with the equivalent—if I draw it to our position—of our section 4 and section 5 rights.

And the section 4 and section 5 rights, perhaps section 4(a), due process; 5(2)(e):

> "right to a fair hearing in accordance with the principles of fundamental justice…"

5(f), you shall not:

> "deprive a person charged with a criminal offence of the right—
>
> (ii) to a fair and public hearing by an independent and impartial tribunal;"

5(h), you shall not:

> "deprive a person of the right to such procedural provisions…"

Sen. Mark regurgitated the arguments which the Privy Council trounced upon in saying that there is some sort of implied right which was somehow miraculously saved in our Constitution. *R v Stone* put an end to that. But, in

particular, the jurisdiction of Malta provided another opportunity for the Privy Council to consider that implied fair proceeding position and, again, confirmed—albeit on a slightly different case as to composition of juries—whether they were all male or should have female. They again spoke to the fact that a right to a jury is not a right in the Constitution of Malta, just like it is framed in the Constitution of Trinidad and Tobago.

If one went even a little bit further and tried to give what they call the generous interpretation argument expressed in the case of Fisher and you tried to import international law—be it United Nations Conventions or otherwise—to say that there is somehow some rooted right there, again it fails.

Mr. Justice Telesford Georges in publications since 1983 said it could be done by simple majority. The Chief Justice, in his speeches, in the 2015/2016, if I recall, opening of the law term, again said it is a simple right. There is no vested right. But each and every Member of the Opposition stood up with a straight face and said that. They are entitled to say that. I now respond and I make reference to decided case law from the highest courts of our land which have put an end to that, quite simply.

What do we look at next? We have heard a few submissions and permit me—Madam President, again, I trip between the House time which is longer than the Senate—would you let me know exactly what time I am supposed to end?

Madam President: You are supposed to end at eight minutes past six.

Hon. F. Al-Rawi: Eight minutes past six. Thank you very much. Let me address some of the submissions made by hon. Senators. Some of the sentiments were expressed by various persons, and they were shared—some between the Independent Bench some on the Opposition Bench. We heard Sen. Sturge speak to

the need for a discretion to change your view as to whether you should wedded as the Bill proposes—once you choose jury, no turn back, once you choose judge, no turn back.

Sen. Chote also tickled the point quite squarely. There was merit, in particular, in the argument that Sen. Chote brought forward, and from that perspective the Government proposes that we do keep you wedded to a position once you have elected, but enlargened the time for you to change your mind. And so we propose in amendments which should be circulated to put forward prescriptive language which allows you up to 28 days before your trial comes up to elect one way or the other or to change your mind one way or the other. I thank Sen. Chote for that recommendation made on the floor.

We heard Sen. Sturge make a most incredible submission to say that Lord Diplock's commentary in the Trevor Stone case was obiter dicta. The main submission before the Privy Council was whether there was a constitutional right to jury. That was the main submission. I do not know how we reach to it being obiter dicta, but he said it over and over again, but the Attorney General has come to this House and prayed in aid obiter dicta from Lord Diplock. I wonder if he actually read the case, because it was the main issue decided in the case. Obiter dicta is where there is a "lil" passing language not related to the main issue.

What else did we hear? In relation to the main submission and in aid of support, I would like to throw in, apart from the cases in Malta and the Trevor Stone case, which a number of people have referred to. I would like to add in an interesting case call Shuker and Others, 2004, coming out of the European Court on Human Rights which again dealt with the argument that depriving someone of a trial by jury amounted to their right to a fair and public hearing. The court literally

said that argument can be disposed of quickly. There is no evidence that the trial an applicant will receive other than fair is relevant. Trial by jury may be the traditional mode of trial of indictable offences in most common law jurisdictions, but it is not the exclusive touchstone of a fair trial. And I thought that that was an interesting case to reflect upon.

We heard as well the interesting submissions from Sen. Ramkissoon, and I thank her for them. Sen. Ramkissoon asked—well, she said, the hon. Senator, that she had not spotted any offence for juror misconduct in Trinidad and Tobago. Hon. Senator, you are right. In that expression of the law, which is the 2011 revised version of the law, which is the books of Trinidad and Tobago which you and everyone else would rely upon, the law was not updated to reflect the amendments which happened under the Administration of Justice (Miscellaneous Provisions) Act, 2014; the Criminal Offences Act, Chap. 11:01 which provides that where a juror misconducts himself or yields to an improper influence in connection with performance of his functions as a juror, he commits an offence and is liable on conviction on indictment to a fine $50,000 and imprisonment for five years. So we looked for it and it does exist.

The hon. Senator pointed out that in her reading that there were consequential amendments that were absent from the Criminal Procedure Act. I just wish to refer the hon. Senator to the provision of clause 4(b) of the Bill. Clause 4(b) of the Bill, of course, is that sweep-up clause which says wherever you see "trial by judge and jury", read in as well "trial by judge". So there is one clause that treats with the amendment to be read right across that particular piece of legislation.

The hon. Senator also made an interesting point saying that the election for

trial by jury should be done under grounds to be determined by the court. We felt that it would be onerous to ask an accused who was electing the route of trial by jury to provide grounds to a court to decide whether the court wanted jury trial or not, and we preferred instead to maintain the policy which was that if you the accused elect, then we are prepared to go with that.

Now, a lot of the people have mentioned the position of who will accept a trial by jury. The fact is that when we look to the statistics we see that of the number of pleas of guilt coming through the Magistracy, coming through the High Court, there is a significantly high ratio of persons electing to choose guilt, and that is therefore the starting point in this here—yes please.

Sen. Ramkissoon: Madam President, thank you. Thank you for giving way. In relation to the clause, I spotted three clauses that missed the word "jury" and "by judge alone" and you referred me to 4(b). But if you look at your amendment for 19, you went into that area and you cleaned it up for 19(d), where you put section 58 should be amended. So that is why I had raised it that I did not see it in sections 30(3), 46 and 51. So that is why. So I do not know if you need to amend them because 4(b) did not reference when you did. Thank you.

Hon. F. Al-Rawi: Thank you, Senator. It does catch it and we can discuss it in committee stage as we come to it. The hon. Senators Chote and Ramkissoon, in particular, raised the issue of whether we are going to treat with the backlog. Sen. Richards touched upon it today as well. We have reflected upon tightening the language, and we were very much minded to listen to what the Senate said. What we propose is to circulate an amendment which will actually deal with the Act applying to indictments for which a trial has not yet begun, meaning you may be in the course of the position, you have not yet had your trial started, but you can elect

for this system.

There are many people—I want you to remember hon. Senators, through you, Madam President, there was a case of a fella who had broken out of jail after being in jail for 12 years. He was found on a jetty in Carenage. And when they came for him, he did not resist. He said he broke out just to prove the point that he wanted a headline to say he was waiting 12 years for a trial, and he would have done anything to get a high turnover rate moving inside of there. Who are we to say that this law is designed for the rich and that the poor will have no access?

In fact, the entire law, one may argue, is skewed towards those who have a greater power in arms as the law speaks about equality of arms. Perhaps the entire law is. Could one say that a preliminary enquiry that is going on for 17 years right now in our jurisdiction is because the accused are well heeled, because they can afford to go to the Privy Council on umpteen occasions? Perhaps one could. But what is the position in defence, when one says that any method by which somebody can elect a trial to be advanced is a good one to choose? After all, do we not have in our existing laws in the Summary Courts Act, section 100, hybrid offences; Second Schedule of Chap. 4:20, scheduled offences where a magistrate under section 94 can say you are on an indictable charge, but there is a like summary charge and if you are an adult you can elect to go for your summary charge? Is not the route of going for a summary charge obvious because the summary trial involves a discount of up to one-third of what you would otherwise suffer? There is a discount for going on a summary route. It is not as grave a consequence as going for an indictable route.

Let us go a little further. Hon. Senators raised the point—Sen Mark started, several other Senators asked—about what are we going to do in relation to the

provisions in the Bill that allow for the abnormality of mind rule which a jury right now can deal with that you are in postpartum depression or that your matter should be as a result of provocation reduced to a lesser sentence? That is the feature right now which a jury exercises. We have added in the feature which judges are now going to have the facility to.

But I want to point hon. Members to the fact that this Bill proposes that a judge as a safeguard of having the ability to determine issues of fact and law—wherein the system with judge and jury, the jury determines the fact and the judge guides on the law—we are requiring as a proof positive that the judge provide written reasons. When we look to the experience in the Cayman Islands and we look to the experience in the Northern Ireland Diplock cases, Diplock Courts—and in Northern Ireland, of course, the precursor to the terrorism legislation which came to deal with the Northern Ireland experience started with Lord Diplock's considerations starting with legislation which brought in Northern Ireland, what we call the Diplock Courts.

Those courts ran for nearly 30 years, ended in 2007 only where there were judge-only matters, because jury tampering or witness tampering became real. But that was a very successful experiment in large part which fuelled some of the reforms for witness tampering and for judge-only matters in the United Kingdom. But I do not think it fair to say that we can compare our experience in the United Kingdom and Trinidad and Tobago. Their reforms in 1984, the pre-PACE reforms where they cleaned their system is much like where we are now. We are working ourselves into a better system now by dealing with the same abolition of committal proceedings, et cetera, as the UK did in a different form.

So the fact is, when we look to the learning which comes out of the Cayman

Islands which has judge-only courts, they have pointed to a whole line of authority, a very important line of authority, *Chief Constable s Lowe*, 2006 case, the dicta in Galbraith, the dicta in *Richards v R*, a 2001 case, the dicta in *R v Cameron*, Jamaican Court of Appeal, the dicta in *Whittaker v R*, 2010. But importantly, jurisdictions have developed clear jurisprudence which says what a trial judge must put into a trial judge's written reasons. For instance, in *Richards v R*, when a trial judge sitting alone has advised himself to the applicable principles of law and given himself any necessary warning, he must indicate clearly in his judgment his reasons for acting as he did in order to demonstrate that he has acted with the requisite degree of caution in mind and is therefore heeding his own warning. No specific form of words is necessary for this demonstration. What is necessary at the judge's mind upon the matter should be clearly revealed.

It is dicta such as this, borrowing from Northern Ireland dicta which has now stood for about 30 years, repeated in the Cayman Islands that we get comfort that it is okay to allow the judge the same privileges as a jury exercises where we are dealing with the mental competence for diminishing the capacity and diminishing the charges before the court, because the judge now must put it in writing and reveal his mind. And, therefore, when one has fear or suspicion that a judge can come up or a judge can be coerced or a judge can be a classmate with someone or move in similar circles, the fact is the judge is going in those written reasons to be subjected to review on appeal.

Recently, we have had five appeals heard in the court of appeal. Just as an example no names, no calls. Very much centre stage in Trinidad and Tobago. In those five appeals, a High Court judge's opinion pronounced as landmark victory was thrown out by the Court of Appeal, completely and totally. In one of the cases,

the entire case was thrown out, whole case. That is where you have three judges of a Court of Appeal paying attention to a single judge, and you still have the Privy Council. As in those cases I just referred, there is an attempt to go to the Privy Council and so be it. There is nothing wrong with the judicial inspection. We are yet to see what will happen. But the point of relevance in this debate is that you have the safeguard of another court looking at it, and another court looking at it. That is a very important facet for us to remember when we are looking at this invitation to allow, as other jurisdictions have, judge-only trials by the accused's own election.

Sen. Dr. Mahabir: Hon. AG—

Hon. F. Al-Rawi: I just have five minutes.

Sen. Dr. Mahabir: A point of clarification. Thank you very much for giving way.

Hon. F. Al-Rawi: I have not given way, Sen. Mahabir. I just have five minutes of speaking time. I know we can catch it in committee stage. So, forgive me for not doing what I would normally do.

When we go further, there was a point, Sen. Shrikissoon asked about it, it was based upon a submission by Sen. Ramdeen. Sen. Ramdeen came to the Parliament and made a song and a dance that the Attorney General was the worst Attorney General in Trinidad and Tobago, effectively, his words. "How could you come and bring law that was struck down by the courts." Sen. Shrikissoon referred to it as he was reading from an article which said that all of subsection (6) was struck out. It was not all of subsection (6). I know it then went on. It starts there. You see, reportage in the newspapers sometimes get it wrong. I am not saying Sen. Ramdeen said that. Sen. Ramdeen, in fact, said the subsection (6) was capable of salvation. You could change President to court, okay, and then he went on to the

point at subsection (7) was struck out and that was not capable of rescue. You alluded to the position.

The fact is that the Law Revision Act—it is an Act of Parliament—is the creature which governs the law Revision Commission. You read from a publication where Miss Lorraine Lutchmedial came out and said what had happened. The laws of the Republic of Trinidad and Tobago are revised in accordance with the Law Revision Act. The last update to the law was in 2011. Sen. Ramdeen was involved in a case as he told us personally where a first instance judgment was in play and where the courts of Trinidad and Tobago in unreported judgment had come up with something which affected the law. The Law Association did not pick it up, the Law Revision Commission did not pick it up.

In 2011, 2012, 2013, 2014, 2015—let us stop and pause—2016 and 2017, but the Attorney General with responsibilities in 2011, 2012, 2013, 2014 and part of 2015 was Anand Ramlogan. The Attorney General with responsibility in 2015 was Garvin Nicholas and then me. Three Attorneys General did not see this particular position because it is not reported to us. It is an impossibility for any one of us to know that unreported judgments have come out.

Where you have an entire Law Revision Commission and department and legislation, section 16 and 19 of that Act, section 13 of that Act, that Act says that it is the commission's responsibility to check, but Sen. Ramdeen had a close proximity to then Attorney General Ramlogan or perhaps the Sen. Garvin Nicholas. He could easily have whispered, not that it was his responsibility. There is a department ascribed in law with that responsibility. So I thank Sen. Ramdeen for pointing out that the law was observed. It really is a storm in a teacup, because it can be treated with by way of a simple amendment in the change of language

from "President" to "court" and just deleting the subsection (7). It is not a big deal. That is why we sit as a Senate, that is why there are multiple minds, but to make it appear as if it is such a grave consequence, I think was a little bit over the top.

6.00 p.m.

But, this is adversarial politics, and I cannot condemn an hon. Senator opposite from making the criticisms in as flamboyant a style as he is entitled to engage. I make no criticism of that. Good advocacy comes that way, it is sometimes compelling, but the point is it is easily dealt with.

What do we go on to next? We see, hon. Senators, that we have law which is novel. It is not that novel because we certainly have it appearing in other jurisdictions. We have the ability to attenuate or adjust the law. We propose, therefore, in amendments to take care of the observations made by Sen. Ramdeen, repeated by Sen, Shrikissoon, at section 4(a) of the Act; change "President" to "Court", one word out. We will have to restate the paragraph to deal with it, repeal subsection 7.

We propose to make some adjustments in language, in terms of the modernization of language. We propose to actually improve the step-by-step approaches involving arraignment or trial by causing an amendment to section 4(a) of the Bill, where we will step forward and deal with the steps as to how one gets through the process, allowing for a better due-process position. I thank Sen. Chote for those observations which sparked that consideration. We intend to deal with the opportunity to change your mind any time before trial. Twenty-eight days before trial you can change your mind and go, jury and judge, or judge alone, and vice versa.

We propose to deal with the statement of reasons with a time frame, as

raised by Sen. Chote and Sen. Sturge. I am sorry he is not here. In dealing with the time frame position, we are actually proposing that we insert a time frame for the judge to give reasons, and hon. Members will see that in a little while, that reasons must be given at the time of conviction. We have separated out the need to give reasons for acquittal immediately, and we say that the judge will have seven days to give his reasons on acquittal once the prosecution asks for it, because you may wish to appeal and, therefore, have the judge's reasons. But the judge—we wish to preserve the right to the judge to give it anyway, and, therefore, that is also found in amendments that will come. We propose, specifically, in clause 5 to allow for the transition or working of this matter, so that trials which have not yet begun can actually be addressed, and, therefore, persons can actually access this opportunity which we are providing.

We caused certain consequential amendments, which we omitted, and Sen. Ramkissoon, we thank you for pointing out the observations. We did not reflect upon the Supreme Court of Judicature Act fully enough, nor the Summary Courts Act fully enough, and, therefore, we propose to amend, consequently, section 2(a) of the Summary Courts of Judicature Act, and also section 100 of the Summary Courts Act to pick up the need to put in judge along with judge and jury. Hon. Senators, it is not that we are proposing a Government—[*Interruption*]

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

Hon. F. Al-Rawi: Thank you, Madam President. It is not that we are proposing matters which are beyond reach of logic or experience. Sen. Mark said that he did not want to be as a Senator in a similar circumstance to many jurisdictions, I do not necessarily share the fervour of that argument. I found solace in the Western Australian experience, solace in the Canadian experience, the United States

experience, the United Kingdom experience, the Jamaican experience, the Cayman Islands experience, the Turks and Caicos experience, the Belizean experience, New South Wales experience, the Netherlands and Suriname. That is not a small amount of experience, let alone Northern Ireland's experimentation in its legislation for a whole 30 years.

We are talking about things like gun courts, specialist courts. The Government is looking at that right now, because we would be hiding our heads in the sand to say that witnesses do not feel intimidated, or that witnesses are not killed in this jurisdiction, as they approach time. We would be hiding our heads in the sand if we said that the trial by jury system is a perfect experimentation. There was a point in this country, there is a point under the English law where trials by jury, and juries, as a feature of the law, happened in civil trials. We do not have juries in civil trials, but that was a feature of the law. The United States, they still have it. So are we really making a nonsense of the law? I do not know if that word is unparliamentary, but I mean it in the sense of the nonsense of the argument.

I am asking hon. Senators to reflect upon the fact that magistrates right now in summary trials are single creatures without a jury, deal with serious matters, with serious jail terms across a plethora of laws in Trinidad and Tobago, and the vast majority of justice happens in the magistracy. Why is there no complaint that the magistrate should have a jury? Is the Summary Courts Act, under the copyright laws, which are very serious matters for copyright infringement involving jail term, is that any less serious than an indictable matter where you are going to empanel a jury? How come the two could prevail? Why not have juries for magistrates? How come? If the argument is so pure, then every magistrate who deals with a serious summary matter should have a jury. But why is it that that system operates? It

operates because there is a safeguard of appeal, Court of Appeal, Privy Council, and that is where reflection can perhaps help us through some of the difficulties that hon. Members have expressed. In those circumstances, Madam President, I beg to move. [*Desk thumpin*g]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Attorney General, the amendments have been circulated. Sen. Mark.

Sen. Mark: Madam Chair, I have just, this moment, received almost about four pages of amendments, and then there is a Bill, I suspect, where the Attorney General is seeking to make things a little easier for everyone, and these things have now come. May I, respectfully, suggest that we suspend for at least an hour.

Hon. Senator: So long?

Sen. Mark: Yes, because we need to really consume this properly, Madam. I cannot participate properly, Madam President, so could we consider that, Madam?

Madam Chairman: Okay. Hon. Senators—Attorney General, you wanted to say something?

Mr. Al-Rawi: Yes, please, Ma'am. Thank you, Sen, Mark, for observing that what I have circulated also includes a track-changed version. It is not normal to put out a track-changed version, but the Government feels that it is prudent to help people to see where amendments are fitted in. I have no objections, subject to Madam Chairman, for taking a short break, but I do not think we need an hour because they are very, very straightforward amendments that are being proposed.

Madam Chairman: Hon. Senators, I will suspend the committee for half an hour and then I will come back. Okay? So this committee, we now suspend for half an hour.

6.11p.m.: *Committee suspended.*

6.41 p.m.: *Committee resumed.*

Madam Chairman: Hon. Senators, I would not sit for too long, because I understand some more time is needed, so, all right, seven o'clock. Yes? So we will suspend until seven o'clock.

6.42 p.m.: *Committee suspended.*

7.00 p.m.: *Committee resumed.*

Madam Chairman: Attorney General, Members, are we ready to proceed?

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Delete paragraph (a) and substitute the following paragraph:

"(a) in section 4A—

(i) In subsection (6), by deleting from the words "require the jury" to the word "known" and substituting the words "require the jury or the Judge as the case may be, to declare whether the accused was so convicted by them or by him on the ground of such abnormality of mind and, if the jury declare or the Judge declares, that the conviction was on that ground, the Court may instead of passing such sentence as is provided by law for that offence direct the finding of the jury or the Judge to be recorded and thereupon the

Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the Court's pleasure is known"; and

(ii) By repealing subsection (7)."

Mr. Al-Rawi: Madam Chair, the Government proposes an amendment to clause 3, which has been circulated. If I may explain, it was observed during the course of the debate that as a result of the decision of the court that the word "President", which was not being amended in the original Offences Against the Person Act in section 4A, and which the court had ruled should be read instead as "the Court". It was recognized that that needed to be picked up because the Law Revision Committee had not done it. In those circumstances, what is repeated for the honourable Senate's consideration is that in subsection (6), the very exact form of words that was produced in the Bill is reproduced, but then it goes further by adding on the balance of the words which were not being amended and which would have been left alone, and in that, the last four lines of the draft circulated. The word of relevance there is the word "Court", which is in the penultimate line, which would change from "President" to "Court". And that is the substance of this amendment before the honourable Senate. We also propose that, as a result of judicial interpretation and judgment, as a matter of fact, that subsection (7) of that Act, which was repealed by virtue of judgment of the court, be in fact reflected here. Again, the Law Revision Committee did not do that, and it needs to be updated accordingly.

Madam Chairman: Sen. Ramdeen?

Sen. Ramdeen: Madam Chairman, thank you very much. Hon. Attorney General, thank you for recognizing and making the appropriate change that has been made

to the amendment as presented by you. There is one suggestion that I wish to make. As with the case of Evelyn, and the other case that was cited, what I want to bring to your attention is that—if you just let me explain the reason why.

Mr. Al-Rawi: Sure, please.

Sen. Ramdeen: This module of sentencing at court's pleasure is applicable in two cases. It is applicable to infants, as you know, in juveniles, and it is applicable to persons who suffer an abnormality of mind. The reason why the courts have done this in this form is because those persons who are subject to that type of sentence, they do not remain in a constant state over a period of time. A person who suffers an abnormality of mind, their mental state may change, it may get worse but it may improve, as with a juvenile. A juvenile who is sentenced to imprisonment, they will change over time and as they mature. The reason why the court, the law, has provided that the court supervise it is because the court would then be an independent body that is able to modify the sentence as we go along.

After this change had become recognized in our law there was a decision of our Court of Appeal in Attin, where the court set down what the statutory guarantees are to a person who is subject to this type of imprisonment. I would have thought that for the purposes of those persons who would be subject to a sentence—I should not say, a sentence—an order of detention of this nature—I know that you do not have the amendment before you, and you do not have the judgment before you, but the Court of Appeal made it very clear in Attin, and it was the first time that the court actually set down in a proper judgment what these people are entitled to. I would have thought that if we are going to change the law, to fix it in this form that we should really put that in, as you have done, to correct it pursuant to a judgment of the court.

The Court of Appeal has laid this down. It has gone to the Privy Council, it has not been changed. The authority on it is Attin, that we should just continue with the work that you have done and substitute what they would be entitled to. I do not have the judgment before me, so I am just speaking off the top of my head, but Chief Justice Sharma in that case set down, as a very minimum, that they are entitled to a review every three years. And if it is put down in that way, I can tell you this from experience, the difficulty with leaving it as—perhaps your response might be is that we already have a decision of the Court of Appeal.

Mr. Al-Rawi: No, no, I think it is a very laudable suggestion what you are actually proposing. I have not considered it at all. I am open to the suggestion. We have eminent senior with us, and you by your own experience, and my mind is wide open to the issue.

Sen. Ramdeen: I just want to just finish it, so what I am saying is, the disadvantages of not doing it now is that frequently, because it is a decision of the court and it is not in statutory form, there are time periods of the three years passing. And only when actions are brought against the State, as you would know as well, then the Registrar lists it for trial, by that time the three years is gone. The condition of mind might change and then the State is sued, which is not to anybody's benefit. So if your advisors could just probably have sight of it and—if you can have sight of it and you look at the decision of the Court of Appeal, at the very end of the decision you would see where the Court of Appeal has set down what needs to be done to a person who is subject to this order of detention. And I know that you cannot do it now on your feet, but I am sure that the advisors would be able to formulate some kind of formula in which we could fix the law properly, once and for all, and not have to rely on it. And I think it may take two or three

more subsections, but I think what it will do, to the benefit of those persons who would be in such an order of detention, it will be of great public benefit.

Mr. Al-Rawi: I think it is, subject to you, Madam Chair, I think it is an excellent suggestion. Not often that a Parliament gets moved with the opportunity to improve the law. I have no objection. Perhaps, Madam Chair, you may wish to hear any other views on this?

Madam Chairman: Does anyone else wish to make a contribution? So what we can do, Attorney General, Sen. Ramdeen, is we will defer consideration of clause 3, and we will come back to it, yes?

Mr. Al-Rawi: Sure.

Sen. Ramdeen: Attorney General, could I just—Madam Chair, sorry, through you to the Attorney General. Attorney General, I know it is something that I have just raised, I did not get an opportunity to raise it before because I would not have seen your amendment, and having seen it now I just think it is something that you should consider carefully, because it would require not just simply another subsection, it will require something a little bit more—

Mr. Al-Rawi: May I suggest this—I thank Sen. Ramdeen for an excellent observation—this Bill has not yet gone to the House. We have the option to actually make the amendment in the House and come back to the Senate, so that we could tidy up the work. I give an undertaking now that I think it is a very solid and excellent suggestion, and that I will ask the team, together with Mrs.—well, certain other attorneys who have helped us along this path, and perhaps we could tidy it up between now and the House, and we can tidy it up as an amendment that comes back to the Senate for approval.

Sen. Ramdeen: Whichever way you think is more tidy or efficient to you, but I

just would not want the staff to rush it because this is something that affects the juveniles, it is something that affects these persons, and it is something that we could do once and for all to benefit everyone.

Mr. Al-Rawi: I thank you for the suggestion.

Sen. Mark: May I, Madam Chair, just add, and probably propose to the hon. Attorney General, if we could proceed, as the hon. Chair said, to other sections, or clauses, I should say, of the Bill, and if at the end we are still unable to formulate what would be acceptable to all parties, then we could then report progress and we could probably go on to plea discussion and plea agreement, and when we come back next week the formula, or the formulation would be sufficiently tight for us to go back into committee. So when you go to the House of Representatives with it, it would be a complete formula, rather than not have it and then coming back up, because, remember, once it passes that you go downstairs. Let us say downstairs, right, you have to come back upstairs again, so I was wondering if it would not be a cleaner finish for us to go through, suspend, report progress, go to plea discussion, plea agreement, and then come back.

Mr. Al-Rawi: I caught you. May I just, through you, Madam Chair, and thank you for indulging us on a point of law, I think that there is merit in the approach recommended by Sen. Mark, but I fear that we may risk losing work, and, remember, Parliament ends in the—we must stop by the first week of July, come back after the first week of September, so we do have tail end to tidy it up. The person who I propose to give me the advice on this, and I thank Sen. Ramdeen for raising it, is not in the jurisdiction right now, and a leading member of the bar, the criminal bar in particular, so I do not believe we would be able to fix it on the floor now, but I do give the undertaking now to look at the issue. I think it is excellent

opportunity for us. It can come back to us as a House amendment to the Senate for approval, and then we can also discuss it there as well. So subject to that approach being recommended, my proposal is that we actually consider clause 3 now, but I have given the undertaking on the floor.

Hon. Senator: His word is good.

Mr. Al-Rawi: No, there is a committee of undertakings as well.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

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

4 (a) A. In the proposed section 6(1), delete the words "committed for trial shall be tried on an indictment" and substitute the words "against whom an indictment has been filed".

B. Delete the proposed section 6(2), (3) and (4) and substitute the following subsections:

"(2) At the first hearing after an indictment has been filed, a Judge shall inform the accused person that he may elect to be tried by a Judge and jury or by a Judge alone, unless the accused person indicates an intention to enter a plea of guilty.

(3) Where the accused person does not make an election at that hearing, he shall file his election with the Registrar of the Supreme Court and serve a copy on the prosecution, within twenty-eight days of the adjournment of that matter, or with leave of the Court at a later date.

(4) The Court shall make an order that the accused person be tried by a Judge alone if it is satisfied that the accused person—

(a) has sought and received legal advice from an Attorney-at-law in relation to a trial by a Judge alone; and

(b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 31 of the First Schedule.

(5) Where an accused person does not wish to be represented by an Attorney-at-law and elects to be tried by a Judge alone, the Court shall make an order that the accused person be tried by a Judge alone if it is satisfied that the accused person—

(a) has waived his right to consult an Attorney-at-law for legal advice in relation to a trial by a Judge alone; and

(b) has filed with the Registrar of the Supreme Court a certificate in the form set out as Form 32 of the First Schedule.

(6) The Court shall not make an order for a trial by a Judge alone unless it is satisfied that-

(a) in the case of a joint trial, all other accused persons have elected to be tried by a Judge alone and each accused person has filed a certificate in the form set out as Form 31 or 32 of the First Schedule, as the case may be, in accordance with subsection (4) or (5); and

(b) where two or more charges are to be tried together, the accused person has elected to be tried by a Judge alone in respect of all of the charges.

Mr. Al-Rawi: Could I just put the amendment.

Madam Chairman: Sure.

Mr. Al-Rawi: Madam Chair, we propose that clause 4 be amended as circulated to the honourable Senate. There are two particular subcategories of amendment. The first one is in relation to a tidying of language in the proposed section 6(1), that instead of the more archaic expression, "committed for trial shall be tried on an indictment", that we go with the more renovated language of "against whom an indictment has been filed", and that is the advice on the CPC's end in terms of tidying up. The larger amendment that has been circulated, just by way of explanation to hon. Members, proposes that we modify, by a more prescriptive method, what happens in terms of process when a person is electing to come before a judge to indicate the election for jury or—sorry, judge and jury, or judge alone.

7.15 p.m.

In dealing with this amendment we therefore propose to effectively change from clause 2. So this is clause 4A, and if we look at the original Bill from page 3 over to page 4, we are proposing that we completely change subsections (2), (3) and (4), we delete those effectively, and we restate them in the draft as circulated and as shown in the marked up version, to treat with the process of coming before a court. That would mean—and Members would find it at pages 3 and 4 of the marked up Bill—we would in the new subsection (2) demonstrate what happens at the first hearing, so it would read now:

"At the first hearing after an indictment has been filed, a Judge shall inform

the accused person that he may elect to be tried by Judge and jury or by a Judge alone, unless the accused person indicates an intention to enter a plea of guilty."

There is a new subsection (3):

"Where the accused person does not make an election at that hearing, he shall file his election with the Registrar of the Supreme Court and serve a copy on the prosecution, within twenty-eight days..."

So it allows the person a second opportunity, having missed the opportunity at the first occasion. The new subsection (4) we seek to add some procedural safeguards moving down now:

"The Court shall make an order that the accused person be tried by Judge alone if it is satisfied that the accused person—

(a) Has sought and received advice from an Attorney-at-law in relation to a trial by Judge alone; and (b) has filed with the Registrar...form 31."

This appears a little bit later in your marked up version and in the Bill. At the marked up version it is at page 9. This form is to give a procedural safeguard where the attorney-at-law will actually sign on, much like a consent order in court, indicating that not only has the accused consented, but his attorney-at-law has also indicated the advice and consent.

When we come to the subsection (5), we are dealing now with the situation where you do not have an attorney-at-law. Again, the court is inviting the confirmation by the accused that he has waived the right, but more particularly that the accused indicates, in writing, that that right has been waived. That is in a new form 32. Both in the new form 31 and form 32 you will see that there is cautionary language indicating I have not been threatened, I have not been coerced, et cetera,

into giving up this position that I previously had.

Then in the subsection (6) that we come to, we have the prescriptions for caution that the court should not make an order for trial by judge alone unless it is satisfied of a number of matters. That in a joint trial, all other accused, et cetera, have elected, and where there are two or more charges the accused person has elected to be tried by judge only for all of those.

The new subsection (7) which appears at page 5 of the marked up version, deals with the position of a court making an order, under (4) or (5)—that is what we just previously discussed. The accused person may subsequently apply to the court for a trial before a judge and jury or the converse, that whilst you may have been locked in a judge and jury matter, you can actually go for judge only. So (7) is where we allow for the options, and (7) is subject to the new (8).

Subsection (8) says basically you could change your mind right through until 28 days prior to your trial. We may wish to consider—I did have a chat with Sen. Roach as we were just sitting to start—an indication that the judge may have a discretion to alter that time frame. That is usually consequent in certain matters. The new subsection (9) indicates:

"Where an accused person makes an application in accordance with—

(a) subsections (7)(a) and (8), the Court shall make an order granting the application; or

(b) subsections 7(b) and (8), the Court shall, subject to..."—meeting the conditions for judge only, then direct it that way. So it is the natural progression through.

Those are the amendments in a nutshell and rationale that we propose to clause 4 of the Bill.

Also, because clause 4 is continuing, we propose further that clause 4(b) stays the same, clause 4(c) stays the same. When we get to clause 4(d) that we are now renovating the giving of reasons and the time for giving reasons, and what we are proposing—which Members will see into the Bill—that we change the language of 42B and we say that:

> "When the case on both sides is closed, the Judge shall give a written judgment stating the reasons for the conviction of the accused person at the time of conviction."

Previously, we would have had the language acquittal or conviction, so we are keeping it only to conviction now: That you must give the reasons at the time of conviction, and that is a simultaneous event.

Then we are adding in that:

"Subject to subsection (5),"

We are adding in a new subsection (4), and (5) that:

> "where an accused persons acquitted in a trial by a Judge alone, the Judge may give reasons..."

The next clause is:

> "Where the prosecution requests reasons for an acquittal, the Judge shall give reasons..."

So put simply now, we are saying no longer will we allow for a judge to give reasons as soon as is practicable. We are telling the judge give the reasons at the time you give the conviction. If you are going to convict, give it in writing at that time. If you are going to acquit you may wish to give it at the same time but, in any event, if ever the prosecution asks you for the reasons for acquittal, you must give them within seven days, therefore allowing the prosecution the opportunity to

appeal on the basis of written reasons.

We propose some tidying up in subsection (l) by inserting the forms that we have just spoken about. So after form 30 that we will actually add in form 31 and form 32, so that is at page 4 of the draft circulated and page 5, that is of the amendments itself. And those in nutshells are the amendments proposed to clause 4 of the Bill.

I interrupted, through you, Madam Chair, Sen. Ramdeen was about to indicate something.

Sen. Ramdeen: I inadvertently came in, because before you went to clause 4, if I could be allowed, Madam Chair, when we passed clauses 1 and 2 there was one issue in your amendment to the Supreme Court of Judicature Act at Chap. 4:01, and I just wanted to—

Madam Chairman: We have not dealt with that as yet. We have not come to that.

Sen. Ramdeen: As you please.

Mr. Al-Rawi: That is new clauses at the end of clause 5.

Sen. Ramdeen: I am obliged.

Madam Chairman: The question is that clause 4 be amended as circulated.

Sen. Ramdeen: Madam Chair, I just wanted to address some matters in clause 4 before we actually go to the vote.

Mr. Al-Rawi: Sure.

Sen. Ramdeen: I only mentioned that because it was clause 2. Can I, with your leave?

Madam Chairman: Yes.

Sen. Ramdeen: AG, when you come to your new subsection (3) where you set out that:

"Where an accused person does not make an election at that hearing, he shall file his election with the Registrar of the Supreme Court and serve a copy on the prosecution within twenty-eight days of the adjournment of that matter or with leave of the Court at a later date."

I have a bit of a concern with that in relation to persons who are incarcerated. We have had these cases where in relation to notices of appeal you have the difficulty where you statutorily provide for something to be done within a particular period of time. For an incarcerated person one has to consider carefully the idea of serving an election:

"…he shall file his election with the Registrar of the Supreme Court..."

It becomes a real difficulty with persons who are incarcerated, and I think that is something that we need to consider, because the way they dealt with it in relation to the notices of appeal they had put in a provision that allows the Court of Appeal to extend the time by amendment. So that before where you had a fixed statutory period of seven days, you could then make an application to the Court of Appeal to extend that time.

I understand that you have a provision that says, "for with leave of the Court at a later date", and I am not sure that you want to completely shut out the idea that someone may want to file an election, and then it may be only—the problem with these things is that it is only when you reach the hearing and you realize ex post facto that this thing has not been filed. Somebody might take a point, you never know what could happen.

So I was wondering if you could consider, only in relation to persons who are incarcerated, if we could do something with that particular subsection, to perhaps ease the burden, because for somebody who is incarcerated—let us just

take, for example, someone who is incarcerated without a lawyer. By the time they go back into the prison, they decide what they want to do or what the position is. Whatever the position is, it takes some time—you know what the system is like inside there—they might fill out their election, they might have the form, fill it out, it gets stuck in the prison, it does not reach the Registrar of the Supreme Court. This particular one says that it must also be served on the prosecution. That puts another burden on someone in that position. So I am just thinking that it is something that you would want to consider.

Mr. Al-Rawi: Do you have a recommendation? In taking care of the vicissitudes we had sought to put in "with the leave of the Court", but I accept your point that we may be dealing with something ex post facto, and then you are chasing the result that you may have missed. I was sort of banking on the fact that once you are remanded that you would be returned every 28 days, et cetera, and at least the court would have had some degree of sight as to where you go.

Sen. Ramdeen: The problem with this is this is after you are committed, after the indictment is filed. After the indictment is filed and you do first-cause list, then you are not coming back at all.

Mr. Al-Rawi: What do you suggest, Senator?

Sen. Ramdeen: Because of the period of time that we have had, I am not able to formulate to you an amendment that would suit it.

Madam Chairman: Sen. Roach is also seeking to make an intervention.

Sen. Roach: AG, if you would take out instead of "with the leave of the Court" and put instead "as the Court may so determine" or "may so order", so you are taking out, "with the leave", and just say—

Mr. Al-Rawi: The rationale for leaving—

Madam Chairman: Attorney General, before you answer—Sen. Sturge, you wanted to raise something?

Sen. Sturge: No.

Mr. Al-Rawi: Sen. Roach, I had inserted "leave" so that you could get an order, so it was to indicate that at least you would make an application or bring it to the court's attention. I sort of read the order flowing from the leave. The point is that one should have the opportunity to enlarge the time, to meet the circumstances and the justice of the case.

Sen. Roach: But you see, if you go without saying "leave", and you say "as the Court may", you could make an oral application before the court.

Sen. Ramdeen: Sen. Rambharat is proposing "or at a later date as the Court may order", the spirit of the proposal.

Sen. Ramdeen: I think that may cure it, because it opens the door for you to make an application at any point in time subsequent to the first hearing.[*Interruption*] The amendment to 4(20) you might be able to copy back that same provision.

Mr. Al-Rawi: No.

Sen. Ramdeen: AG, no; if you get the Summary Courts Act you would see the amendment in, I think it is 108, where they have actually put in the amendment to allow the person to extend the time, so you could perhaps use that section. [*Interruption*]

Madam Chairman: Hon. Attorney General, Members, I will suspend for five minutes.

Sen. Ramdeen: Madam Chairman, before you actually make that decision, I was just wondering if it would not be more prudent, as the Attorney General is taking advice on this said section, if we could perhaps go through the other parts that I

have concerns with, then we could stand it down and the Attorney General could deal with all during that time; just a more efficient use of time.

Mr. Al-Rawi: Very prudent.

Sen. Ramdeen: AG, I looked at your form 31, and while there is much benefit to be gained by having form 31 in this form I could see it being problematic from the second sentence where—the purpose for which you are doing the form is to ensure that whoever is the subject of such an election is protected by being advised properly. I guess that is the intention, which is a noble one. But the problem is that without actually putting something minimum as to what the attorney should advise the person of, I think it leaves the door open for some persons to get proper advice as to what the election should be and perhaps their rights they are giving up, as opposed to someone who does not give them proper advice by just simply telling them to sign the form.

Before we came back here I was explaining, like when you go to take a mortgage in the bank and the banks have formulated the position of you taking a mortgage with your wife. You know that you have to get legal advice because of the case law; they actually set out what you are taking advice on. So that I would not like for us to pass this form in a form where we do not actually say, at a minimum we should advise them of A, B, C. So that at a very minimum there is a certain amount of protection that you would be giving to someone making an election, no matter who the attorney is, and it will give you more protection because at the end of the day it will guarantee that the person who is subject to make the election has been given at least that minimum threshold of advice.

Because you could come to the point where someone would then make the usual application of not receiving proper advice. I was not advised properly. I

signed the form, but when I was asked what the position is I was not told anything.

Mr. Al-Rawi: We did look at the independent legal advice aspects that come up in mortgages in particular, and we also mirrored some of the approach we are taking in a Bill, which is not yet before us, but the plea bargaining approach in that form. We were after that then relying upon the fact that the judge must make enquiries as to whether you actually understand the position, notwithstanding the form, but in the form itself:

> I, the accused, confirm that I have sought and received advice from the undersigned Attorney-at-law on electing…The undersigned Attorney-at-law has advised me of my rights and of the implications of electing to be tried by a Judge alone. I have had sufficient time to confer with the undersigned Attorney-at-law concerning this mode of trial. I understand the implications of electing to be tried by a Judge alone and agree to this mode of trial without reservation.

Those were the points. So you think that something more should be—

Sen. Ramdeen: I think problematic in that, AG, you see where you say "advise me of my rights" and then you come after the "and" with "of the implications", I think we should do something to set a minimum threshold there of what that entails. Leaving it open like that I think you yourself would understand, most of these people are advised by persons who are—I do not want to criticize lawyers—but people who—you open a door for people to not—we have had instances in this jurisdiction where you have a criminal, a capital matter where an attorney did not know he was doing a re-trial. So I would not like for us to not get all the benefits that we can get from a form which, obviously, as it stands here, sets a very good border. If we could just fill in the gaps I think it will give the person who is

electing much more protection.

Mr. Al-Rawi: Appreciate it, thank you. Madam Chair, may I enquire if there are other matters? I supposed that the form 32 would also be—

Sen. Ramdeen: The same thing, yes. I have a concern with clause 4, AG.[*Interruption*]

Mr. Al-Rawi: Apologies, the Leader of the House was just discussing our timing in terms of the usual agreements, Madam Chair, that we come up to, and we should be careful not to indulge the Senate's time on the next Bill. So I am just flagging that we may ask you to consider ending at the end of this Bill, as opposed to delaying us here.

Sen. Ramdeen: I hope I could run through what we could do here.

Mr. Al-Rawi: Yes, please. Through you, Madam Chair, with your leave.

Madam Chairman: You have five more minutes.

Mr. Al-Rawi: Before the Procedural Motion? Okay.

Sen. Ramdeen: AG, I know this is something that you would probably want to think carefully about, but I am not comfortable in allowing anyone to elect to trial by judge alone, without receiving legal advice. I think it is a protection that has a lot of problems that can flow from it. I know it is a big step, unlike the others that I have mentioned, but I am not comfortable with 5(a) and 5(b), the fact of giving someone to elect for something as serious as this without getting legal advice, and giving up that right.I do not think that you should take away that kind of protection, because this thing applies to people who have capital matters.

You yourself in wrapping up understood that the frustration alone that people go through after sitting through a PI stage and waiting for an indictment to be filed for 10 years. It opens the door for somebody to just out of pure frustration

say, "Gimme a judge alone trial and move on with it." I do not think that we should legislate to take away the right of legal advice for something as serious as this. You can consider it, but I am not comfortable with the provision in terms of allowing someone to elect a judge alone trial without legal advice.

Mr. Al-Rawi: Madam Chairman, would you permit me one moment.[*Interruption*] Sen. Ramdeen, is there much more in terms of observations?

Sen. Ramdeen: I just wanted to go through them.

Madam Chairman: We have to take the Procedural Motion. I will leave at 7.39 to go. After I take the Procedural Motion, I will come back and then we will decide. [*Interruption*]

Senate resumed.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (**Sen. The Hon. Franklin Khan):** Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand.

Question put and agreed to.

MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2017

Committee resumed.

Madam Chairman: Are we in a position to stand down clause 4, deal with clause 5 or shall I suspend at this stage?

Mr. Al-Rawi: Madam Chair, what I am proposing, if you would permit me to just think aloud, or rather share my thoughts aloud.I really wish to thank Hon. Senators, and Sen. Ramdeen in particular, for giving thought to the work that we have before us. I am minded, with your permission and with proper process, to hear the

observations of the hon. Senators and, if necessary, insofar as we are proposing that we do not commence the second Bill, because of how long we have been sitting as a Senate, that we could perhaps take the committee stage on the next day and then start the other Bill. Because we would not want to truncate that rhythm of the second Bill, where Senators may want to come in.

If I can share my situation openly, I am very concerned that we may run out of parliamentary time. I had adjourned considering a number of these matters to allow the Law Association to give commentary, but they did not, and we waited for a very long time for them. We really cannot compel them to give us their thoughts. We did get some great assistance from members of the Criminal Bar on this matter. Sen. Ramdeen has raised some very important points that I think deserve consideration.

So thinking aloud, and I know we have not had—because the Leader of Government Business has whispered to me—the opportunity to speak to either the coordinator or the Leader of the Opposition Bench. In light of my fear of the parliamentary time, I do not know what hon. Senators' position would be in starting a little earlier on the next Tuesday. The advantage of course in starting early is that we get to do some more fulsome work, but again the Government cannot impose itself on the time of the honourable Senate.

So I am just sharing that aloud, Madam Chair, and for those reasons I would propose that we hear the other observations for the other clauses and then, subject to the will of the Senate, treat with it as we may agree.

Sen. Mark: Madam Chair, I think that the Attorney General has advanced some thoughts on a matter that is very critical before us. First of all, I agree that we should try to explore fully and finally any additional concerns Members of the

Senate may have on the remaining clauses that we are yet to traverse or address, and, having done that, if I hearing what the Attorney General is saying, we will suspend, report progress and when we meet next week Tuesday he is suggesting that we come in a little earlier, so we can go through the committee stage and finalize this Bill, and then go on to plea discussion and plea agreement.

We have no objection to that. We normally would start 10.00, 1030 in the morning—

Sen. Khan: Notwithstanding, would you have any objection—and through you Sen. Dr. Mahabir—that we can go through this because apparently the amendments will call for some time, so instead of going to the House and coming back so we could complete the committee stage here early. So would you have any objection to 10.30 on Tuesday?

Dr. Mahabir: No problem; we are okay.

Sen. Khan: Thank you very much. Appreciate it.

Sen. Mark: Yes, 10.30 is good.

Sen. Mark: Madam Chair, in your hands then in terms of facilitating the observations on any other clauses.

Madam Chairman: Let me just ask, are there any more observations on the amendments to clause 4?

Madam Chairman: Sen. Ramdeen, we dealt with the forms.

Sen. Ramdeen: My next concern is at 8.

Sen. Ramkissoon: Madam Chair, if you would permit me before Sen. Ramdeen gives his issues with clause 4. Attorney General, please note that we did start this debate in March, and I know you were waiting for time, but you have put us in a very big inconvenience, because these are now new clauses, and I have not heard

other Members points on these other clauses. We are only hearing from one Senator from the Opposition and yourself for the Government. So I would prefer that we take clause 4 in the new on Tuesday, where we could get some time to research these clauses, because remember these are new legal terms coming in. We are repealing amendments, we are putting in new amendments. I would prefer we have the time to do that.

7.45p.m.

Madam Chairman: Sen. Ramkissoon, that is what is being proposed. Okay? So that we will come back and resume the committee stage next week Tuesday. So that is what is being proposed. All right?

Mr. Al-Rawi: Just to join in, Madam Chair. The committee of the whole on all of it will be wide open for everyone to contribute. What we are hearing so far and Sen. Ramdeen has drawn a very careful caveat, these are just his initial observations because he too has said that he has not had the time to give proper fulmination. So, I am not holding him to an exhaustive position now, he may very well have the Members of the Opposition further observations which the Government wants to entertain and treat with.

Madam Chairman: Okay. So, we are still at the proposed amendments to clause 4. Correct? Sen. Ramdeen, continue. Yes.

Sen. Ramdeen: AG, at your new clause 8, I think it is a good suggestion to set a time before which the trial is made for that election to be made, but I think the period is a bit short. As you know, I can foresee a situation where if somebody is changing from judge alone to judge and jury or the other way around, most of the times you might want to get new counsel and if that is the position, at least, under the Civil Proceeding Rules when you have to file trial bundles for the notice of the

judge, you at least do it 42 days before the trial. I think 28 days is too, too close to the end of the trial.

Mr. Al-Rawi: Do you have a figure in mind?

Sen. Ramdeen: I would have thought, at least, at the very least, perhaps 60 days. From the date of the cause list hearing the trials are set quite long away from the first cause list hearing. So, I would have want, I would have thought—

Mr. Al-Rawi: Sure. No objection to that.

Sen. Ramdeen:—I consider between 60 to 90 days, but I think that will give the court and the accused enough time even if a new counsel has to come in, because you have an election and a new counsel comes, you make the election 28 days, you go before the judge and this whole trial gets adjourned.

Mr. Al-Rawi: The members of the Criminal Bar recommended these thoughts, actually had 14 days and I said that there was no way that could happen, the Cayman vein of thoughts, so I appreciate your reflections.

Sen. Chote SC: Madam Chairman, I am sorry to interrupt. May I?

Mr. Al-Rawi: Yes. Please. [*Crosstalk*] No. No. I give way to Sen. Chote.

Sen. Chote SC: I would like us to exercise some caution because remember some of these discussions you may have had with members of the Criminal Bar may have taken place before the Criminal Procedure Rules—

Mr. Al-Rawi: After.

Sen. Chote SC:—kicked in. So timelines now have to be considered in accordance with the Criminal Procedure Rules and I think the break that we have between now and the next sitting will allow us to do a proper comparison in terms of timelines between what is provided in the legislation, what is provided in the rules.

Mr. Al-Rawi: Excellent point, appreciated it. Thank you, Senator. Which actually

impacts somewhat on the other Bill that we may consider as well. Yes. Madam Chair?

Sen. Ramdeen: (d) page 7. That still falls within your section 4, does it not?

Mr. Al-Rawi: Yes. It does.

Sen. Ramdeen: AG, I do not think that we should legislate this the way it is, I could see it causing real problems because, I think, as you have set a time limit in relation to the giving of reasons where you have an acquittal on—

Mr. Al-Rawi: On page 6.

Sen. Ramdeen:—on page 6, sorry, on page 8.

Mr. Al-Rawi: Page 8. Yes.

Sen. Ramdeen: I cannot agree that we should allow the judge to simply give reasons for eight—

Mr. Al-Rawi: I wrestled with this, eh. In my mind he should have given the reasons on acquittal or conviction at the same time?

Sen. Ramdeen: No. No. No. I am not on that. No. No. No. I am on 42B, where you have said that you are providing, what you have add in is "of the accused person at the time of conviction".

Mr. Al-Rawi: Right.

Sen. Ramdeen: Now, without setting your motive when you turn over leaf on 8 is laudable because you have now set a timeline for the judge to give reasons of seven days, and I will come to that, but in relation to this provision here, without setting a timeline, AG, I can tell you and I can say openly in Parliament—

Madam Chairman: No. You can say it a different way.

Sen. Ramdeen: No. No. No.

Mr. Al-Rawi: I do not think it is going to be pejorative.

Sen. Ramdeen: No. No. No. It is not going to be. I have done FOI's where there is a judge sitting on the High Court bench that has 42 judgments that are outstanding more than seven years.

Madam Chairman: That is why I said— That is why I said and please, please, take my guidance to be very careful of what we are saying. Okay?

Sen. Ramdeen: I am not calling any names.

Madam Chairman: No. No. It does not matter whether names are called or not, it is the Standing Order that is being infringed. So, Attorney General, Senator Ramdeen, continue the discussions, but on a certain line.

Mr. Al-Rawi: Sure. Madam Chair, this might sound on a rare occasion, but I do thoroughly accept what Sen. Ramdeen is saying. I did not get it he was being pejorative.

Madam Chairman: No. No.

Mr. Al-Rawi: But I am guided by you.

Madam Chairman: No. Please, whether it is accepted or not, my responsibility is to the Standing Orders. And, please, I am trying to steer everyone clear just, please, abide by the Standing Orders. So it can be exchanged in a different way. Sen. Ramdeen.

Sen. Ramdeen: AG, I do not want a situation to arise where you have a very long period of time between the end of the trial and the giving of the reasons, because the way legislation is structured what you have is that the only thing that limits the judge in giving the decision on trial is whenever the reasons are there.

Mr. Al-Rawi: Correct.

Sen. Ramdeen: So it opens the door to be a lot of arbitrariness.

Mr. Al-Rawi: And just to point eh, the Judiciary in its difficulties of resourcing, et

cetera, had recommended—the originate version of this was at the time of conviction or acquittal or as soon as it is reasonably practicable thereafter which itself has fallen into, well, a lot of complaints by persons. The prescription for time frame that you are suggesting is that X number of days after the end of the trial, is that the sort of formula you are looking at?

Sen. Ramdeen: AG, you have already done it in relation to acquittal. I will come to that. It does not fit well that you have done it for acquittal, and then for the substantive trial itself, which is perhaps more important, you just leave it open.

Mr. Al-Rawi: But we have done it for acquittal from conviction as well which is for the production of—

Sen. Ramdeen: Of course. Yeah. What I am saying is, I do not want to support a piece of legislation that leaves it open ended like this. If we look at Ramnarine in the Privy Council you would see, I think, in Ramnarine they suggested a number of months. On this issue there are a number of judgments. There is a Privy Council out of Jamaica and there is Ramnarine from our own jurisdiction that deals with what is reasonable for a judge to deliver reasons.

Mr. Al-Rawi: Question.

Sen. Ramdeen: Well, the one thing that we have to be careful about in this is that, because you have judge-alone trial you run into the same problem that we have with civil trials which is, the longer the period of time that elapses between the giving of the evidence and the writing of the reasons and coming to a decision, the judge is a human being, he will forget about the impression of the witnesses. He is the judge of fact in this particular case and therefore, we must be conscious that the judge who is doing this is going to be the judge in a judge-alone trial and is going to be a judge of fact and law.

Mr. Al-Rawi: What about a hybrid formula which suggests after reflecting on Jamaican case or the Ramnarine a link which says, for instance, and I am just throwing it out, three months or such other time. My fear is that the complexity or the vicissitudes of the different types of cases may come into kick. It may be a very complex fraud trial where the evidence cannot harness into factual determination, et cetera.

Sen. Ramdeen: Well, just let us take, for example, Vindra Naipaul. I mean, a judge who has to sit down and listen for evidence for a year and a half or two years to tell him to deliver a judgment on the facts of that particular case in a month or two months or whatever. I think this one is something that you should have some consultation with the Judiciary on and get their view on it, because at the end of the day it falls to their feet, to feel comfortable with it.

Mr. Al-Rawi: Their view is the first version of the Bill which is, as soon as is practicable.

Sen. Ramdeen: I am not going to agree to that. I think that you should suggest, as Attorney General, I think that the right thing to do is to suggest that you are going to fix a time frame and get a time frame that is workable, at least, giving them the opportunity to be heard as the principal in the administration of justice. But I do not think that we should leave it as open ended as this. I do not think that we should leave it to a reasonable time. We have to also remember that this is a superior court of record, so that you would not be able to get judicial review against them in relation to if there is a delay, you have to go under the Constitution and then you have problems there. So, I think this is one that you should have consultation with them.

Mr. Al-Rawi: We did. I am noting your concerns well and we will go back to

some further reflections.

Sen. Roach: If I may on this point?

Mr. Al-Rawi: Please, Madam Chair, through you.

Sen. Roach: Madam Chair, through you. Just to elaborate on what Sen. Ramdeen is saying. If there is a difficulty with the Judiciary talking about and he says open ended, I understand that. What about if a time is fixed and then if there is an extension it has to be on the approval of the parties involved, or at such time as the parties may approve. I mean, you do not have to agree on it now, but that can be a source of bringing back the persons who will be affected in having a say in what time will be reasonable in the circumstances.

Mr. Al-Rawi: Thank you, Senator. It was along the lines of hybridizing, but I can see the various camps taking entrenched positions one way or the other, but I do appreciate the points that hon. Senators are raising.

Sen. Ramdeen: The problem with that suggestion is that bringing back the parties is a very good idea. The problem is, you are coming back before the judge who has to decide whether he is going to give himself more time. So that is where the problem is in relation to that.

Mr. Al-Rawi: Well accepted. Any other observations, through you, Madam Chair?

Sen. Ramdeen: In respect of 4 and 5, AG, of (d), I do not think we could realistically agree to seven days. I mean, a magistrate under the Summary Courts Act has 60 days. If they have to appeal, the appeal is not going to come up any time soon and I just do not think it is practicable to give a judge seven days for reasons like this. The reasons that the judge would acquit would require the judge to apply his mind to the same facts and the same law as if he has to convict. So that the expression of reasons, the fact that it is an acquittal, I think, that whatever

period of time we are going to agree in relation to the conviction, I do not see why it should be any different in relation to the acquittal.

Mr. Al-Rawi: We had two choices here and we cleaved on one and I had not wedded myself one way or the other, and that was whether the judge ought to give reasons for acquittal and conviction. A I am not cleave in the discretionary approach that we have recommended here. This discretionary approach that you are only producing reasons when invited by the prosecution to do so was driven out of the Criminal Bar itself that felt that it should go that way, but I am certainly not wedded one way or the other to the point.

Sen. Ramdeen: Well, I have no difficulty in the practicality of that, because why should a judge give, I am not going to—I do not think that we should support a position that he gives reasons anyway.

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: Whether it be—I understand the practical reality of giving reasons only if required.

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: Why we wish to give them, giving reasons when the acquittal is there and there is no appeal? The position is that, I think, the seven days is what I am concerned about, because I do not think that it is realistic. So I am just on the time period. I am with you on the policy behind it. I think it is laudable in terms of giving it only when it is required for appeal, but I just think that whatever we do with the time period in relation to 42B, we do the same thing in relation to—

Mr. Al-Rawi: Appreciated.

Sen. Ramdeen:—(5) and I think with respect to (g) and (h), AG, these are the provisions where, and I do not know if there are any others, if there are any others I

stand to be corrected. I hear you when it comes to taking away the discretion from a jury in relation to these particular types of matters. I think that the procedural safeguard that we should put having regard to the fact that we are excluding the jury totally in these, these are not the optional ones, if you want to put it that way, is that in relation to 64 and 65, where a judge is going to make a decision that is going to affect the conduct of the trial and what takes place with that accused person and there is no intervention or option to go for a jury, and the judge to give reasons in relation to that as a matter of fairness. So perhaps you would want to consider that in relation to 64 and in relation to 65. I do not know if there is any other provision in relation to 63. No. I think in 63 you have an option, 64 and 65 are the ones where you do not have an option.

Mr. Al-Rawi: Sen. Mark, I recall, through you, Madam Chair, forgive me as well. I recall the observations you made during the debate which a couple other Senators on the Independent Bench also echoed. So I am going to look at those in a little bit deeper sense for the reduction as a result of diminished capacity, if I could put it that way.

Sen. Ramdeen: My concern is in relation to that clause. It is clause 5?—4.

Madam Chairman: So any other Members, any additional comments on clause 4? So we will defer consideration of clause 4.

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

Clause 4 deferred.

Clause 5.

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

Madam Chairman: Attorney General, I believe there are amendments circulated.

Mr. Al-Rawi: Yes, Ma'am. My mind was just reflecting upon the fact that we had

actually agreed to clause 3, and I would ask you after this to return to that so that we can actually defer consideration of that as well, subject to the will of the Senate, to allow for the reflections that Sen. Ramdeen brought up in relation to that which we had given the undertaking on.

Sen. Ramdeen: I know that your parliamentary time is very limited and that is why the Leader of Government Business and you want us to do that. Perhaps unconventionally, if you get your advice—

Mr. Al-Rawi: I am agreeing with you. I am asking, Madam Chair, afterwards to go back to it to unlock it.

Sen. Ramdeen: Right. So, I am just suggesting, if you get your advice, as you have done in all of these Bills, if you get your advice by Monday and you put something in draft, at least, we could see it before—

Mr. Al-Rawi: Sure.

Sen. Ramdeen:—Tuesday, if you could just, perhaps, email it to the respective convenience of the respective Benches, and if there are any suggestions we can make to improve it, it would save the time on Tuesday—

Mr. Al-Rawi: That is an excellent suggestion.

Sen. Ramdeen:—and we can also make whatever changes we can, so that on Tuesday—

Mr. Al-Rawi: I see, Madam Chair, smiling in disbelief at our comity. I am just teasing.

Madam Chairman: Just to ask though, because I am appreciating what is being suggested, but clause 3 was amended.

Mr. Al-Rawi: Which is why I am asking you, Madam Chair, that we actually go back to clause 3 to agree to revisit it and then suspend.

Sen. Dr. Mahabir: He wants to revisit clause 3 and reopen.

Madam Chairman: Oh, to reopen clause 3.

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

Sen. Dr. Mahabir: Revisit and reopen.

Mr. Al-Rawi: And for the same reasons volunteered. And the thinking is that once we got something that we can circulate it in advance as quickly as possible.

Sen. Mark: Procedurally, Madam Chair, would you have to—

Mr. Al-Rawi: Clause 3 revisited.

Madam Chairman: Yes. Yes.

Clause 3 recommitted.

Question again proposed: That clause 3 stand part of the Bill.

Mr. Al-Rawi: Yes, Ma'am. Madam Chair, I propose that we take on—oh, I am sorry, did you need to ask for an all in favour or?

Question put and agreed to.

Madam Chairman: Clause 3 will now be revisited, it no longer stands part of the Bill as amended.

Mr. Al-Rawi: Thank you, Madam Chair. We propose to take on board the recommendations of the Senate and to come back on the next occasion with recommendations that could meet with some of the observations that the Senate has so far given. I, of course, note for the record that hon. Senators may have further observations to give and, of course, the Government is open to listening to that.

Madam Chairman: All right. May I ask at this stage because what I intended to do was to go through the Bill and then defer consideration of the five clauses, but as I was doing that, I was kind of stopped. So I just want to make sure we are on

the same page.

Mr. Al-Rawi: Yes, please.

Madam Chairman: So clause 4 we have deferred consideration. I am now moving on to clause 5.

Clause 5.

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

Mr. Al-Rawi: Madam Chair, we have proposed a circulated amendment to clause 5. Previously, we had said that the Act did not apply to any trial on indictment that began under the Criminal Procedure Act. We propose now to clarify that language to allow for us to tackle some of the backlog by saying that the Act will apply to an indictment for which the trial has not begun under the Criminal Procedure Act, and then to specify further that the Act does now apply to any trial on indictment that began under the Criminal Procedure Act prior to commencement of the Act.

It was the suggested language to allow us to facilitate the entry into this selection and election process where trials had not begun, but that we would not unduly cloud the situation to cause people to challenge rights or seek clarification from the court as to whether they could participate or not in the mechanism. I am open to the observations of the honourable Senate on this clause.

Sen. Ramdeen: There is a problem that perhaps a difficulty with the application of 5(1), because you would have people in the system who would have passed the first hearing date under—

Mr. Al-Rawi: Yeah. Where you could elect or then come to eight days after.

Sen. Ramdeen:—so while you can catch, you can find a way to capture them without falling afoul of what we would have already been providing for at 8 and 9, it would help you to clear up the backlog and also facilitate whatever procedure is

engaged, it would be in accordance with the Act, because perhaps you can make an exception, some way, find a way of making an exception for those persons to be able to engage the provisions of the Act, but still not breach the provisions of the Act by virtue of the timelines having already been passed. We have a lot of people in the system who would have just come up before a judge—

Mr. Al-Rawi: Appreciated.

Sen. Ramdeen:—and then gone back into the system.

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: The period of time would have passed under the Act. So perhaps we could find some way of formulating.

Mr. Al-Rawi: Some further transitional language.

Sen. Ramdeen: You could do it in the form of a transitional provision—

Mr. Al-Rawi: Yeah.

Sen. Ramdeen:—and perhaps set a timeline on it so you could probably consider perhaps doing a sunset clause for that particular provision so that it will cut off at a particular point in time that is suitable to you. You could check with the administration and see what the position is.

Mr. Al-Rawi: Appreciated. Madam Chair.

Madam Chairman: Sen. Mark.

Sen. Mark: Are you through, Ma'am?

Madam Chairman: No. I am asking, do you have any observations on clause 5?

Sen. Mark: No.

Madam Chairman: No. Any other Member?

Assent indicated.

Clause 5 deferred.

New clause 6.

Insert after clause 2 the following new clauses:

New Clauses 2A and 2B

Chap. 4:01 amended

2A (1) The Supreme Court of Judicature Act is amended in section 44 (1) by inserting after the word "jury" the words "or Judge as the case may be,".

(2) The Court of Appeal Rules are amended in Appendix C in Criminal Form II, in item (4) by inserting after the word "Jury" the words "/Judge".

Chap. 4:20 amended

2B Section 100 of the Summary Courts Act is amended –

(a) in subsection (3), by inserting after the word "jury" the words "or by a Judge alone", and

(b) in subsection (4), by inserting after the word "jury" the words "or by a Judge alone",".

Mr. Al-Rawi: It is a new clause 2A and 2B, Madam Chair.

Sen. Dr. Mahabir: Hon. AG, I am not following you where the 2A and—

Mr. Al-Rawi: It is on page 6 of the circulated amendments and new clauses come last.

Sen. Dr. Mahabir: Yeah. Okay. Thank you very much, AG.

Mr. Al-Rawi: This, I will let, Madam Chair, put the question first. Sorry. It is on page 6 of the circulated amendments, so it comes after you see the two schedules, the two new forms, sorry, 31 and 32, if you turn over from that, there is the new 5 which you would have seen in the marked up version. So it is the first few pages of the Bill, of the circulated amendments. On page 6 of the circulated amendments, the 5 you would have seen reflected and the new sections 2A and 2B are to take care of the omissions that happened in the Supreme Court of Judicature Act and in the Court of Appeal Rules where we had not modified to include "Judge only" as opposed to "Judge and jury", and specifically an amendment to section 100 of the Summary Courts Act for the same reason. And then what would have gone consequently from that was the need to amend the long title because the long title would have only referenced two bits of legislation as opposed to including the Supreme Court of Judicature and the Summary Courts Act. I think we jumped the gun on you, Madam Chair.

Madam Chairman: No. No. Are you finished in your discussions?

Mr. Al-Rawi: Well, Members had not spotted it because one thinks that forms usually come at the end so you are tempted not to look right down to the end of it. So, I am open to any observations, subject to your guidance on new sections 2A and B.

Madam Chairman: Members, any?

Sen. Ramdeen: AG, the amendment to section 100 of the Summary Courts Act. When you look at the substantive Act, this is the provision that allows for the hybrid offences—

Mr. Al-Rawi: Correct.

Sen. Ramdeen:—for the explanation. I thought that you would probably want to

consider that in addition to simply adding "or by Judge alone" in relation to section 100 subsection (3), that before that in the substantive law, if you have it before you, you would see that for the hybrid offence, the magistrate would explain first the choice, but then what we had not catered for is for explaining what it is to be tried by judge alone even though you are now putting in "Judge alone" so the same right that you would be giving to the accused—

Mr. Al-Rawi: Yes.

Sen. Ramdeen:—for the hybrid offence. Could we just give it to the accused in relation to the fact that we are adding "Judge alone", so the magistrate will just simply explain to the person that they would have that option, what it is.

Mr. Al-Rawi: So a reflection of what we are doing for the criminal proceedings position with the explanation there. I catch you.

Sen. Ramdeen: Yeah.

Mr. Al-Rawi: Right.

Sen. Ramdeen: Those are my observations.

Madam Chairman: All right.

Mr. Al-Rawi: Sincerely appreciated.

Madam Chairman: So, hon. Senators, unless anyone else has any, Sen. Mark.

Sen. Mark: Well, there are just two observations, if you will allow me? I did recall the hon. AG giving an undertaking to report to the Senate on the possibility of a sunset clause.

Mr. Al-Rawi: Yes.

Sen. Mark: I do not know if you are in a position to do that now.

Mr. Al-Rawi: I did reach out for response. I have not gotten it. Sen. Creese had asked that and Sen. Ramdeen has echoed it in a very, in a tighter way in respect of

the transitional provisions. So, I will certainly come back to that. I did not get the response yet for Sen. Creese.

Sen. Mark: Madam Chair, my final point is whether the hon. Attorney General, in fact, whether, for instance, the Attorney General would want to consider a provision that would allow a review of the legislation, not so much talking about like a sunset clause like every three or four years but, you know, sometimes you may have a provision in the legislation where, because of the effluxion of time.

Mr. Al-Rawi: It is in Dangerous Drugs Act. I saw the formula of which you are looking for.

Sen. Mark: Do you have a review, Madam Chair, of the legislation? I do not if that is something you may want to examine as well.

Mr. Al-Rawi: I will look for it and look for the precedence on it to consider.

Madam Chairman: So, okay. Hon. Senators, consideration on the new sections will also be deferred. Okay? Hon. Attorney General.

New clause 6 deferred.

Mr. Al-Rawi: Yes, Ma'am. Sorry. Just to catch up with you. We have considered so far without prejudice to further observations a number of issues. Do we do the report for the recommendation to the Senate yet? Is that what you are inviting me to indicate?

Madam Chairman: I am inviting you to just report.

Mr. Al-Rawi: Madam Chair, I wish to report on an Act—so, Madam Chairman in committee, in accordance with Standing Order 68(14), I beg to move that progress on the Bill be reported to the Senate.

Question put and agreed.

Madam Chairman: The Senate will be resumed.

Senate resumed.

Hon. Al-Rawi: Madam President, I wish to report that an Act to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters was considered in committee, however, the deliberations on the Bill were not concluded. I, therefore, seek the leave of the Senate to resume committee stage on Tuesday 13 June, 2017. I think it would be for the Leader of the House to indicate the time. Thank you, Ma'am.

Question put and agreed to.

Madam Chairman: Leader of Government Business.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday the 13th of June, 2017, at 10.30 a.m. During that sitting, we will conclude the committee stage of the Miscellaneous Provisions (Trial By Judge Alone), Bill, then we will proceed to do the two Motions on the Order Paper: one for the Vision 2030 to go into—be put to a Joint Select Committee; and, one for the Review of the Levels of Health Care Delivery at the Regional Health Authority to go before a Joint Select Committee. Hopefully those debates would not be long, and we still hope at the back end of the day to begin the debate on trial by judge. [*Crosstalk*] I mean, plea bargaining, sorry.

8.15 p.m.

Madam President: Hon. Senators, before I put the question of the Adjournment, leave has been granted for two matters to be raised on the Motion for the Adjournment of the Senate. Sen. Mark. [*Desk thumping*]

Greater Power to Permanent Secretaries

Sen. Wade Mark: Thank you very much. Madam President, thank you very much. I rise to address an issue dealing with a statement which was issued by the Ministry of Public Administration and Communications, dated May 12, 2017, entitled "Greater power to Permanent Secretaries", and in that statement, it is stated that the Public Service Commission will allow Permanent Secretaries in five specific Ministries to fill a number of vacancies, and that release went on to say, as well, that the whole recruitment and the filling of vacancies will now be addressed on a specific basis, meaning vacancies will be filled as agreed by the Ministries themselves, who would have the responsibility of advertising these positions and the Permanent Secretaries can fill these positions accordingly.

Madam President, what is also important to note in this statement or media release, is that the Ministry of Health—there are six Ministries involved: the Ministry of Health, the Ministry of Energy and Energy Industries, the Ministry of Public Administration and Communications, the Ministry of Rural Development and Local Government, the Office of the Prime Minister and the Ministry of Community Development Culture and the Arts. The impression that one got here is that the new arrangement approved—that is the language—by the Public Service Commission, will only be in place in the following Ministries. Now, we are being told that this has been approved according to this release, and if I may advise, I know that under the Constitution of the Republic of T&T, the Public Service Commission under 120, 121 exists, and they are clearly outlined in terms of their powers and functions. And under 127 subsection (1) of the Constitution, there is a provision that says that:

> "A Service Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its functions other than any power conferred on the Commission by section 129..."

Now, Madam President, I raise this matter in the context of section 85(1) of the Constitution, because this is a very dangerous area that we are traversing at this time. Because under 85(1) of the Constitution, the Minister exercises general direction and control over his Ministry, and subject to such direction and control, he has under, the department shall be under the supervision of a permanent secretary, whose office shall be a public office. So, the independence, impartiality, fairness and neutrality of the Public Service Commission in appointing, transferring, disciplining and promoting public officers could be compromised politically, having regard to how Ministries are structured and how Permanent Secretaries behave, as we recently saw in a hearing at a JSC recently, where a Permanent Secretary whimsically, capriciously, without any accountability, expended $ 92,000.

Madam President: Sen. Mark.

Sen. W. Mark: Madam President. No, Madam President, I am saying this to let you know that in this particular matter before us we have some reservations, and this is why I ask the Senate today, through the Minister of Public Administration and Communications and through you, Madam President, to come and give an account of, when did they get the approval? Could the Minister provide us with a legal notice?

Madam President, may I draw to your attention, a legal notice, which was issued in 2006 by the Public Service Commission, with the approval of the Prime Minister, pursuant to section 127 of the Constitution, where they gave certain powers to the fire service, and the Chief Fire Officer in this instance. And, Madam President, it is detailed. There are some 10 to 15 pages of detailed information in this public notice. I have searched, I have asked the Librarian in this Parliament to provide me with a legal notice, giving the Permanent Secretaries in these six

Ministries the power to recruit, and the power to discipline, and up to this time as I speak, I am yet to receive any legal notice. There is no legal notice that has been brought to my attention, and from what I have learnt, what we have is a public relation gimmick on the part of the Ministry of Public Administration and Communications, because no Public Service Commission can delegate onto any Permanent Secretary, in any Ministry, any power to employ public servants, to recruit public servants, or to discipline public servants, unless it is gazetted and there is a legal notice to that effect.

So, I have called on the hon. Minister, through you, today, to explain to this Parliament and Senate, and to the public, where is the approval given to these six Ministries to recruit personnel to fill positions within those respective Ministries. So, this, as I said, is a very unusual development, because I myself in another incarnation recalled trying to get this same power and it was not granted, and the reason why it was not granted is because the Public Service Commission guarded very jealously that function and responsibility under sections 120 and 21 of our Constitution to be allowed that power, that independence rather, to recruit, to promote, to discipline and to transfer, and it was very difficult to delegate that to Permanent Secretaries.

So, that is why I found it very interesting, and I await the response of the hon. Minister of Public Administration and Communications to explain to us how this regime, or this Government, was so lucky to get the Public Service Commission to grant this power, and yet still there is no legal notice, there is no legal order, nothing has been gazetted. So, these Ministries, could we be advised—I know I have one minute now, Madam President—by the hon. Minister of Public Administration and Communications, how many workers have been recruited thus far in these six Ministries? When were they recruited? How were they recruited?

Was the Public Service Commission involved? These are some of the areas that we would like to have clarified so that we will know what is taking place. Thank you very much, Madam President. [*Desk thumping*]

The Minister of Public Administration and Communications (Hon. Maxie Cuffie): Madam President, thank you for the opportunity to address this honourable House on the Motion brought by my friend, Sen. Mark, on an important, and I thank him for giving me yet another opportunity to address the matter. It is important that I recite the precise wording of the Motion "The need for the Government to provide the public with good reasons for requesting the Public Service Commission to delegate recruiting and disciplinary authority to Permanent Secretaries in five Ministries."

I must admit that I am disappointed in Sen. Mark, who is not only one of our longest-serving parliamentarians, but also a Minister of Public Administration for the wording of this Motion. In fact, Madam President, he was the first person to serve as a Minister of Public Administration with full Cabinet authority. Madam President, the Public Service Commission is an autonomous constitutional body established under sections 120 and 121 of the Constitution, with the power to appoint persons to hold or act in offices in the public service, including the power to make appointments on promotion and transfer, and to confirm appointments, to remove and exercise disciplinary control over such persons, or acting in such offices, and to enforce standards of conduct on such officers.

Further, under sections 127 and 129 of the Constitution, the commission has granted additional powers with the consent of the Prime Minister to dedicate any of its function, imposed duties on public officers and regulated procedures. I say this to point out that the Public Service Commission does not pander to the whims of any politician, and I will certainly not make any request to the Public Service

Commission to delegate any functions on any five Ministries. Monumental changes are taking place in the public service, but it is clear that Sen. Mark is overwhelmed by the changes and does not understand them. I will attempt to enlighten my good friend, since I appreciate that this Motion is born out of ignorance, not malice. Although as a Minister of Public Administration I think the goodly Senator should have known better.

Delegation of authority in the public service is done pursuant to section 127(1) of the Constitution by way of a delegation order.

In 2006, the commission amended this delegation of powers to Permanent Secretaries, Heads of Department, the Chief Administrator, Deputy Permanent Secretaries and Directors of Human Resources by Order of Legal Notice No. 105 dated the 24th of May, 2006. These delegated functions include: Acting appointments up to range 68, except in officers requiring consultation with the Prime Minister for a period of six months; appointments on a temporary basis for a period of six months after first appointment by the commission; confirmation of appointments; transfers within Ministries, Departments and the Tobago House of Assembly; exercise of disciplinary control in respect of minor infractions in the code of conduct.

So, Madam President, the delegation which Sen. Mark thinks he is referring to actually took place in 2006, 11 years ago on May 24, 2006 with the publication of Legal Notice 105. Now, I understand what he was really attempting to refer to was my recent announcement in the news release that Permanent Secretaries have been given the authority to recruit persons for peculiar positions in six—not five—Ministries. But, that authority—and the reason why you would not have been able to find it Sen. Mark—has been in existence since 2007, when the Public Service Commission's regulations were amended to Regulation 13, clauses 5, 6 and 7 to

provide Ministries and Departments with the power to issue notices of vacancies, and set up selection boards to interview candidates.

This was done by way of amendment of the Public Service Regulations with the consent of the hon. Prime Minister, and not by way of delegation. So, there was no delegation order. So, on that score Sen. Mark is 10 years late. On the issue of delegation he is 11 years late. So, on the issue of recruitment he is 10 years behind. I know, Madam President, that the PNM is generally 10 years ahead of the UNC [*Desk thumping*] but on the issue of public administration it could be longer. [*Laughter*] So, try as they might —and Sen. Mark has been trying for 26 years— they just cannot keep up. We are at least 10 years ahead of them. [*Desk thumping*]

Now, the amazing thing is that during the time when the delegation of orders were issued, and published by legal notice, and when the amendment to the public service regulations were done, Sen. Mark was a Member of this House, and as party spokesman for public administration. So, he was clearly sleeping on the job. But, Madam President, the situation gets even worse. Under the previous People's Partnership administration, consultant Deloitte & Touche, in collaboration with the institute of Public Administration were engaged in a project for the institutional strengthening of the Service Commissions Department. They approved a report on the future state for the public service. It was suggested in the summary of Phase I of their recommendation, four things: That the Commission's role be one of policy directing, monitoring and reporting.

The Service Commissions Department's role, under the leadership of the Director of Personnel Administration, include provision of support to a client, Ministries, Departments and agencies, including complex and difficult files; serving the commissions in fulfilling their policy monitoring and reporting roles; all recruitment except for recruitment of large cross-government categories,

staffing and discipline be delegated to the Ministries, Departments and agencies. The Permanent Secretaries and Heads of Departments assume responsibility and accountability for these functions consistent with the policies and procedures set out in the Public Service Regulations by the commission.

The committee which made that recommendation, Madam President, was chaired by the then Minister of Public Administration, Carolyn Seepersad-Bachan, in August 2015. It was a recommendation that has been approved since 2007. It is to be noted that information regarding how the Ministries were selected is within the Service Commissions Department and the Public Service Commission. But if Sen. Mark really wanted to know why the commission gave the power to recuse persons for the six Ministries, all he needed to do was to ask Sen. Ameen who sits to his left. She was a Member of the Joint Select Committee which summoned the Public Service Commission, and they were told that there were 9,000 vacancies in the public service. So, there are approximately 20—[*Crosstalk*].

Madam President: Minister, you have one more minute.

Hon. M. Cuffie: Thank you, Madam President. I just want to say that the authority is given under the amended regulation. And to respond to Sen. Mark, last Sunday, page 21 of the *Sunday Express*, the first advertisement announcing the recruitment of public servants by the Ministry of Energy and Energy Industries started the ball a rolling. So, you expect to see more Ministry applying directly for staff and filling the 9,000 vacancies which Sen. Ameen would know about. Thank you. [*Desk thumping*]

Collapse of Sea Bridge

Sen. W. Mark: Thank you very much, Madam President. I deal with the sea bridge at this time. Before the collapse of the sea bridge we had a situation where the *Super Fast Galicia* operated, and everyone could have testified that the *Super*

Fast Galicia did an excellent job. Even the Government recognizes that.

But, because of internal shenanigans by the PNM, and the ring leader being the former chairman of the Port Authority, Christine Sahadeo, misled the country completely, because it appeared, Madam President, that that particular chairman along with other elements had their own agenda. [*Desk thumping*] They wanted their barge, they wanted their own boat, and therefore they came up with a world called "corruption", which they are very familiar with. And, what they did they sought all kinds of reasons to justify why they would not renew the *Galicia*. It was because of the Government's refusal to renew and to give a contract to the *Super Fast Galicia* that the people of Tobago, and trade that goes on between Trinidad and Tobago has been just suffering and suffering because of other person's self-interest and machinations. [*Desk thumping*] That is what is happening.

So, Madam President, what has happened in the sea bridge requires a criminal investigation. We need to really get to the bottom of this. Maybe we need a forensic investigation to determine, for instance, who are the real owners [*Desk thumping*] of the two boats that have been hired by this Government. We know for a fact that one David Brash is the gentleman who has the *MV Transporter*, is a well-known financier of the PNM. And what is even more alarming, Madam President, is that we have learnt that this barge gets US $10,000 a month—a day. A day, Madam President. US $10,000 a day. And we were told that that barge was going to be there for only one month, we are now going into two months and the barge is still operating. I want the Minister of Works and Transport who is going to be answering me this evening, to tell us whether this owner of the *MV Transporter* is receiving US $10,000, or whether they are paying him in T&T dollars? We need to know this. Because, we now have a shortage of foreign exchange. Chicken prices gone up because of a shortage of foreign exchange, US dollars.

Madam President, in addition to this company, the *MV Transporter*—lucky to get this particular contract—we have the *MV Provider*, and that boat is being provided for very nicely. And, Madam President, it gets "curiouser and curiouser" like Alice in Wonderland. This boat, *MV Transporter*, we understand, is getting US $14,000 a day.

Sen. Ramdeen: "Nah, nah, nah!" [*Desk thumping*]

Sen. W. Mark: Madam President, US $14,000 a day, or close to $100,000 a day. This boat, we understand the owners are from somewhere south Trinidad. We are doing our investigations to connect the dots, and once we connect the dots, we will be able to expose this whole corrupt ring that has been established.

So, they give the impression to the country that they had not get rid of this thing. The Minister of Work and Transport, who is not here today, he said that they were being held to ransom, all kinds of excuses as to why they would not renew this particular contract. The people of Trinidad and Tobago, and particularly the people of Tobago, are suffering as a result of this crisis. As a result of the collapse of the sea bridge. Every day there is some crisis on that port. The Government got rid of bay ferries and they brings some fella called Mc Gillan, or Mc Jillan, "he take over" and as soon as they take over that maintenance part, the boat gone, break down, every day is break down, to the point that the Prime Minister of our country said there was human interference, meaning there was sabotage. Luckily, the hon. Minister of Works and Transport came later on and said there was no sabotage. So, the Prime Minister is being told one thing and the Minister of Works and Transport is being told another thing.

So, what you have actually happening on the sea bridge is a whole conspiracy hatched by the PNM in an effort—

Madam President: Sen. Mark.

Sen. W. Mark: Yes, Ma'am.

Madam President: Language.

Sen. W. Mark: Yeah, well I am saying—well, it was given berth. [*Laughter*] If it was not hatched, I take back hatched, but the berth that this particular—[*Interruption*]—and they can see—

Hon. Senator: That this particular.

Madam President: You know actually I was on the word "conspiracy".

Sen. W. Mark: Oh no, conspiracy.

Madam President: Yes.

Sen. W. Mark: Okay, sorry. Sorry [*Interruption*] So, Madam President, we want to get answers, and I think that the time has come, as I said, that we should have a forensic enquiry into this whole transaction.

How come, Madam President, this particular owner of this barge from South Trinidad, called David Brash, was so lucky to be selected, and he so happened to be a financier of the People's National Movement? How come, Madam President? [*Desk thumping*] You "eh" find that strange, Madam President? So, that has happened, and what is even more alarming is that this Government is paying more money today for those two vessels than they paid for the *Galicia*. They are paying more money for those two vessels today. I think it is almost $150,000 a day, and whereas the *Galicia* was costing us just close to $100,000.

So, Madam President, I think that the Government owes this country an explanation. They need to answer, and stop hiding behind distractions. So the distraction was Alphonso, Nariel Alphonso, was part—and they were going to have a criminal investigation. Whatever happened to that? Madam President, the Minister of Works and Transport threatened to sue the *Super Fast Galicia* owners because he said the breached contract. Up to now no legal action has been taken

against, not even a letter has been written. And you know why, Madam President? They have no basis. They cannot sue. They cannot sue that particular company, because the company did not breach any particular arrangement, and therefore the Government needs to come clean with the people of Trinidad and Tobago on the real reason for that particular sea bridge disaster. [*Desk thumping*]

Do not come with cover-up stories to give us the impression that it had to do something with somebody blackmailing you. It was no blackmail. It was the Government of Trinidad and Tobago trying to get its hands on the cookie jar in order so that they could feed at the trough, and that is what is taking place in Trinidad and Tobago. And that is why I am calling for a forensic enquiry into this whole matter, and a criminal investigation into this whole matter. [*Interruption*] This is what is called "Ferrygate". [*Laughter*] [*Desk thumping*] It is a "Ferrygate" that has taken place, Madam President. I need answers to this matter.

Madam President: Before I call on the Minister to respond, I just need to urge Members, when making reference to parties who are not Members of this House, to be—freedom of speech is sacred, yes, but, you know, be careful when you are making reference to persons outside the House, because they do not have an opportunity to defend themselves. Leader of Government Business.

8.40p.m.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Before I begin my contribution in response to the Motion of Sen. Mark, on a point of clarification, during my intervention at the end of Urgent Questions, it was never my intention to question the authority of the Chair to approve Urgent Questions. I want to make that abundantly clear. I was making the point in the context of time management. If I was ambiguous or if I came across as if I was challenging you, Madam President, I

humbly apologize.

Sen Sturge: "Apologize man."

Sen. The Hon. F. Khan: I humbly apologize.

Sen Sturge: Louder.

Sen. The Hon. F. Khan: I humbly apologize. [*Laughter*] Madam President, let me get to the point. The Motion before—[*Interruption*]

Sen. Mark: You are forgiven, you are forgiven.

Sen. The Hon. F. Khan: The Motion before us today which states that there is a failure of the Government to appropriately address the issue of the sea bridge between Trinidad and Tobago, this is farthest from the truth, Madam President. Permit me to say, Madam President, that since this serious matter arose, this Government has tirelessly explored solutions to alleviate the distress levied on the citizens who are dependent on the operation of the sea bridge.

Madam President, there are three key areas that I need to address: First it is the roll-on roll-off cargo vessel. The charter hire of the *MV Super Fast Galicia* by a previous administration was subject to much contention. Firstly, because of the size of the boat and the docking facilities next to the Hyatt causing major damage and associated problem particularly with the procurement process. If we considered a trail of events, with the understanding that the Intercontinental Shipping had held an 18-month contract with the Port Authority, which was due to expire on October 31, 2017. We will see that it was always this Government's intention that during that period, until October 31, 2017, that during that period a replacement vessel would have been sourced.

Madam President, because of that, the Cabinet got involved. In that context the Cabinet agreed to take the following measures: one, to secure a suitable vessel on a three-year time charter to provide coverage for the service in the medium

term; and, two, to implement a public procurement process for the design, build and finance of a suitable roll-on roll-off cargo vessel as a long term solution once and for all.

In facilitating these workable solutions and the immediate needs, the way forward we approached it at three stages. One, an interim solution. Madam President, in response to Sen. Mark, on the 31st of March 2017, Intercontinental Shipping, agents for the *MV Super Fast Galicia*, served 14 days short notice to the Port Authority of determination of the roll-on roll-off contract which was due to expire, as I said, on October31st, because they wanted a five year extension without any public procurement. There has been a rant and rave in this country for public procurement and they wanted you to roll over that contract for five additional years. Obviously, whether you want to use the word, "blackmail" or "coerce" or what, that was unacceptable to this Government. [*Desk thumping*] Their service ended on April 21, 2017. Obviously, we were caught in a bind. The Port Authority then invited proposals from interested parties and also received unsolicited proposals from interested parties, firms for the provision of—[*Interruption*]

Sen Sturge: Point of order, 42(11). The Member is reading.

Sen. The Hon. F. Khan: Yes, but I have to read. [*Laughter*] I am not normally a reader. They received unsolicited proposals from interested firms for the provision of short-term vessels.

Madam President, you do not just take "ah—source ah boat like ah maxi taxi". You have to go through a procurement process. Two vessels were made available after a long search, it was the *MV Atlantic Provider*, a roll-on, roll-off cargo vessel chartered at a daily rate of US $14,000—Sen. Mark is right—and the *MV Trinity Transporter*, a tug and a roll-on roll-off barge charting at a daily rate of US $8,000.

Madam President, we would be the first on this side of the Senate to admit that these vessels are not the ideal solution but they are the only, an interim solution given the immediate circumstances that were facing the Government. And, Madam President, you made the point on the Brash's. Let me just say for the purposes of this country, that the Brash family, who is the owner of Well Services Petroleum Company Limited and Lease Operators Limited, is one of the most prominent businesses in Trinidad and Tobago. They produce 5,000 barrels of crude oil for this country. They earn foreign exchange for this country. I have no beef for the Brash family. But what I am saying, they are businessmen and a business family of long standing and I think it is unfair—

Sen. Ameen: PNM financier.

Madam President: Sen. Ameen!

Sen. The Hon. F. Khan: And I consider it unfair for the statement that was uttered by the Sen. Mark.

Madam President, on the medium term side, in addressing the medium-term solution on April 01, 2017 the Port Authority invited duly qualified brokers to tender for a vessel on a three-year time charter. These tenders were closed on April 24, 2017. Unfortunately, only one proposal was received which was unsuitable and the tender process was deemed unresponsive and was aborted. Luckily for us at this point in time, Madam President, in this respect, the Board of the Port Authority had been fortunate to secure the technical advice and services of the World Bank which is agreed to review the model of ownership and operations in the inter-island ferry and the financing and design of vessels which are suitable to meet the long term operational requirement.

Let me move on to the fast ferries. Having regard to the high frequency of the breakdown and consequent on the reliability of the fast ferry service, the

Government intends to take immediate steps to thoroughly overhaul and rehabilitate the two Incat fast ferries, the *T&T Express* and the *T&T Spirit* that it currently owns. This is to ensure that they are restored to full functionality in order that they can provide the same level of quality service on the route as they did prior to 2010.

Madam President, in that regard, arrangements are currently being made to immediately source an additional Catamaran passenger fast ferry vessel; fast ferry similar in design, feature and capacity to the current Incat vessels such as the Incat 046 or any other suitable fast ferry.

With regard to the technical management services, it is well known that the ferries contract was terminated.

Hon. Senator: Why? Why?

Sen. The Hon. F. Khan: They were in this country for almost 12 years as a foreign Canadian company. There was no mentorship, there was no training of locals and what have you, so we had to bite the bullet and try to see if we could have gotten a local entity to provide such services. Obviously, it did not work out the way we hoped it would have worked out and we are going back out to the market now to source a maintenance contract for boats.

But, Madam President, before I close, I want to emphasize that this Government continues to take all possible steps to resolve the many issues that face the sea bridge service in the shortest possible time. And let me close by quoting Columbus. You know before Columbus discovered—well, I want to be corrected by Sen. Baptiste-Primus, before he visited Trinidad he was stuck in the doldrums and it was going to be a mutiny and he said, "give me my men but three days". And then the wind rose and he found Trinidad and he called it "La Trinity" in honour of the Trinity.

I ask this country through you, Madam President, to give us a little more time and I want to guarantee this nation that that issue of the sea bridge and the service that the sea bridge provides both for cargo and passengers will be solved once and for all. I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.54 p.m.