
THE SENATE DEBATES

(UNOFFICIAL REPORT)

PARLIAMENT 2003 – 2008

THE SENATE

Friday, February 18, 2005

The Senate met in the Senate Chamber, Parliament

Buildings on Friday, February 18, 2005, at 11.15
a.m.

PRESENT

His Honour Senator Sir FRED GOLLOP, K.A., J.P.,
(President)

Her Honour Senator Dame PATRICIA
SYMMONDS, D.B.E., G.C.M., B.A. (Hons.) (Deputy
President)

Senator the Hon. ERSKINE R. GRIFFITH, G.C.M.,
J.P. (Minister of Agriculture and Rural Development
(Leader of Government's Business))

Senator TYRONE E. BARKER, B.A., (Hons), M.A.,
(Econ.), J.P., (Parliamentary Secretary, Ministry of Finance
and Economic Affairs)

Senator Sir JOHN STANLEY GODDARD, K.A.,
G.C.M., B.Com., F.C.A., LL.D. (Hons.)(U.W.I.)

Senator the Hon. Mrs. VELMA E. NEWTON,
S.C.M., B.A., (Spec. Hons.), M.A., LL.B.(Hons.) (U.W.I.),
F.L.A.

(Gt. Brit.), L.E.C.

Senator RUDY W. GRANT, J.P., B.A.
(Econ.)G.Dip. M.A. Parliamentary Secretary, Ministry of
Tourism and International Transport)

Senator the Hon. Miss LYNETTE V. EASTMOND,
LL.B., (Hons.), LL.M.(Minister of Commerce, Consumer
Affairs and Business Development)

Senator IVAN ST.C. LINTON

Senator GREGORY P. B. NICHOLLS, B.Sc.,
(Hons.), LL.B. (Hons.)

Senator Miss PATRICIA E. PARRIS, J.P.

Senator G. P. IAN GOODING-EDGHILL

Senator Miss SANDRA C. HUSBANDS, B.A.,
(Hons.)

Senator FREUNDEL J. STUART, B.A., LL.M.

Senator Dr. DENIS S. LOWE, Ph.D, Dip. Theology,
B.A., MED, ED.D.

Senator the Very Reverend HAROLD E.
CRICHTON, G.C.M., B.A. (Hons.) (Dunelm)

Senator Dr. FRANCES L. CHANDLER, Ph.D.,
B.Sc., (Hons.)

Senator A. C. FIELDS, KCMG.

Senator RASHID O. MARVILLE

Prayers were led by Father E. Massiah.

Mr. PRESIDENT: This Senate is in Session.

PAPERS

SENATOR the Hon. E. R. GRIFFITH: Mr.
President, I am commanded to lay the following
documents:

1. Financial Statements for the Barbados Marketing Corporation for the years ended March 31, 1992 and March 31, 1993 and the period April 01, 1993 to August 31, 1993.
2. Annual Reports of the Barbados Agricultural Development and Marketing Corporation for the period September 01, 1993 to December 31, 1994 and the years 1995, 1996, 1997, 1998, 1999 and 2000.
3. Financial Statements for the Barbados Agricultural Development and Marketing Corporation for the period September 01, 1993 to December 31, 1993 and the years 1994, 1995, 1996, 1997, 1998, 1999 and 2000.

REPORT OF SELECT COMMITTEES

MR. PRESIDENT: I have received the following report from the Committee of Selection in respect of nominations for vacancies on two Committees, consequent to the passing of Senator Branston Collymore.

PARLIAMENT OF BARBADOS

(First Session of 2003/3008)

COMMITTEE OF SELECTION

THE SENATE

Parliament of Barbados

Bridgetown

18th February, 2005

Pursuant to a Notice of February 11th, 2005, the Committee of Selection met on Friday 18th February, 2005, to nominate Senators to serve on the following Sessional Select Committees:

1. Standing Orders Committee

Standing Order 60(2).

2. Joint Committee on Public Accounts

Standing Order, 60(6).

The Committee of Selection made the following recommendations:

Senator Sir Roy Trotman, K.A., to serve on the Standing Orders Committee. Senator Rashid Orlando Marville, to serve on the Joint Committee of Public Accounts.

The Committee of Selection submits its report accordingly.

Sir Fred Gollop, K.A.

Chairman

I will now ask the Leader of the Senate to move a motion for the adoption of the Committee's report.

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I beg to move that the report of the Committee be adopted.

The question that the report of the Committee be adopted was put to the Senate and agreed to.

INTRODUCTION OF BILLS

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I beg to give notice of the following Bill:

1. Computer Misuse Bill, 2005.

I beg to move that this Bill be read a first time.

The question was put to the Senate and agreed to.

CONGRATULATORY SPEECHES

SENATOR the Hon. E. R. GRIFFITH: Mr. President, before we proceed with Public Business, I crave the indulgence of the Honourable Senate to make a few remarks in relation to the news that we received during the closing of the last year, about the elevation of Senator Fields to the position of Knighthood.

11.30 a.m.

Wednesday, February 18, 2005

SENATOR THE HON. E.R. GRIFFITH: Sir, that information came while the Senate was in recess. Unfortunately, at the first Sitting, Senator Fields was absent and I considered it inappropriate to make these remarks in his absence.

I wish on behalf of the Senators on this side and on the other side, although they would have the opportunity to do so, to extend our heartiest congratulations to Senator Fields on his elevation to Knighthood. We all know the hard work which he has put in over the many years in the private sector and as a member of the Social Partners and all of us are happy for his elevation.

I extend greatest congratulations to him.

MR. PRESIDENT: Senator Stuart.

SENATOR F.J. STUART: Mr. President, on behalf of the Opposition, I would like to associate myself and the Opposition with remarks made by the Honourable Leader of Government Business in congratulating Senator Fields on his elevation to the status of Knight of Barbados.

As has been correctly observed, Senator Fields' contribution to Barbados through his contribution to the private sector and the Social Partnership are well-known. I think that his courageous leadership of the private sector strongly recommended him for the elevation since courage in any leadership position is a virtue and very rarely a vice.

I am sure that Senator Fields would be the first to admit that it has not been easy because, all too often, he has been the target of the slings and arrows of outrageous political fortune but he has borne these misfortunes with dignity and courage appropriate to a man of his standing.

When the time comes for me to write my memoirs, I shall have to reserve a few pages for the fact that it must be a rare privilege for anyone to sit in a Senate and at the same

time sit with five Knights. I do not know of any time in the history of Barbados when there have been five persons with Knighthoods sitting in this Chamber at the same time. Therefore, the elevation of Senator Fields adds a special and particular significance to that fact

Sir, on behalf of the Opposition, I want to congratulate Senator Fields and to let him know that his contribution to Barbados is greatly appreciated and I wish him all the best for the future.

Sir, I am obliged to you.

MR. PRESIDENT: Senator Sir Stanley Goddard.

SIR JOHN STANLEY GODDARD: Mr. President, on behalf of the Independent Senators, I would like to associate myself with the remarks made by the Leader of Government Business and the Leader of the Opposition. There is no point repeating what has been said. The accolades are fully deserved because Sir Allan has made tremendous contributions to this community both as head of the private sector and as a director and often Chairman of many of our leading public companies. We are very pleased that he has been given this honour.

Sir, I thank you.

MR. PRESIDENT: Senator Dame Patricia Symmonds.

SENATOR DAME OLGA PATRICIA SYMMONDS: Mr. President, I could not let this pass without offering heartiest congratulations, personal and on behalf of my family to Sir Allan. He spent part of his time in Bank Hall and we in Bank Hall are very proud of the fact that it has produced some outstanding citizens, people like Dr. Duncan O'Neale, Sir Frank Worrell and Dr. Gordan Cummins, a Premier of this island.

One of the things I have always admired about Sir Allan is the fact that he is so unassuming and so lacking in vanity that you would not think he was a person who had achieved so much. Sir, I too admire his courage and his public spiritedness as a member of CTUSAB where he has made an outstanding contribution.

I was delighted when I heard the news of his elevation. Again I wish to say heartiest congratulations and long may he live to continue making a contribution, such as he has already made, to this dear country of ours.

Mr. President, I thank you.

MR. PRESIDENT: I would like to associate myself with the tributes paid to Senator Sir Allan Fields. Senator Fields, as we know, has enjoyed a distinguished career in

the field of business, a career which I might add is still in bloom.

I have had the good fortune to work with Senator Fields and at present we work in similar capacities in a certain place. I have some knowledge, therefore, I can speak with authority on the quality of his mind and contribution to discussions on business matters. Of course, I congratulated the Senator immediately on hearing the news but now for the record I wish to place it in the annals of this Chamber and, as Senator Dame Olga Patricia Symmonds said, to wish Sir Allan a long life.

We look forward to his continued contribution to the development of this country.

Sir ALLAN FIELDS: Mr. President, with your permission, I would like to thank you and all the other members of this Chamber for the warmth and sincerity of the congratulations bestowed upon me. It is a rewarding career because I am very much enjoying my career. When people talk about retirement, I continue to tell them that I might concede that as my casket is lowered. I now have a cadre of people who I can recommend to my wife to do my eulogy.

Many thanks for the congratulations and the way they have been received in my Chamber.

Mr. President, I thank you.

GOVERNMENT BUSINESS

ORDER NO. 2 – FORENSIC PROCEDURE AND DNA IDENTIFICATION BILL, 2005

SENATOR THE HON. E.R. GRIFFITH: Mr. President, the Forensic Procedures and DNA Identification Bill, 2005, seeks to provide the legal basis for the operations of the Forensic Services Centre which was opened in 2003.

S25/11:40

Sequence 3

Friday, February 18, 2005

SENATOR HON. E.R. GRIFFITH: It currently provides services for a number of government agencies such as the Queen Elizabeth Hospital, the courts, the Government Industrial Schools and other agencies. It also provides some technical assistance to a number of countries in the Caribbean region. Those services, according to my information, are provided free of cost at the moment but the legislation before us has a section in it which seeks to

give the minister the powers to make regulations, including dealing with fees.

Mr. President, forensic procedures and to some extent DNA profiling are well-known to us, especially those of us here and in the wider society who are engaged in activity in the law courts. My knowledge of the DNA profiling aspect is based merely on what I see on the TV channel Court TV and how it is applied in helping the law agents to solve difficult problems.

Sir, all of us are made up in such a way that the genetic materials within our makeup will allow the experts to determine a number of things about us. In this particular case, expertise is used to assist the law courts in solving problems, for example murder cases and paternity. There was a good example of DNA profiling in Sri Lanka where nine couples were claiming a baby who was found unattended after the visitation by the tsunami. Certainly, the baby could not have belonged to nine different couples. Recently, the court resolved the issue by resorting to the use of DNA profiling and as a result were able to identify the correct couple to whom the baby belonged and the baby was handed to that couple. Sir, without that type of technology that case would still be in dispute and those nine couples would have been claiming a baby that belonged to only one couple. That gives us some practical idea how DNA profiling is of assistance to the law executing agencies.

Mr. President, the Bill is a very exhaustive Bill. There are provisions that seek to make sure that the persons who are charged with the responsibility of implementing these provisions do not go outside of their legal bounds and that the rights and privileges of individuals are in no way violated or infringed. Sir, because of that reason I wish to take some time to go through this Bill clause by clause so that Honourable Members have no misunderstanding about what is the intention behind the provision.

The Objects and Reasons of the Bill are as follows:

(a) The procedure required for the carrying out of forensic services including DNA forensic analyses;

(b) The use of DNA identification services and the administration of a DNA database;

(c) The altering of section 13 of the Constitution, to the extent necessary to best ensure the attainment of the purposes specified in the paragraphs (a) and (b);

(d) Matters related or incidental thereto.

Sir, since persons' rights and privileges are involved, the Bill seeks to alter in a way, section 13 of the Constitution which deals with the protection of rights of

persons' liberties. There is need for a clearer set of procedures and protocols that will outline how any such procedures are to be carried out, who will carry them out and under what authority they must be carried out. There is also an issue in relation to the handling of samples; the use or misuse of any information which is stored on the database and the Bill seeks to set out clearly what the responsibilities are of the individuals who are involved in dealing with these matters and how the rights and privileges of the individuals are to be preserved.

Mr. President, therefore, the Bill covers the types of procedures that can be carried out and on whom; the circumstances in which they may be authorised; the manner in which the procedures are to be carried out and how the evidence obtained from the samples must be used. In other words, the Bill is leaving nothing to chance.

Sir, when we deal with people's rights and privileges in this modern age, there is a certain degree of sensitivity that must be used at all times. Therefore, there are a number of safeguards that have been included to ensure that the powers to take forensic material and samples are used appropriately. These include that a person from whom a sample is required must be asked whether he/she consents. Sir, consent is only lawful where inter alia that person is properly informed of the circumstances in which that consent is being requested and the request for the sample is justified.

Sir, special provisions in relation to consent apply to children and persons incapable of giving legal consent on their own behalf. Therefore, you will notice that there is an amendment to the Status of Children Reform Act, Cap 220, which deals with Children.

The Bill also indicates that if consent is not given or consent is withdrawn, the police may seek a court order to obtain the sample so that at no time is there any opportunity being created here for people to misuse their power and authority. They are expected to follow these set procedures.

Sir, with regard to the DNA database provisions, these enable forensic material to be included on the database. It also states what material may be stored; how it is to be stored; how access to that data base is permitted and how information on the database may be used or disclosed to others. There are safeguards to prevent the misuse of the database and stiff penalties are in place for breaches of those provisions.

25.11 a.m.

Sequence 4

Friday, February 18, 2005

Senate 25, sequence 5, 11.50 a.m.

Senator, the Hon. E.R. GRIFFITH: Sir, of course, there will be costs associated with all of these activities and that is where the issue of fees come in and, in addition to the section which gives the Minister responsible the authority to levy fees through the appropriate regulations, there is a section which gives the Minister of Finance the authority to waive any fees, if he deems that the circumstances merit such a waiver.

The Bill, as I said is quite extensive. It has 14 parts. I think I should go through the Bill, part by part for the benefit of Senators, so as to make it abundantly clear that the enactment of this Bill will in no way breach the rights and privileges of members of the society, and that the Bill is really simply to create a legal framework that will allow the Forensic Centre to carry out its responsibilities and to assist the law and executing agencies in the country to carry out theirs as well, in the interest of the society.

Part I is quite extensive and there you have the definition of various terms in the Bill, such as forensic procedure, forensic material and others.

Parts II to VII are the substance of the Bill.

If you look at Clauses 3 and 4, they authorise the forensic procedures carried out with the informed consent - in the interpretation you can see what is the meaning of informed consent - of a suspect, provided the suspect is not a child or an incapable person, because they are special provisions to safeguard those two individuals.

Clause 5 ensures that suspects are given an opportunity to consent, so there is not a case of forcing any individual - even though the individual is suspected of having done something illegal - into agreeing to give any consent.

Clause 6 ensures that the consent of the suspect can only be requested after the police has considered certain specific matters and that is just as a matter of routine. In this regard, there must be reasonable evidence to suggest that there is need for such a procedure to be carried out.

Clause 7 ensures that a suspect's consent has been given only after being properly informed, by requiring the police officer requesting the consent to provide the suspect with detailed information about the procedure, and the possible consequences for the investigation in the case. That is, it may produce evidence against him that may be used in court, so it is not a matter of merely extracting information through the procedure to use that information against the suspect, without putting the individual on guard upfront.

The police officer must also explain the consequences of not consenting. That is, a court order may be sought, so that the police office is supposed to tell the individual that if you do not consent, we have the right, according to the legislation, to go to the court and obtain an order, which will then require you to allow us to carry out the procedure, where it relates to an intimate forensic procedure. This term is important because that may become necessary from time to time, depending on the circumstances.

Clause 8 sets out what may happen if the suspect, having given consent, withdraws that consent.

Clause 9 seeks to prevent any future disputes about whether consent was given in accordance with the Act, by requiring a record of the giving of information and the consent to be made and a copy given to the suspect.

Those of you who are involved in the court, know that this sometimes is an issue. I read it in the newspapers, when I follow what is happening in the court, where people claim that they did not give this statement and things like that.

Therefore, this section is making sure that when any information is given, a record is kept and the suspect is given a copy of that record, so that there is no issue at a later stage that the individual did not give consent for the procedure to be carried out.

Part III deals with non-intimate forensic procedures, which may be authorised by an order made by a police officer, the rank of an inspector or above that rank.

Clause 10 authorises the carrying out of a non-intimate forensic procedure on a suspect, who does not consent in certain circumstances, but it does not authorise such a procedure on an incapable person.

Clause 11 indicates where a police officer may order the procedure and it sets out those circumstances.

Clause 12 lists the matters a police officer may consider before making the order, and requires the police officers to weigh competing public interest before deciding whether or not to make the request.

This is to ensure that forensic procedures which effect a person's physical integrity should be ordered only where appropriate, such as when there is a reasonable chance that the procedure will produce relevant probative evidence of the commission of an offence.

This is another effort to make sure that people's rights and privileges are not violated and that the people's privacy is respected.

Clause 13 requires a police officer to make a written signed record of the police officer's record, and provide a copy to the suspect as soon as practicable, thus removing the possibility of disputes about if or when the order was made.

Part IV deals with the way in which forensic procedures on suspects can be authorised by order of a magistrate, and that order may be a final order, or an interim order.

Clause 14 authorises forensic procedures that have been ordered by the magistrate.

Clause 15 applies where the suspect is not in custody and has not consented, or the suspect is in custody and has not consented to an intimate forensic procedure, or the suspect is an incapable person.

Clause 16 explains where a final order can be made by a magistrate where Clause 15 applies, but the magistrate must have considered all the matters listed in clause 17, which sets out the matters the magistrate may first consider, and which he must be satisfied before making an order under clause 16.

The objective here is to ensure that there is a reasonable chance that the procedure will produce relevant probative evidence. Therefore, it is not a question of leaving it to people's whims and fancies, to just go and get engaged in these procedures, without having some good reason for so doing.

Senate 25, sequence 5, 12:00:14

Friday, February 18, 2005

SENATOR the Hon. E. R. GRIFFITH: Clauses 18 and 19 ensure that the suspect is present at the hearing for a final order whether in custody or not.

Clause 20 requires the magistrate to give reasons for making the order and to inform the suspect that reasonable force can be used to give effect to the order. This is important not only for the law courts but in general because in many instances, from my observation as a member of this society, persons in various positions are often reluctant to give reasons for the decisions they have taken, so this is one that I consider to be very important.

Clause 21 authorises a suspect to be detained if necessary so that the procedures specified in the order of the magistrate can be effective.

Clause 22 provides for the making of an interim order where forensic procedures are required to be carried out immediately. That is, without a full court hearing, but

this may only be done in cases where the relevant forensic evidence is likely to be lost or destroyed. This is an approach that is to be used only in those situations where there is reasonable evidence to suggest that if the procedure is not executed immediately the evidence may be lost or destroyed. The lawyers amongst us will know some of the examples where that would become critical.

Clause 23 speaks to the process required to be followed for applicants seeking an interim order and what matters are required to be addressed by the applicants.

Clause 24 indicates how the hearing for an interim order is to be conducted by the magistrate.

Clause 25 states the action the magistrate must take once the interim order is made, that is, to inform the applicant and give directions about the implementation of the order.

Clause 26 makes provisions for records to be kept of interim orders and for the applicant to receive a copy of such. Sir, you can see the attempt in the legislation to make sure that there is proper record of all that takes place and that the suspect is given a copy of those records, so there is no issue as to what is happening and why and so on. Needless to say, all of this is in an effort to make sure that at all times the rights of the individual are respected.

Clause 28 prevents the disclosure of the results of an analysis for samples until the interim order is confirmed to ensure that should the interim order not be confirmed by the magistrate the carrying out of the procedures does not prejudice the interest of the suspect.

Clause 29 is aimed at protecting the privacy of individuals in certain circumstances.

Part V establishes clear rules about what is permitted in the execution of a forensic procedure to ensure that as far as possible the person's dignity and human rights are respected during the procedure. This has given paramount importance to the Bill.

Clause 30 sets the standards for implementing the forensic procedures authorised by the Bill. Those standards are spelt out in great detail in the first schedule to the Bill.

Clause 31 authorises the use of reasonable force only in carrying out the procedure.

Clause 32 stipulates that the Bill does not authorised forensic procedures to be carried out in a cruel, inhumane or degrading way. That is, there must be due regard for persons human rights and dignity.

Clause 33 provides the authority for persons authorised to carry out the procedures by a police officer or a magistrate to seek assistance from another person to carry out a procedure and authorises the other person to give the required assistance in accordance with the standards set in the first schedule to the Bill.

Clause 34 enables the suspect to have access to material obtained from a forensic procedure where there is enough material for the suspect to do so. This is very important because it allows the suspect to have an independent analysis of the sample if the suspect wishes to do so.

Those of us who watch the trial of O. J. Simpson would know how this featured in that trial. Many independent experts were brought in at all times to give evidence and to give their views on various things.

Part 6 seeks to obtain basic forensic material from convicted serious offenders that may be relevant to solving other offences.

Clause 35 explains that only a limited range of forensic procedures may be carried out on serious offenders after conviction. That is, only the non-intimate procedures listed. The only intimate procedure authorised is the taking of a blood sample.

Clause 36 states that a non-intimate forensic procedure may be carried out on a serious offender with his or her consent or by court order of a magistrate, but where the offender is an incapable person, then only by an order of the magistrate.

Clause 37 provides that where the forensic procedure is to be an intimate one, that is, the taking of blood, then the offender's consent or a magistrate's order is required unless the offender is an incapable person in which case no such procedure can be carried out.

The effect of clause 38 is to ensure that forensic procedures carried out on serious offenders are done in the same way and subject to the same limitations as forensic procedures carried out on suspects.

Clause 39 makes it clear and this part is not to be used to obtain forensic material from a serious offender, who is also a suspect or a volunteer in a matter, and therefore cannot be used to bypass provisions that deal with the carrying out of forensic procedures on suspects or volunteers.

Clause 40 gives the police officer the opportunity at the time of sentencing of a serious offender to seek an order from the court for carrying out a forensic procedure on the offender where appropriate.

Clause 41 makes provisions for a serious offender to give informed consent to a forensic procedure where he is advised of the matters set out in clause 43 and gives him the opportunity to consult an attorney before deciding to consent.

Clause 42 prevents a police officer from making an order for a non-intimate forensic procedure on a serious offender unless consent has been refused and the relevant matters specified in clause 43 have been considered.

Clause 43 requires a police officer to consider the justification for making the request for such a procedure mentioned in clause 42.

Clause 44 is aimed at preventing disputes about whether the information or consent was given or requiring the process to be recorded.

Clause 45 requires a police officer ordering a process to record the order and to provide a copy for the offender.

Clause 46 ensures that a court order for carrying out such a procedure can be implemented and the relevant person carrying out the procedure has access to the offender.

Senate 25 Sequence 6

12.10 p.m.

Friday, February 18, 2005

SENATOR the Hon. E. R. GRIFFITH: Mr. President, clause 47 ensures that no disclosure of forensic material taken under this Part can be made until the offender's right to appeal has been exhausted and a conviction sustained.

PART VII

CARRYING OUT FORENSIC PROCEDURES ON VOLUNTEERS AND OTHERS.

This section provides the legislative framework for the carrying out of forensic procedures on persons who voluntarily agree to assist the police in the investigation of an offence.

Mr. President, it is important, therefore, that such persons and the police can be certain that all forensic material can be used and what safeguards are in place to ensure that it is used only as intended.

Clause 48 authorises the carrying out of forensic procedures on persons who have given informed consent, including those who have volunteered, who may be

incapable persons but whose parent or guardian has given the informal consent on that incapable person's behalf.

Clause 49 also deals with the question of volunteers and seeks to ensure that consent given by those persons to such procedures, is properly informed and freely given and that the procedures cannot be applied where there is any objection or resistance on the part of the volunteer.

Clause 50 specifies that the giving of information by the police and the giving of consent must be recorded in writing and also where possible, recorded electronically.

Clause 51 sets out the procedure to be followed if consent originally given is withdrawn. It provides that any forensic material obtained initially must be destroyed, unless a court orders otherwise.

Clause 52 explains when a magistrate may order a forensic procedure to be carried out on an incapable person.

Clause 53 sets out the facts to be considered by the court under clause 52.

PART VIII

ADMISSIBILITY OF EVIDENCE

Forensic Evidence

This part sets out the law governing the use of evidence relating to forensic procedures and forensic material in court proceedings. These are dealt with in clauses 51(1) and (2), 56, 57, and 58.

PART IX

DESTRUCTION OF FORENSIC MATERIAL

This part deals with the destruction of forensic material referred to in the Bill.

Clause 59 governs the procedure in relation to forensic material that is the subject of an interim court order that was disallowed by a magistrate or allowed by the court only for a specified period.

Clause 60 ensures that forensic material obtained from a serious offender whose conviction was eventually quashed, is destroyed.

Clause 61 requires forensic material taken from a suspect is to be destroyed after one year, if no proceedings against the suspect has been instituted, neither has the suspect been arrested.

Clause 62 provides for the destruction of forensic material where the court has found that evidence relating to that material is inadmissible.

Clause 63 ensures that improperly obtained forensic material is destroyed and can never be used again by requiring the issuing of a certificate by the Director of Forensic Services, to the effect that the material has been destroyed and the date and time of the destruction noted.

PART X

DNA DATABASE SYSTEM

This part is concerned with the establishment and the proposed DNA database.

Mr. President, we must remember that in the execution of the duties of the law enforcement agencies and other persons, there will be quite a lot of material being collected and stored on this database. Therefore, it is absolutely necessary that we have a clear protocol which sets out how that material can be used, who can access it, when it can be accessed, what can be done with it, et cetera. It is necessary then to have penalties for the misuse of that information.

Mr. President, very soon we will be debating the Computer Misuse Bill, 2005, but all Honourable Senators know what can happen with information when it is stored on databases. There are various individuals within organisations who would try to get access to it. There are also some persons outside of the organisation, who would try to get access to such information. This type of information has to be kept with the greatest care because it can affect, one way or another, the rights and privileges of individuals.

The database will not only contain information that can be used in the law courts, the Forensic Centre will be doing work for the Queen Elizabeth Hospital. It is also envisaged that it will be doing work for private medical institutions and, therefore, in every respect, that database is going to have very sensitive information stored on it. Therefore, the Government is taking no chances with it and this Bill provides a clear protocol as to how this information is to be managed.

Clause 64 defines the concepts and terms relating to the DNA database, including the definitions of the indices which are to comprise the database.

Information derived from the sample of DNA, from forensic material and by laboratory analysis, as we all know, is referred to as DNA profile. That information is stored in particular indices, depending on the source of the

forensic material from which the DNA profile would derive.

The systems, therefore, include crime scene DNA index; an unknown deceased persons index; a missing persons index; a serious offenders index; a volunteers (unlimited purposes) index; a volunteers (limited purposes) index and a suspects index.

Clause 65 aims at presenting the supply of forensic material taken from a person under the Act, to anyone who has no authority to analyse or to have access to such information, to include it on a DNA database, as such an action would be an offence.

Clauses 66, 67, 68 and 69 also form part of the protocol which sets out how the DNA database can be used.

Clause 70 is aimed at protecting the privacy of persons whose DNA profiles are included in DNA database system, or who has undergone a forensic procedure under the Bill.

Clause 71 ensures that the Bill does not interfere with the taking, retention, or use of forensic material, or material obtained for forensic procedures, where to do so is authorised by any other law.

Clause 72 provides a mechanism for the Director of Forensic Services to consult relevant trained persons in respect of standards for testing the proficiency and methods of conducting the DNA analyses, et cetera.

Clauses 73 through to clause 85 are also part of the protocol.

PART XIII

MISCELLANEOUS

In this section, provision is made for the collection of fees through the making of regulations.

12.20 p.m.

Wednesday, February 18, 2005

SENATOR THE HON. E.R. GRIFFITH: Part 14 deals with the transitional provisions in respect of the carrying out of forensic procedures or the taking of forensic materials. Sir, added to that, there are three Schedules to the Bill.

Mr. President, it is clear from the various Clauses to which I refer that every effort is being made to ensure that while it is necessary for the state to authorise its various

agencies to get involved in procedures aimed at dealing with criminal issues to make sure that justice is done in the society, it does not intend to do so by violating the rights and privileges of individuals. There are a number of provisions in the Bill which seeks to reserve those rights and privileges at all time.

We are all well aware of the benefit of making use of these procedures in various circumstances, not only in matters relating to the court. I am sure that all of us are supportive of the idea of making use of the technology to deal with issues which confront the society.

Mr. President, in that regard, I beg to move that this Bill be read a second time.

SENATOR F.J. STUART: Mr. President, I am indebted to the Honourable Leader of Government Business for the exhaustive and comprehensive introduction to which he treated Senators. From his speech, it is clear that no fault can be found with the motives of the Government so far as the introduction of this piece of legislation is concerned.

It seems to me that the legislation is aimed primarily at strengthening the criminal justice system of Barbados. I have said in this Chamber before and it is well-known that courts of law do not make decisions based on what they know but, rather, they make decisions on what they believe. Sometimes they believe things that are not true and sometimes they doubt things that are true, but when all is said and done, courts of law do not act on what they know but on what they believe and, Sir, what they believe is based on sworn testimony given in a court of law.

Sir, any attempt to make a criminal justice system more certain is to be applauded. The first requirement of any fair criminal justice system is that the person who stands in the docks, accused of a criminal offence should be the right person. A criminal justice system cannot be guessing at who is the person or the most likely person to have committed a criminal offence. The first requirement of the system is to apprehend the right person.

I believe it was the Roman historian Tacitus who once said that rumour does not always err, that sometimes it points its finger at the right man but, Sir, courts cannot operate that way. They must try as often as possible to point their finger at the right person. Therefore, to the extent that this Bill is aimed at ensuring that identification issues are resolved as fairly as possible, then the motives of the Bill are to be applauded.

Sir, the situation that exists in Barbados today so far as DNA evidence is concerned is that the courts have, from time to time, used DNA evidence to assist them in solving not only criminal problems but problems of paternity. The

DNA evidence in some cases has been treated as being conclusive of the issue particularly in cases dealing with paternity. In other instances, DNA evidence has been treated as just another item of evidence tending to assist the court in making a determination of the issue before it. In that regard, it makes sense that this legislation amends the Status of Child Reform Act, as was indicated by the Minister, so that issues of paternity can be resolved through the mechanisms provided by this legislation.

Sir, my concern is that in the Status of Children Reform Act, Cap 220 of the Laws of Barbados, the word "court" in the Interpretation Section of the Act means High Court. As one who has been practising around the courts for some time, to my certain knowledge, most of the issues dealing with disputed paternity are dealt with in the Magistrate's Court, not under the Status of Children Reform Act but under the Maintenance Act. The Bill is silent on the issue of amending the Maintenance Act under Section 9 of which magistrates hear evidence and then make a determination of paternity.

If the Bill is really to serve Barbadians in any meaningful way, it has to go far beyond amending the Status of Children Reform Act and reach down to those long queues of single women to whom the Maintenance Act applies. Sir, one sees these long queues of women at Magistrate's Courts around the island weekly trying to collect maintenance for their children, who sometimes have to face the rascality of delinquent fathers who, in order not to pay maintenance or in order to delay it, will tell the court that they are not certain that the child is theirs leading to issues of disputed paternity.

S25/12:30

Sequence 8

Friday, February 18, 2005

SENATOR F.J. STUART: Sir, it is not the High Court that should be the focus of the amendment as much as it is the magistrate court where most of these issues are dealt with. Of course, the Maintenance Act has its own problems, in my view because only single women can apply to a magistrate for maintenance under the Maintenance Act where these issues proliferate.

Sir, if that women had a child when she was single for man 'A' and then gets married to man 'B', she cannot go to the magistrate court for maintenance under the Maintenance Act because the Act says that only single women can apply. There is actually the cited case which validates that interpretation of single woman. In my view, a fairer interpretation of the legislation would have been single at the time of having the child so that you would not have to thread through a torturous labyrinth of High Court

procedures to get a basic issue of maintenance determined. That is just peripheral to what we are discussing here. The main point is that under the Maintenance Act, most of the issues of disputed paternity are dealt with and this Bill is not amending the Maintenance Act to bring the machinery provided by the provisions in this Bill more easily within the reach of the persons who really need the assistance most.

Mr. President, of course there are more problems. Even when you have DNA evidence, as I have experienced in cases which I have done in the magistrate court, DNA evidence states what the probabilities are but DNA reports seldom stated that A or B is the father of a child. It states percentage probabilities and the magistrate is then put in a position where he has to evaluate the DNA evidence along with other evidence which he heard in order to determine what decision he should make in terms of whether a man is the legitimate father of a child or not.

Sir, in some cases, all the oral evidence of both the man and woman support a finding that the man is the father of the child where both parties are subjected to cross-examination, then there is a DNA report that points in a direction quite different from all the evidence which the magistrate has heard. The magistrate is then put in a position where he still has to weigh the evidence before him and determine how much weight he should attach to the oral evidence he has heard and the demeanour of the witnesses under cross-examination as against what a solitary DNA report has said. I think that these are issues which need to be addressed under the Maintenance Act but within the context of the Maintenance Act being brought within the ambit of this Bill.

Mr. President, the Bill has some agreeable features about it. I think that the Honourable Minister went through the Bill clause by clause. A number of persons have to take various types of action under the Bill. Therefore, the Bill makes provisions for authorised persons and professional such as doctors, dentists, forensic scientists and suitably qualified persons approved by the Minister, who are to act under the Bill.

Sir, where applications are to be made, the Bill also makes provision for authorised applicants, the investigating officer, a police officer at the rank of inspector or above or in some cases the Director of Public Prosecutions. The Bill seeks to protect persons who are minors or who are incapable, suffering from mental defects of various kinds and they are given special protection under the legislation. The Bill distinguishes between intimate and non-intimate samples and these, for the most part, speak for themselves.

What is the central concern of the Opposition with this legislation? The Bill seeks to alter section 13 of the Constitution of Barbados and alters it to extent necessary,

according to the language of the Bill, to best ensure the attainment of the purposes specified in the following paragraphs:

“ (a) the procedure required for the carrying out of forensic services including DNA forensic analyses;

(b) the use of DNA identification services and the administration of a DNA data base.”

Mr. President, in the first instance, most Barbadians, I think, have heard that Barbados is going to have a new Constitution before the end of this year. If that is so, we in the Opposition do not know that if a new Constitution is coming, it is necessary to amend the present one at this time because the amendment would have a very limited life and we will soon have to be back in Parliament to deal with this issue all over again.

The second point is, section 13 of the Constitution deals with the liberty of the individual. The Bill does not change any of the language contained in section 13 of the Constitution. In fact, I believe that draftsmen rather than using the word amend, like to use the word alter because it is argued that the language of the Constitution is not being touched and that is true under this Bill. The alteration being introduced is called, by the experts in drafting, a non-textual amendment. The text is not touched. The text maintains its integrity but in the legislation altering it, the text is rendered elastic, so that when any citizen of Barbados reads section 13 which deals with his individual liberty, he sees certain rights guaranteed him there. As long as the issue has nothing to do with forensic or DNA procedres, those rights are guranteed.

12.40 p.m.

Sequence 9

Friday, February 18, 2005

Senate 25, sequence 10, 12.40 a.m.

Senator F.J. STUART: Sir, if he finds himself in police custody, or as a suspect for committed a crime, what were concrete rights that admit of clear interpretation, would suddenly become elastic because, under this Bill, none of the persons who are authorised to act, can act unconstitutionally. Therefore, everything they do, whether palatable or not is rendered palatable, by this non-textual amendment.

Section 13 is stretched to validate whatever authorised persons do under this legislation and that renders, therefore, rights that are ordinarily certain, uncertain, and that is where the Democratic Labour Party's problems are, but let me make it quite clear.

This is not the first time that a Barbados Labour Party Government amended the Constitution non-textually. I believe when the Tenantries Freehold Purchase Act was introduced, there was also a non-textual amendment to the Constitution, which touched and concerned the citizen's right to his property.

Sir, the argument was then and it is now, that no rights are really absolute and all rights are relative. For example, under the Land Acquisition Act, the Government can acquire your land. Therefore, even though you think that you have a right to your property, the right is not as absolute as you imagine. This is true to a certain extent.

The doctrine of what lawyers call, an eminent domain, starts from the premise that we are all, even though we may have conveyances to our land, really tenants of the Crown. All the land in this country belongs to the Crown and the taxes that paid are, basically, in the nature of rent for the use of the Crown's lands.

The Crown has a right therefore at any time to reclaim from its tenants, any part of the land they hold for public purposes. It is true that we do not have absolute rights to property and that the Land Acquisition Act permits the state to acquire our land and in accordance with the Constitution to promptly, adequately and effectively compensate persons.

Sir, that relates to property and that argument, I seem to recall, was used at the time when the Tenantries Freehold Purchase was introduced and I hear echoes of it this time around again. As far as the fundamental right to freedom is concerned, it is argued that even though a citizen has the right to free speech, under the Law of Defamation, a citizen's freedom of speech is curtailed or amended to a certain extent to ensure that freedom of speech is not misused.

The Defamation Act, of course, does not amend the Constitution of Barbados. The Defamation Act was passed in its own right in 1997 without any reference at all to the Constitution of Barbados. This Bill non-textually amends Section 13 of the Constitution, which deals with the individual's liberty.

For example, Mr. President, under Section 13, a suspect in police custody has an unrestricted right to communicate in private with his Attorney-at-Law but, under this Bill that suspect also has the right to communicate in private with his Attorney-at-Law but only if the police inspector or the investigating officers are convinced that allowing that private communication will not interfere with their designs, so far as the securing of forensic evidence is concerned.

Therefore, immediately one sees that a right which we took for granted, the right to communicate in private with one's Attorney-at-law, is now being undermined by this piece of legislation which now makes that right conditional, upon the judgment of the person in whose custody the suspect finds himself or herself.

There has to be something, Mr. President, fundamentally wrong with that and we on This Side, cannot support the abridgement or circumscription of a right which citizens of this country have enjoyed since 1966 by a non-textual amendment in a Bill that really does not need to alter the Constitution of Barbados to achieve the objectives which it sets itself.

The other area related again to the rights of the individual has to do with the loud silence in the Bill on procedures for appeal, if a suspect or his Attorney-at-Law is convinced that procedures have not been properly followed. The Bill is silent on the right of a suspect to appeal. I have always known that the right to appeal is inherent in the criminal justice system of Barbados.

Sir, magistrates are given the power to make final orders and there is no explicit provision in this Bill that guarantees a suspect the right to appeal against those orders.

I wait to hear members of the Government on this, because we on This Side need to be assured that this fundamental right is not being withdrawn in the interest of ensuring that the objectives of this Bill are sacred.

Senate 25, sequence 10, 12:50:14

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SENATOR F. J. STUART: In addition to that, if you read through this Bill you will find a remarkable consistency so far as the Bill deals with what Senator Griffith, in his speech, described as penalties which are quite stiff.

Mr. President, I have always known that an indictment is an accusation in writing that somebody has committed a criminal offence and it is brought at the suit of Her Majesty the Queen. After a suspect has been indicted, in the lower courts they say charged, he then has to go through a trial and having gone through that trial he is either acquitted or convicted on the evidence heard in that trial.

Mr. President, before coming here this morning, I put myself to the trouble to check other pieces of legislation like the Offences Against the Person Act, the Theft Act and a whole set of other legislation just to satisfy myself that I was not reading too much into what this Bill

says. If you go through this Bill, Mr. President, you would find that the Bill gives power presumably to the courts to impose fines and terms of imprisonment on indictment only. If you go through the Bill, you would also see that people can be fined on indictment. There are many examples of it. For example, section 29(2) states that a person who contravenes subsection (1) is guilty of an offence and is liable on indictment...

Mr. President, every other enlightened piece of legislation in Barbados that deals with crime says that a person is guilty of an offence and is liable on conviction on the indictment. You have to be convicted first on the indictment before any penalty can be activated. However, right through this legislation penalties are imposed just on the indictment.

Mr. President, I regard this as a costly omission in the Bill because an indictment is only an accusation, so if the right to a trial is being withdrawn by this Bill, then I think the Government needs to come out and say so. In Part X and XII of the Bill, right through, fines and terms of imprisonment are imposed on indictment only, no mention is made at all of any conviction. I will reiterate, Mr. President, that an indictment is only an accusation in writing that a criminal offence has been committed and the indictment is brought at the suite of the Crown.

Mr. President, while the motives of the Government are laudable in terms of trying to ensure that identification issues are dealt with as efficiently as possible and that the wrong persons do not get exposed to criminal convictions, the fact that the Bill needs to tamper with the constitutionally guaranteed liberties of Barbadians in order to achieve its objectives, causes the Opposition some concern and explains why we are opposing this legislation.

As I said before, we have no problems with the motives but the way to hell is paved with good intentions. Facilis descensus Avern, easy is the path that leads to hell. We do not have any problems with the motives but the machinery to achieve the objectives set by this Bill causes us deep concern.

Mr. President, another area of concern for us is that so far as the management of the database is concerned there are issues relating to the disclosure of information. Again, the penalties there are penalties based on indictment only and not on conviction on indictment. Where the destruction of DNA information is required by the legislation there are no sanctions attached in the legislation to the failure of persons who do not comply with the need to get rid of the information. I am dealing with Part IX of the legislation. The machinery is there but if the machinery is not complied with, the Bill is silent on the sanctions which the persons who failed to comply will face. Sir, in my view and in our view, this exposes persons to risks which could easily be

avoided if the legislation were more explicit and ensure that persons who failed to comply with orders to destroy this information face sanctions that were clear in the event that they fail to comply with the provisions of the Bill.

Mr. President, the legislation before the Senate is actuated by a desire, as Senator Griffith quite correctly said, to make the criminal justice system safer. However, it is our view that in the Government zeal to achieve that objective, it has made the system less safe in some cases. This is not to say that we do not need legislation like this in Barbados, but in our view the legislation fall far short of that degree of particularity which legislation of this kind needs to manifest since the rights and freedoms of individuals come under the microscope in the legislation.

Senate 25 Sequence 11

1.00 p.m.

Friday, February 18, 2005

SENATOR F. J. STUART: Mr. President, DNA and other forensic procedures allow for identification issues to be better handled, and we agree with that. It is still one of the bedrocks of the common law which we have inherited, for it is better for one thousand guilty men to go free, than for one innocent man to face conviction. Therefore, identification issues are, and have always been, at the centre of our criminal justice system.

Mr. President, therefore, to the extent that this Bill aims to make those issues more certain, we have had no problem with it but we contend that the Bill does not need to alter section 13 of the Constitution in order to achieve its objectives. Therefore, so to suggest would be to suggest that police officers who now deal with suspects, have to violate the rights of individuals, and I do not think that the Government is saying that. There is no need to amend section 13 of the Constitution because the objectives of the Bill can be achieved without that initiative.

Asides.

SENATOR F. J. STUART: The Government will answer me. I do not answer asides. I practise law and I know what I am talking about.

MR. PRESIDENT: Order, please.

SENATOR F. J. STUART: Mr. President, we vehemently oppose the alteration of section 13 of the Constitution by nontextual amendments. As it presently stands, the citizen knows what are his rights. A suspect who finds himself in police custody, after this Bill has been passed, cannot anymore rely on the certainty of the wording of section 13 of the Constitution because that

wording is rendered elastic by this Bill. Sir, none of the authorised actors under this Bill can act unconstitutionally in relation to section 13, as a result of the nontextual amendment.

Sir, these are awesome words contained in the Objects and Reasons of the Bill:

“This Bill makes provision for

(c) the altering of section 13 of the Constitution, to the extent necessary to best ensure the attainment of the purposes specified in paragraphs (a) and (b)”.

Mr. President, under this Bill, those words say that what a suspect in police custody regards as his rights under section 13 of the Constitution, is only a matter of words, but that persons such as doctors, dentists and other authorised persons can take whatever steps they need to take, in relation to that individual's liberty, in order to get the forensic material which they would want.

Mr. President, we do not accept this. I do not care how much rumbling there is on the Government's side, I have a duty to the people of Barbados to say how we in the Democratic Labour Party see this. This is not the first occasion on which we have had to say how we feel about non-textual amendments being brought to Parliament by the Barbados Labour Party and that has not changed.

Sir, in any event, if the Constitution of this country is going to be changed before the end of the year, I know of no good reason why we need to be tampering with section 13 at this stage.

Mr. President, our case is very clear. We applaud the motives that have driven the Government to bring this piece of legislation to Parliament but the machinery provided by this legislation makes us uncomfortable. We are uncomfortable with the fines and with the terms of imprisonment being imposed on indictment only. I am not against conviction on indictment. We are concerned about the non-textual amendment to the Constitution. We are concerned about the absence of adequate provisions for appeal in this legislation. We are concerned, for example, under section 31 of the legislation, about the use of force.

“An authorised person or a police officer who is authorised to carry out a forensic procedure on a person, may use such reasonable force as is necessary

(a) to enable that procedure to be carried out; or (b) to prevent loss, destruction or contamination of any sample”.

Mr. President, the expression “an authorised person” is defined in the Bill as:

“a medical practitioner, a dental practitioner or dentist, a forensic scientist, and a person who is a suitably qualified person approved by the Minister to carry out the procedure”.

Section 3l now extends the application of authorised persons to include a police officer. This police officer, according to section 3l, is authorised to carry out a forensic procedure on a person.

Mr. President, how can one expects a serious political organisation, in its 50th good year, to come here and to meekly and tamely accept this kind of assault on the rights of Barbadians. We cannot do it. Sir, having defined who are authorised persons in this Bill, how does a police officer now become an authorised person who can carry out a forensic procedure, when the legislation makes clear who are those authorised persons.

Mr. President, these are the problems we have with this legislation. I am not going to detain the Honourable Senate on Second Reading because when we come to the Bill in Committee, there will be other concerns which I will raise. In addition, since Senator Griffith, in his speech, has adopted the approach by going through the Bill Clause by Clause, I do not intend to traverse that territory again.

Sir, let the word go forth that we on this side are not going to vote for the Bill, which non-textually amends a fundamental and entrenched right of the people of Barbados, their right to personal liberty and their right to communicate with an attorney-at-law in private and without restrictions.

We are not going to vote for police officers carrying out forensic procedures. We believe the Bill should contain more appellate procedures that allow suspects, in the event that they are dissatisfied with the way in which magistrates, police officers or police inspectors have conducted themselves, to appeal to a higher instance for the protection of their rights, along with the other issues which I have drawn to the attention of this Honourable Senate's attention.

Mr. President, we do not agree that there should be no sanctions attached to the failure on the part of those who are supposed to destroy DNA forensic materials, if they fail to comply with the orders of the court or with the provisions of this legislation.

Mr. President, that is where we stand on the issue. My colleague, Senator Lowe, will address other issues in the Bill but I thought I needed to put on broad canvas where the Democratic Labour Party stands on this Bill. We are not against improving identification techniques. That is the core of any fair criminal justice system.

S:No.25(12)1:10 p.m.

Friday, February 18, 2005

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed. Senator Nicholls.

SENATOR G.P.B. NICHOLLS: Mr. President, I am grateful for the opportunity to address the Honourable Senate on the DNA Identification Bill under consideration today. A lot has been said about the Government's intention to put a regime for the administration of forensic procedures, not only by Government's own forensic centre but by private individuals who might want to set up forensic centres across the island in order to contribute to the development of a specific area of economic activity that none of the other regional countries have endeavoured to go into. The only other Eastern Caribbean country that has established a forensic centre is Jamaica. The thing that is striking about this legislation is that it goes wider than creating a forensic system to assist the criminal system of Barbados.

In fact, one of the most important features about this regime ushered in by this Bill and the procedures to regulate it, is that many of the international doping agencies, especially the World Anti-doping Association (WADA) have been looking at Barbados as a forensic centre to assist in terms of conducting drug testing for the ICC World Cup along with two or three other countries in this hemisphere.

S25: 14.30. P.m

Sequence 15

Friday, February 18, 2005

Senate 25, sequence 16, 2.30 p.m.

Senator G.P.B. NICHOLLS: Barbados stands to reap the benefits of a massive social and economic investment in our people.

Sir, the students who are studying microbiology, chemistry and the other pure and applied sciences, do not have to resile themselves to teaching at the Barbados Community College and the secondary schools in Barbados but they can pursue a career in forensic medicine.

Mr. President, it would be remiss of me, if I did not take the majority of my time to deal with a number of illegal issues that have been raised in this debate here today, and in other places.

Sir, I am happy that the Government has taken this road, in relation to bringing the Forensic Procedures and DNA Identification Bill to Parliament. I want to say for the record that it makes good sense, and the Government could not have done otherwise than by the alteration of the Constitution, as is contemplated in Section 49, the Constitution of Barbados.

There is a presumption every time Parliament passes a law that the law is fulfilling its obligation at Section 48 which is to pass laws for the peace, order and good Government of the country. What we heard this morning in the Honourable Senate, particularly by the last Honourable Senator who spoke, would give the impression that the Government, well-intentioned, has brought a Bill to be considered by the Honourable Senators here today which does everything, in his language, to trample on the rights of the people of Barbados.

May I say, Sir, that a criminal justice system is not only concerned with the rights of an accused person. There are victims of crime that also have rights. It is about time that as responsible legislators, we do not seek to look at one side of the equation but we must look to seek balance in our presentations. The word going out from here so far is that the rights of an accused and a suspect are being trampled by a piece of legislation, because the Government is trampling on their right to the protection of personal liberty.

Sir, I want to dissociate myself and, I believe that I would not be going out of bounds by dissociating the Barbados Labour Party from such a ridiculous statement because the Constitution of Barbados, which is that sacred document which sets out the parameters of how power in a society is distributed and administered by some over others, effectively and clearly sets out that the fundamental rights which are guaranteed to our citizens in Chapter 3 of the Constitution, give to those persons or all Barbadian citizens, certain enabling and fundamental rights but those rights, Sir, are subject to the rights and the freedoms of other people and also for good Government, order, public morality and things of that nature.

Section 11 of the Constitution says:

“Whereas every person in Barbados is entitled to fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinion, colour, creed or sex, but subject to the respect for the rights and freedoms of others and for public interest to each and all of the following, namely -

(a) life, liberty and security of the person

(b) protection for the privacy of his home and other property and from the deprivation without compensation

(c) the protection of the law, and

(d) freedom of conscience, of expression and of assembly and association,”

Mr. President, the DNA Bill under consideration before the Senate to my mind, does nothing to violate the Constitutional rights of the citizens of Barbados. The right to protection of personal liberty is enshrined in section 13 of the Barbados Constitution. I think that any discussion of an allegation of trampling on people's rights, we must go back to first principles.

Our Constitution states:

“13. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases...”

Sir, I daresay that the reference to personal liberty, taken with the ten circumstances in which the liberty may be restrained and the specific provisions in relation to persons who are arrested or detained, confirm to you that Section 13 of the Barbados Constitution contemplates liberty only in a physical sense and in no other sense.

Section 13 speaks to the protection of rights to personal liberty. It does not speak specifically to the security of persons, as is in the case of the equivalent Bills of Rights section in the Trinidad and Tobago Constitution or in Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which we have all recognised have been the progenitor for the Bills of Rights provisions in all Caribbean Constitutions.

Mr. President, Trinidad and Tobago is the only country in the Caribbean that has gone beyond personal liberty to speak about the security of a person. Our Caribbean courts have long said that they would zealously guard the Bills of Rights provisions in the Constitution and they would interpret them to give effect, especially to the international obligations to which Caribbean countries have committed themselves.

There is a plethora of case law which has held in the Caribbean that the concept of personal liberty, though narrowly defined in Section 13 of the Constitution also contemplates the inviolability of the person against all unjustifiable acts of trespass.

This is important because there was an argument prior to the decisions in those cases that the sections in every Caribbean Constitution, save and except Trinidad and Tobago, did not contemplate the security of the person, as is in the European Convention on Human Rights, which all of our Bills of Rights provisions have been patterned.

Sir, to say that there is no security of the person in the Barbados Constitution at Section 13 is not to say that there is no security of a person given to an individual in Barbados, because the pre ambulatory section of the Bill of Rights contained in Section 11 of the Constitution to which I earlier referred, clearly sets out in very broad terms, the rights to life, liberty and the security of a person.

The pre ambulatory section, Mr. President, sets out the fundamental rights and freedoms of individuals in very broad ways but they are subject, as I said, to rights and freedoms of others and for the public interest.

Therefore, the security of a person, which is really the issue at the heart of the debate on this Bill, though not given specific treatment in our Constitution at Section 13, is conceived as part of the citizens fundamental rights really that are guaranteed in the preamble to the Bill of Rights.

Mr. President, I go back to the jurisprudential and Constitutional origins of the Rights because I do not believe any discussion on this Bill should proceed without revisiting how the Constitution has created the right that we are being alleged, as a Government, to be trampling on. I say that as a precursor to why the Government, in its good wisdom, has accepted the advice of the drafters of this legislation that an alteration of Section 13 of the Constitution is important.

Sir, the reason why it is important, notwithstanding the protestations by Senator Stuart, Section 13 is peculiar to any of the other Bills of Rights sections in the Constitution, in that this section sets out ten exemptions for which that right that the citizen would ordinarily enjoy can be prescribed.

Senate 25, sequence 16, 14:40:14

Friday, February 18, 2005

SENATOR G. P. B. NICHOLLS: No other section speaks in specific ways to exemptions. The exemptions are broadly subject to the rights of other individuals or subject to the public's interest.

Section 13 sets out about 10 situations in which that right can be circumscribed in relation to persons who are unfit to plea at criminal trials, persons who are detained by way of a sentence of a criminal court, persons who are detained to secure the fulfilment of a legal obligation imposed on them by law, persons who are detained upon reasonable suspicion of having committed or about to commit a criminal offence under the laws of Barbados, in cases of persons who have not obtained the age of 21 years and for the purpose of preventing the spread of infectious and contagious diseases and things of that nature.

Sir, after stating the right to protection of personal liberty, section 13 stands out in that it precisely prescribes those 10 circumstances and does not empower interference on the part of the State with the right or the basis of law or action thereunder which would promote certain goals in society in the interest of public order, public morality, decency or in a defence of the State.

Sir, Government could not create a regime within the criminal justice system by which the extraction of evidence for the purposes of DNA analysis, whether by consent or against the consent of the individual, could be done without an alteration of Barbados' Constitution because the section that creates the right to personal liberty has said that it can only be circumscribed in these specific situations.

Mr. President, an alteration of the Constitution is nothing sinister. In fact, the very Constitution of Barbados at section 49 subsection (5) Part (b) allows Parliament to alter the Constitution of Barbados even by what Senator Stuart considers a non-textural amendment. So the Government is not going outside of the bounds of its constitutional remit to bring a piece of legislation to trample on the rights of individuals. I think that we need to scotch that kind of argument very early in its tracks because it would give ordinary and legitimate citizens of this country the impression that Government is going out there to create a police state.

Sir, that is a statement we have to watch because there are other persons on the same side of the Honourable Senator Stuart who have done things to suggest that Government and the agents of the State in this country, in the name of protecting the legitimate rights of all decent Barbadians, are about to trample on their rights.

Sir, I will give you specific examples. When we were talking about giving the police better surveillance equipment there was a lot of debate about the Government overreaching and infringing on the rights of privacy and there were allegations that the police were searching Members of Parliament or the Opposition houses and things of that nature.

Sir, when these statements go out unchecked in a democracy such as ours and when there are allegations that a Government is altering the Constitution by a non-textural amendment, very clever statutory interpretation jargon, people would start to question why the Government is amending the Constitution by bringing this Act but by not changing the wording of the Constitution.

Sir, I submit that the Constitution of Barbados cannot be altered or amended by implication or by the passage of another piece of legislation, you have to do it in the proper way. Therefore, the Government of Barbados is satisfied that the protection, the very same courts that the

people of Barbados go to for justice, would protect their fundamental rights in this society.

Sir, any time a person does not consent to the giving of a sample in a criminal investigation they have the redress of the courts of Barbados and what better protection than the courts, the same courts that strike down legislation, the same courts that determine that the Government is wrong in certain instances and the same courts that provide some measure of comfort and security for the many right-thinking and ordinary Barbadians on a daily basis.

Sir, the rights of individuals are not being trampled on by a rogue Government or by a police state. The individual rights are subject in these specific circumstances to the rights of all those persons who interface with the criminal justice system not only an accused.

Sir, as a practising attorney-at-law, if my client came to me and said that he did not rape that woman and I asked him if he is sure that the police... and he said that under no circumstances he was not there, I would be happy as an attorney-at-law and I would feel duty-bound as his attorney to advise him to consent to the DNA analysis which to my mind would exonerate an innocent man.

However, Sir, some people like to set up straw men for the sake of knocking them down and we had a lot of that this morning. I have always respected the Honourable Senator Stuart for his intellectual departures on certain issues. My first meeting with the Honourable Senator Stuart was on an issue which touches and concerns the legislation under discussion today. That meeting was in the Magistrate's Court in which he was representing a woman who was alleging that my client was the father of her child. I took the point very early on, as we were taught, to let the court order a DNA test. Senator Stuart complied, the DNA results came back and suffice it to say Senator Stuart and his client were turned away.

Sir, the point that we are trying to make is that this Bill in Barbados provides not only for DNA testing in criminal situations but in civil matters before the courts. People do not now have to send money orders and manager's cheques to the United States of America and all sort of places that we have never heard of and where we do not know the standards by which these people apply the testing of blood and other samples from persons. We now have the correct procedures governed by a body of legislation and a body of administrative procedures that would make these things fair and perspicuous.

Sir, the Honourable Senator Stuart was at pain in defence of the Democratic Labour Party's objection to this Bill. They have now developed the habit of saying that they are for something in principle but they do not like the way

in which it is being implemented. I compliment them for their two-facedness in every issue because they have to show that they are sounding good.

Sir, I was a little unhappy that the Honourable Senator Stuart took the position, like Custer in his very last stand, to attack a Bill on matters in which a simple reading of the laws of Barbados would show that there is much ado about nothing.

Sir, the talk about this Bill being defected because there is no appellate provision for persons who are aggrieved by a decision of the court is much ado about nothing. Section 238 of the Magistrate's Jurisdiction and Procedures Act sets out very clearly that an individual against whom an order is made in the Magistrate's Court has an automatic right of appeal. So to say that the Government of Barbados is wrong and mischievous because this Bill does not contain an appellate procedure is much ado about nothing.

Senate 25 Sequence 17

2.50 p.m.

Friday, February 18, 2005

SENATOR G. P. B. NICHOLLS: Mr. President, the old people say that the hardest thing is to know. I understand why Senator Stuart, is like Custer on his very last stand, so he has to come here to defend a position taken by his colleagues, and they have to be consistent. They can be two-faced about issues relating to Government but they cannot be two-faced about issues amongst themselves.

Mr. President, therefore, for them to say that the Government is doing something wrong and to give the impression to the people in Barbados that we are taking away their rights of appeal, or that we have not sufficiently provided for them, those persons to whom an order is made in this Act, is reprehensible and I would depart from that.

Mr. President, the Honourable Senator Stuart went to section 29(2) of the Bill which says that:

"A person who contravenes subsection (1) is guilty of an offence and is liable on indictment to a fine of \$10,000 or to imprisonment for a term of 18 months."

The Honourable Senator went to the words "on indictment" to make the point that in all the other pieces of legislation in Barbados, an offender is fined only on conviction. Sir, that is true but the Government certainly is not trying to fine persons for an offence before the charge comes about. The wording in the legislation specifically states "liable on indictment". The only way an accused person can be found liable on an indictment would be after

a trial. It is the simplest interpretation of law and of the English language but for mischievous purposes, Senator Stuart would extract from the wording of the subsection on indictment and then charge the Government with trying to fine citizens at the stage of trial before the trial is finished.

Mr. President, I must record my disappointment but not my surprise because I thought better of the Honourable Senator. I am disappointed that as a senior attorney-at-law with over 25 years of practise, one would not extrapolate from one part of the section and leave out the critical words because the concept is “liable on indictment”, not “on indictment”, but as I said, he has, like Custer, to make a very good stance in here, in order to ensure that he is good elsewhere.

Asides.

SENATOR G. P. B. NICHOLLS: Mr. President, the Honourable Member, in his riposte and invective, heaped the most criticism on the Government. Therefore, anybody would think that we are operating...

MR. PRESIDENT: Honourable Senator, I do not think that you can say invective. I certainly have not heard any invectives.

SENATOR G. P. B. NICHOLLS: Mr. President, I withdraw the term. Sir, sections 68 and 69 of this Bill speak very clearly to the restrictive use of the DNA database. Section 69 creates the offence in relation to what Senator Stuart has accused the Government of omitting in a previous part of the legislation. Senator Stuart very cleverly went to the previous part of the Bill at Part IX and accused this Government of not criminalising the act of a refusal to destroy DNA material, which was ordered to be destroyed.

Sir, I would submit that the act of the destruction of the DNA material that has been ordered to be destroyed would be an administrative act. Once the court has so determined that it must be destroyed, the process by which it would be destroyed would be an administrative function. Therefore, to criminalise a public servant in this country for not destroying DNA material on the order of the court is stretching it a bit too far. That is why the drafters of the legislation have gone on at section 68 to say a person may only make such searches of DNA profile as authorised under this Act in writing. Therefore, there is a restricted use of DNA material.

Mr. President, in relation to the use of DNA material, the recording, retention, removal of, identifying information on a DNA database system, persons who retain the information for illicit purposes are dealt with under the Act by the institution of a fine of

\$50 000 or imprisonment for five year. Sir, the Honourable Senator Stuart is saying that because there is no provision to criminalise persons who do not destroy the DNA samples on the order of the court, the legislation is defective.

Mr. President, in section 31 of this Bill, and we are going to deal with them one by one because there was an effort here to make the Government looks as though it is doing something sinister.

MR. PRESIDENT: You have about three minutes to do that, Senator.

SENATOR G. P. B. NICHOLLS: Mr. President, my colleague has been well-briefed and will answer every one of the allegations that were made.

Sir, a person has the right to communication with his attorney-at-law. It is guaranteed in Part II of section 13 of the Constitution. Therefore, to say that this Bill now prohibits a person from communicating with his attorney-at-law, is to mislead the Honourable Senate.

SENATOR F. J. STUART: On a point of order. Mr. President, Senator Nicholls is obviously misleading the Senate. I did not say what Senator Nicholls is alleging I have said. I said that the relevant clause in the Bill now abridges and circumscribes the right which is unrestricted at clause 13 of the Bill.

SENATOR G. P. B. NICHOLLS: Mr. President, the Honourable Senator Stuart was at pains to make the point that a police officer in Barbados can now refuse an accused the right to consultation with his attorney-at-law. Senator Stuart said that and he said so simpliciter. Sir, the section makes very clear sense in a particular circumstance.

5(2)

“The police officer referred to under subsection (1) shall allow the suspect to communicate with his attorney-at-law in private...”

Therefore, the police shall allow him. Sir, here is the proviso, and it makes good sense.

“...Unless the officer suspects on reasonable grounds, that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure”.

Mr. President, what Senator Stuart is saying is that the right to consult with one's attorney-at-law is absolute and that the police ought not to do anything in defence of the rights of the victims, against whom the commission of heinous criminal offences would have taken place, so that the police can investigate them in a proper manner.

Mr. President, as I said before, the rights of the individual are guaranteed by way of the sanctions of the courts of Barbados, which, from time immemorial have said that they would jealously guard the interpretation of any law that would infringe the rights of the individual.

Mr. President, it is my submission that this Bill is more than propitious. This Bill seeks to give effect to a regime of forensic analyses or forensic procedures. Therefore, the only way that the Government could have gone about it, was to alter the Constitution in accordance with the terms of section 49 of the Constitution and that this Bill under consideration before the Honourable Senate is in accordance with section 48, a Bill to make provision for the peace, order and good government of this country.

Mr. President, I am obliged to you.

SENATOR the Hon. Mrs. V. E. NEWTON: Mr. President, I rise to make a few points in relation to the Bill which is before us. Sir, before doing so, I wish to reiterate a statement made by Senator Stuart which is that our draftsmen have a duty to ensure that they are as careful as possible when adapting or copying legislation from elsewhere. They have to make sure that errors that are obvious to some persons, on very careful reading, are not carried forward.

3.00 p.m.

Wednesday, February 18, 2005

SENATOR THE HON. V.E. NEWTON: I am going to support the Bill but I have to confess that I have lots of difficulties. Before going into the substance of the Bill, I will make a few comments about the DNA process itself.

Sir, Government is to be congratulated for bringing this legislation before us. I believe it would be one of the few in the Commonwealth Caribbean to do. It is a forward step and will bring us into the mainstream of what is happening in the developing countries to make sure that when we are going to convict our release suspects that we are doing so on evidence which is better than fingerprinting.

Sir, after considerable thought, I must say that I am in support of Senator Stuart that there was no need to amend the Constitution. We have to look at it this way. DNA is an invasive procedure, as is fingerprinting and

taking blood samples. I have not looked at the legislation relating to fingerprinting but from my recollection there was no amendment of the Constitution. Section 13, as Senator Stuart said, is not amended by anything in this Bill. Having regard to the fact that the suspect is going to be asked by a sergeant or corporal to give a DNA sample, having regard to the fact that a lot of us know that many police officers do not read the Rules of Suspects and Judges.

Asides.

SENATOR THE HON. V.E. NEWTON: Sir, I have been told for a fact that some of them do not read the Rules of Suspects and Judges or know what are the rules and I have done research recently which suggest this is so.

It is extremely frightening to think that police officers at that level, on mere suspicion, are going to be authorised to take samples. I have had a few accidents myself and the police officers write the statement and it is an extremely painful process because you are not allowed to write the statement. Sir, at the end of the day, I did not sign any statement because the proofs sent to me were not my words. They were neither accurate or literate.

Sir, I am worried that we are going to give officers at that level, the right on mere suspicion to require persons to subject themselves to DNA testing.

Mr. President, having said all that, I still think it is a progressive piece of legislation the intention of which is good but I have problems with some features.

Mr. President, in our Bill, there is provision for keeping the DNA sample up to three years but I wonder if that is long enough because in most countries which have adopted DNA samples, they have found it expedient to keep the samples for a longer period because DNA is almost hereditary and certain characteristics go forward for generations. Sir, even though someone is no longer a suspect after a year in relation to a certain matter, the evidence is destroyed and if something comes up again, it would have to be done again.

Sir, I think that provided there are adequate safeguards for keeping the material confidential that there could be provision for it to be kept longer, as in some places it is kept as long as four generations. This period might be too long but it should certainly be kept more than three years.

Mr. Speaker, I want to go through a few sections of the Bill. Section 9 provides that the police officer shall ensure that the giving of the information about the proposed forensic procedure and the suspects consent are recorded in writing and if possible by audio tape or other electronic means.

Mr. President, I had cause to look recently at the Evidence Act, Section 72, which provides for the tape recording of confessions by an accused person. The research indicated that it was not enforced and when I asked what was the situation in relation to Section 72, I was told it was not enforced.

How are we going to have in the Evidence Act a provision providing for video taping and evidence when someone is in police custody but now we have this legislation with similar provisions. How are the two going to mesh? The Evidence Act is generally used for regular purposes and before that provision comes into force in this Bill, Government should go back and make sure that the other general and overriding provisions are brought into force.

I do not know why it was never enforced but it seemed fairly damning to me that all the other provisions of the Evidence Act were enforced but this crucial one which guarantees the rights of people when they are in the custody of police was not enforced.

Senator Stuart spoke earlier of Section 31 which provides that:

“An Authorised person or a police officer who is authorised to carry out a forensic procedure on a person, may use such reasonable force as is necessary (a) to enable that procedure to be carried out; or (b) to prevent loss, destruction or contamination of any sample.”

Section 32 says:

“This Act does not authorise the carrying out of a forensic procedure in a cruel, inhuman or degrading way.”

Sir, Section 32, to some extent, qualifies Section 31 but even so the language of Section 31 is worrying when it speaks to reasonable force.

Section 70 is an example of the sort of sloppiness in the preparation of legislation that we should guard against.

Section 70 (d) speaks about compliance with a Court Order under the Status of Children Act but there is no such Act. It is the Status of Children Reform Act. These are small things but are matters which should have been picked up before the legislation reaches the Other Place and this Chamber.

S25/15:10

Sequence 19

Friday, February 18, 2005

SENATOR the Hon. Mrs. V.E. NEWTON: We can then go to the First Schedule Part I subsection (2) which says:

“(2) A police officer who is of the opposite sex to that of the suspect may only be present during the carrying out of forensic procedure where it would not be reasonably practicable to have present the officer of the opposite sex.”

Sir, that opposite sex should be replaced by the same sex. It is easy to say that we know the intention is good. I have no doubt that I know that the Government’s intention is good. As I said, I have no problem with the general policy and the need for the legislation at this time but we have to make sure that the clauses are elegantly drafted and that there are as few slipshod provisions as possible.

Mr. President, I am also a bit worried about whether the safeguards in relation to the keeping of the data banks are strong enough. I am not too ‘hung-up’ on that because regulations are still to come and I believe that how they are drafted will be important.

Sir, having made those few statements, I am going to support the Bill and would urge that in future that before any legislation is brought before us that it is looked at more carefully because most persons are just concerned about the overall policy but there are times when a minor provision that is misstated could undo all the good that is intended.

I thank you.

Mr. PRESIDENT: Senator Marville.

SENATOR R.O. MARVILLE: Mr. President, I agree with everyone who has spoken so far and who indicated that there is absolutely no doubt about the good intentions of this Government on this particular Bill. I think that we are entering the 21st century when we decide to use technologies that are available. It is even with a bit of pride that we look at things where we can consider ourselves as pioneers. However, I do wish that this Bill had been drafted in less loose fashion. There are innumerable instances of slips, at page 14, where persons suspected by a police officer on reasonable grounds to have committed an offence. I find it difficult to interpret on reasonable grounds in any precise sense that a suspect is treated as someone who is guilty.

Mr. PRESIDENT: Senator, perhaps, if you could tell us what page.

SENATOR R.O. MARVILLE: On page 12, Part I (c) forensic procedure is defined as, "forensic procedure" means both an intimate and a non-intimate" instead of non-intimate.

However, I am left to wonder after listening to the three Senators who spoke whether it was not possible to have framed this Bill without touching the Constitution. I am very concerned about any decrease in the rights of the individual against the all-powerful State. Government on the bogeyman of a Stokeley Carmichael visit, has taken away the freedom of association. I am not persuaded that to some extent this will not be taking away some of the freedoms of the individuals with respect to security of the person.

Sir, I would like to go into some details. Part 111 deals with non-invasive forensic procedures on the suspicion of a police officer. Suspicion effectively replaces guilt. It said police officer and it does not specify what level whether it is an inspector or someone of senior rank. Any police officer is allowed to make this judgement.

Mr. President, in my experience with police officers, it is difficult to have a police officer make some decisions with respect to the rights of citizens. Part V, in a technical exploration of conducting the procedure mentions the use of force. This is where I have very serious difficulties. While we do have several very good police officers, we do know that police officers have been known to force confessions by the use of force. When by the use of force is presented here, I am forced to ask myself how do we determine what is force and what is excessive force. Are we trying to force a confession? What are we doing?

Mr. President, Part VI deals with the conviction of serious offenders. It is not clear to me why there should be a database being kept on a person already convicted. Somehow, this seems to me like the branding used in slavery or cattle. Mr. President, convicts also have rights. Even though none of us have been convicts, I think that we should appreciate the possibilities.

Sir, Part IX deals with the database. I am not comfortable with the database and the way it is supposed to be kept. I do not know what the details are but I am afraid that the State keeping a database can become a serious invasion of the privacy of the individual. I am always minded that in our very small society that there is very little that can prevent a director from leaking information on someone. The penalties involved mean nothing in view of the possible payoffs for leaking such information. I am not talking about internal payoffs. Sometimes the payoffs are to foreign agents.

Mr. President, if Parts VI and IX are doubtful, I would say that Part XI is bad. The notion of sharing a

database with foreign Governments does not sit well with me. I know that we are talking exchanging information but I am afraid that exchanging information with one government might mean that information goes to another government like the United States of America and United Kingdom who would have very great difficulties in sharing any of their DNA information on their citizens with us.

Sir, I understand the need to do these exchanges in an era of terrorism but I also understand that this terrorism has been defined in extremely narrow ways. They are terrorists, like the man who put the bomb on the Cubana plane, who lives comfortably in Florida or there is the Head of the terrorist organisation FRAP, the old Haitian police, his specialty was the killing and torture of ordinary people. I can assure you that he lives comfortably as a real estate agent in New York. Sir, we have to define terrorism in our terms.

15.20 p.m.

Sequence 20

Friday, February 18, 2005

Senate 25, sequence 21, 3.20 p.m.

Senator R.O. MARVILLE: Sir, let me for a moment revisit the definition of a suspect on page 14, section 2. You will note that the police officer can force someone suspected of having committed an offence to proceed to a so-called forensic procedure. You will also note that it says "offence", not serious, not grave, not egregious just "offence".

"Section 6. (1) Where a police officer referred to under section 5 is satisfied on reasonable grounds that

(a) the person on whom the forensic procedure is proposed to be carried out is a suspect;"

Sir, what constitutes reasonable grounds?

"(d) the request for consent to carry out the procedure is justified in all the circumstances,"

"6.(2) In deciding whether a request given under subsection (1) is justified in all the circumstances, the police officer shall balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned, against the public interest in protecting the rights of the suspect."

After what Senator Newton told us about her experience with police officers taking notes, I wonder if this is not beyond the job of a policeman.

This is your common police officer making all these decisions over the rights of citizens. All of this section is very loosely drafted. It should as if we are creating additional duties for policemen.

“6.(3)...a police officer shall have regard to the following matters: (a) the seriousness of the circumstances surrounding the commission of the offence...” (b) ...the alleged participation by the suspect in the commission of the offence;” Is this not a case of guilty before trial?

There is one bit where the police has to consider age and physical mental health of a suspect. Can an older person say, “Look here, I am a senior citizen and card carrying member of BARP. Leave me alone.” Would that make a difference?

Sir, here is the omnibus clause

“(f) any other matter that may be considered relevant to the balancing of these interest.” - by the police.

Sir, let it be clear, a police wanting to take DNA evidence is unlikely to consider any individual’s objection reasonable.

There are other bits where I do not know where the legislation is going.

Section 7. (1) (a) says that a suspect may request a medical practitioner to be present when a procedure is being carried out. Who pays the medical practitioner? Would it not be ample just to have a friend or somebody who is a witness?

This brings me back to the point about DNA given by consent. Of course, I am in agreement with that, but I would like to be sure that it is by consent and there is a witness present.

“32.(1) This Act does not authorise the carrying out of a forensic procedure in a cruel, inhuman or degrading way.”

How do we determine this when there is no witness?

Sir, what bothers me also is section 55.(1) ©) this is providing for the rules of admissibility. It says that evidence is to be admissible even if the procedure is in contravention of procedure rules.

I do not quite understand how that could be considered normal.

The court may accept such evidence even when such data are in breach of these regulations.

This can be decided on the basis of probability.

Section 59, I have some difficulties with as well. It indicates that disallowed forensic material should be disposed of as soon as practicable.

I am not sure what as soon as practicable means in the legislation. There is no sanction for failure to destroy it. Indeed, a request may be made for the retention for up to three years of such data.

Section 66 says that information may be exchanged between Barbados and any other state.

We know only too well that we are not talking about Guyana or Suriname. I made the point before that the U.K. or the U.S.A. are not going to surrender DNA data on any of their citizens to a small state like Barbados, but they will get our information through a third state.

Section 69.(2) indicate that the Director shall ensure that information is properly kept.

I am sure the Director will feel that this is his job but here again, the language is rather loose. There is no accountability on the part of the Director or anybody else.

Section 70, what happens if the Director is suitably paid by a foreign agent?

Fundamentally, Mr. President, I have great difficulties with any changes which run counter to the trend outside of Australia, U.S.A. and the U.K. The trend is to greater protection of the individual against the all powerful state.

This, unfortunately, is not the case in this particular Bill and although I applaud the effort it is making, I am still persuaded, it could have been done within the limits of the Constitution.

I thank you, Sir.

Senator Dr. F.L. CHANDLER: Mr. President, I rise to support the Forensic Procedures and DNA Identification Bill, 2005. Sir, in view of the need to contain our crime rate, we should use every technology available to us in solving these crimes.

It must also be borne in mind that these procedures, used in conjunction with other investigative procedures help, not only to convict but also to exonerate. Of course, the procedures are also useful, as has been mentioned by others, in the case of missing persons and in paternity cases.

However, I share Senator Newton and Senator Stuart's concerns and feel that we should proceed with caution. We have to ensure that the very highest ethical and technical standards are maintained in these procedures.

The way DNA evidence is collected, preserved and tested, is critical to its success. The laboratory has an obligation to perform quality DNA tests and to interpret the results accurately and without bias. We must therefore ensure that all levels of staff involved in taking and analysing samples have adequate training and that there are strict controls in place.

I understand that there is provision for what is called proficiency testing where local lab results are checked against those of an international lab from time to time and I feel that this is definitely important. I also think that persons should have the right to have their tests confirmed by another lab.

It must also be ensured that people's rights are not infringed. It would seem to me that the Act called for considerable judgement on the part of police officers and magistrates. I trust that good judgment would be used at all times and there again that there will be a number of strict controls in place.

In Section 31 of the Bill, it states the authorised person or a police officer may use such reasonable force as it necessary and in Section 32, the Bill does not authorise the carrying out of a forensic procedures in a cruel, inhuman or degrading way.

Sir, bearing in mind the many complaints and allegations which are made about police brutality, and we also hear complaints about the conduct of body searches in the area of customs by relevant officers, very careful attention must be paid to this aspect.

Senate 25, sequence 21, 15:30:14

Friday, February 18, 2005

SENATOR Dr. F. L. CHANDLER: With regard to the DNA database this could be extremely useful in linking previously unrelated cases. Perhaps DNA testing should be added to fingerprinting for arresting persons.

Mr. President, I also agree with Senator Newton. I see no reason why there should be a limit on the time for which forensic material may be retained, but I am told that this would violate another area of the Constitution. I also do not believe that the DNA profile of a serious offender should be removed from the system after the offender has been pardoned or acquitted since the information could be useful in the future. As far as I am concerned DNA testing is used like a fingerprint but better and I do not see any

harm in having your profile there forever if necessary. Again, I am told that this would violate the Constitution.

The question of who pays for these procedures must be looked at. I assume that this would depend on who request it, whether it is the prosecution or the defence. I think Senator Griffith mentioned that would be covered in regulations.

Mr. President, I would like to reiterate my support for the Bill. I note the length and the complexity of the document and trust that all concerned would become totally familiar with it and that the strict code of ethics and strict controls would be maintained at all times.

I thank you.

SENATOR Miss S. C. V. HUSBANDS: Mr. President, the modernising of the Barbados justice system is not an easy task. Our efforts to improve our collection of evidence and our detection activities require that we seek to ensure that justice occurs. Justice here means justice for both the person who is accused and the persons who may have suffered as a result of whatever crime was perpetrated.

Mr. President, justice is important to the foundation of any democracy, and justice denied or justice deferred weakens that foundation. Balancing the rights and freedoms of individuals living in a common society is often very difficult. What emphasis do we place on the right of the individual versus the good of the society and how do we balance the right of one individual versus another. There is freedom of speech, but you cannot go around libelling or slandering persons.

Sir, what we are seeking to do here in this Forensic Procedures and DNA Identification Bill is to create a balance while upholding our primary goal of establishing justice and ensuring that justice is delivered, so we are seeking wherever possible to put the necessary safeguards and controls in place to take care of the rights of persons who are accused.

Mr. President, a number of concerns were raised by a number of senators and rightly so in terms of seeking to understand what the Bill is trying to achieve and to look and see whether or not we have been able to achieve the appropriate balance. I know that there may be other persons who are more versed in the law who would speak more fully to the matter, but my reading of the Bill shows or demonstrates a number of things that I think could have allayed some of the concerns of senators pertaining to the Bill.

Mr. President, the Act distinguishes between an intimate procedure and a non-intimate procedure and then

it outlines the various persons who can actually conduct that particular procedure. For example, in Part I of the Act it states that authorised persons who could carry out the procedure would be a medical practitioner, a dental practitioner, a forensic scientist or a person who is suitably qualified and approved by the minister. This suggests to us that it is not just simply a matter of the police solely executing these various procedures on behalf of the State but rather that suitably qualified persons with the requisite knowledge and training would be able to carry out or conduct those procedures.

Mr. President, one would want to think that the police in seeking to give actions to this particular Bill would ensure that a certain level of training is put in place to allow a person to have the necessary skills to conduct that procedure. Also the person who is having the procedure has the right to have someone present there, whether it is a medical practitioner, a lawyer et cetera, so that one can see that justice is being done. Therefore, I feel that inherent within the Bill are the attempts to ensure that not only are the rights of the victims are being realised but also the rights of the persons who are being accused.

On the matter of intimate procedures, the decision to conduct an intimate procedure is not at the behest of a police officer. An intimate procedure can only be conducted if a magistrate states that can happen. In a non-intimate procedure it is a police officer at the rank of inspector or higher who has to authorise a non-intimate procedure. So as we look at the Bill we can see that certain safeguards have been put in place to seek to ensure that proper care is taken on when a procedure can be done and how it can be done.

Why is this important in Barbados at this time? Mr. President, it is very important as we draft legislation that the rights of the individuals, both the accused and the victim, are maintained. It is also important that people who are wrongly accused should have the opportunity to prove their innocence by having access to such services as has been outlined by this Bill. It is also important that persons who are justly accused should feel the weight of the law and are not able to get away because we were not able to provide the necessary evidence so that justice could occur. This is particularly important when you have very serious crimes like rape, murder, assault et cetera.

Mr. President, I know that many of us watch television and we listen to the news and we have seen the value that this kind of forensic testing has done for a number of persons. A number of persons who were put away in prisons in the United States of America for a number of years and had their liberty taken from them were set at liberty to resume their lives through the advent of DNA testing, so DNA testing has set free those who have been wrongfully accused.

Mr. President, on a more personal note I can relate to the importance of forensic procedures and DNA testing. I had a great-aunt who was in her late 80s. She was a very spritely woman. She lived a very good life. She was very energetic. Her mind was clear, her thoughts were excellent and she could recount a story. There was nothing senile about her. I was amazed that she had lived such a good life and was in such excellent health in her late 80s. However, Aunt Gladys was murdered.

Mr. President, that hurt me very much because when I first had the opportunity of meeting her as an adult she was able to share a great deal of information with me about my grandfather and all my antecedents and their lives and so on. I thought this was so wonderful and I said that when I got a chance again I would take a tape recorder and sit and talk with her and record the background to our family history, but before that could be executed, aunt Gladys was murdered.

Senate 25 Sequence 22

3.40 p.m.

Friday, February 18, 2005

SENATOR Miss S. V. HUSBANDS: What was upsetting about it was, here was a woman who was strong, who had lived well into her 90s, who had the right to live like anybody else and who had the right to die peacefully in her bed, as she was likely to do, free of illnesses, only of old age. Sir, that was taken away from her because persons had entered her home and strangled her and, therefore, her last moments on earth were moments of terror and fear, and that was not right.

Mr. President, the family wanted justice and, therefore, it was very difficult to get justice, as there were no procedures in place. We did not want someone wrongly accused. It was important for us that the perpetrator was caught and we could not have done that unless there were these types of legislation or these types of forensic services available, where we can ensure that the right person is apprehended and that justice was created for an old woman who had every right to live out her life and to live it out well.

Mr. President, I feel it is important that we have a Bill such as this before us, that we have such a forensic laboratory that is able to provide the opportunity for all citizens in Barbados to have justice and, as my fellow Senator has said, to also experience mercy. Therefore, I welcome this Bill with all my heart.

Mr. President, the provision of forensic services is not only for the provision for justice for our citizens. What I really admire about the Forensic Centre is the fact that the

Government has taken a visionary approach to the provision of these forensic services in Barbados. Government has not only sought to set up a Centre and to provide service for Barbados only but has sought to set up a quality-type of service that not only can it provide service here in Barbados but it can provide that service throughout the region and the world.

Mr. President, it is on this area that I want to spend some time because as a person involved in business, I like the focus that it has. Sir, the Director of the Forensic Centre is such an enthusiastic and committed person and while the Centre was being set up, I had the privilege of speaking with her, where she shared the various procedures, protocols and various things that are done to protect evidence, the various things that they have to go through to ensure the correct handling of the material, et cetera, and the protocols and types of training that she was putting in, to ensure such. Sir, I was very impressed. As she shared her enthusiasm, it energised everybody at that regional conference. I felt very proud to know that Barbados would be setting up a Forensic Centre, operating at that calibre.

Mr. President, here before us we have a Bill to allow the proper operationalisation of what that centre can be. Sir, from an economic level, what was particularly interesting was the fact that it is a tremendous example of what it is that we have to do, as Barbadians and as Caribbean people, to be able to market our services to the world.

Mr. President, very often as business people, when we are thinking of selling services overseas in the European market, we try to identify things that we feel they do not already have. We have a feeling that we would have a competitive edge by so doing. Sir, the truth is that in the world, over the past 50 years, most of the trade that goes on across the world is done by people trading in similar goods. For example, France produces wine and they trade that wine in the United States of America, but there is wine in California as well, but both the Californian wines and the French wines have their markets and are able to do well.

Mr. President, I see the provision of the forensic services as being in that vein, that although other people have a forensic laboratory that offers international standard services, that Barbados has taken up the challenge to be able to provide such a service and to know that Barbados can compete internationally, to be able to earn foreign exchange. I felt that this was commendable and that it would have set an example for the rest of us in the private sector, that there are things that we are currently doing here in Barbados, that could be put to an international level and that we would seek to go out there and compete in that wider world.

Mr. President, I want to commend the Government for what they have been doing in the area of forensic services. I want to commend the Bill. I know that with a Bill of this nature, there will be challenges in getting it operational and in helping it to do exactly what we want it to do. Therefore, it is only by training, by vigilance and by taking the necessary care possible, that we will ensure that what we are able to deliver, through the operationalisation of this Bill, is justice for Barbadians and for other people across the Caribbean and indeed across the world.

Mr. President, I am obliged to you.

SENATOR The Very Reverend H. CRICHLAW: Mr. President, I am sure that all of us are happy that a Bill of this nature has been introduced into our Parliament. DNA testing has become so common that one assumes that it is almost everywhere. Therefore, Government, Opposition, and Independent Members, are all happy about the introduction of this Bill.

Sir, from the many speeches that have been made by all Honourable Senators, there is need for a tighter drafting for the language of the Bill. I was impressed by the speech made by the Honourable Leader of the Opposition Business in the Honourable Senate, and during the luncheon interval, I had to get a number of points checked with people who are versed in law because I felt that the case that Senator Stuart had made out for the Constitutional provision was clear but I have since been told that there is no real danger about it.

Sir, from comments I have heard from an attorney-at-law from Government's side, the Constitution does provide for this. It does not actually mention DNA because when the Constitution was first written, DNA was not as common as it is now, but it is in line with an individual's freedom which interferes with the freedom of others and, therefore, the public good has to be always thought of. Therefore, I am happy about that part and I do not think there is any real danger there.

Mr. President, I got the point about indictment clarified as well. Perhaps it is a bit of loose drafting but of course the person would have to be tried before being fined. Sir, the point about no adequate provision for appeal is standard.

3.50 p.m.

Wednesday, February 18, 2005

SENATOR the Very Reverend H.E. CRICHLAW: I use those three points for the benefit of people at home listening to us because they were powerfully made in this Senate and I do not want people to be misled by them.

I always consider Senator Stuart to be a solid, knowledgeable, bright man and a lawyer but I was convinced that the point raised by him this morning at first made me feel that we were not going down the right avenue. Those points have been cleared up and I am now happy to support the Bill.

Mr. President, I thank you.

MR. PRESIDENT: Senator Barker.

SENATOR T.E. BARKER: Mr. President, I rise to support the Bill. I am heartened by the words of Senator Stuart who said in a very lucid moment that he had no fault with the motion of the Government with regard to this Bill. Sir, I thank him for that. He also said, again in a lucid moment, that the Bill was aimed at strengthening the criminal justice system in Barbados. We on this side take comfort from the fact that even our opponents recognise the merits of this piece of legislation.

However, Sir, I share the concerns of everyone in this Chamber on both sides when it comes to the question of personal freedom because we all value it and it has made Barbados into what it is. We on this side would not take lightly to any measure which would limit the freedom of Barbadians.

Sir, this Bill is paramount because today is you but tomorrow it is me. We do not take lightly to any measure which would curtail the freedom of the people of Barbados. At the same time, noting what Senator Stuart said, we have to make sure that we strengthen, to every extent possible, the criminal justice system in Barbados. Those who did not commit a crime must not be punished for the crime they did not commit and at the same time, those who perpetrate crime must feel that the state will use every method at its disposal to ensure that they are brought to justice.

Sir, this is very important because the rule of law must be maintained. The innocent must believe that in the end the system will find them innocent but those who are guilty must also know that Government will use every legitimate means at its disposal to bring them to justice.

Sir, the whole question of DNA and this part of forensic science is about 20 years old. We are talking about a relatively new science and it is a tribute to our maker that there are more than six billion people in this world and except for identical genes, no two persons have the same DNA characteristics. Sir, the science is an exact science and we can be sure to get the right results once the correct scientific procedure are adhered to. We are not reinventing the wheel but the science has grown and more and more people are becoming involved in it. Sir, a lot of our young people are fascinated by forensic science and are studying at universities all over the world.

It is a fascinating area and appeals to my scientific nature. I wonder how it is possible that there are six billion people but I can take a drop of blood or one strand of hair and with reasonable certainty identify it as belonging to me. Mr. President, we have to use it as much as we can but, at the same time, we have to ensure that the freedom of the individual is at all times respected.

Sir, a person who is guilty of a crime would not readily subject to a procedure like this knowing full well that he can be found guilty but at the same time, this science can prove that a person was not at the scene of a crime.

Sir, I read a lot of things but this is unfortunate because a police officer cannot take my blood. If we read the Act carefully, the act of taking blood must be carried out by an authorised person. The definitions say that the authorised person must be medical practitioner, a forensic scientist or a person who is suitable qualified. Sir, on page 11 of the Act, it says that a police officer cannot carry out forensic procedures.

Sir, I should think that the police officer would be the one who is requested to do it because, obviously, he is the person doing the investigation. He would say that he has a suspicion that a particular person is responsible and that he wants to carry out the test. Sir, if the person does not consent readily then the magistrate becomes involved but from my understanding, the police officer is not the one carrying out the procedure.

Sir, there may be a case where a doctor in carrying out the procedure on the order of the magistrate in a case where he is not given consent, may need to have with him an officer of the law.

S25/16:00

Sequence 24

Friday, February 18, 2005

SENATOR T.E. BARKER: The doctor or whoever is carrying out the procedure may need to have the name while he carrying out the procedure.

Section 31 says that the police officer and the person carrying out the actual testing can use reasonable force. Do not forget that the magistrate would have been the person who issued the order in the place. The magistrate would have said that there is enough evidence to suggest that you could be involved, therefore, I am going to order that you surrender a sample of blood for further examination. We have to bear in mind that if the person is guilty of the crime they would not readily surrender a sample for DNA testing. So, section 31 says that there may be occasions where

reasonable force may have to be used in order to get the person to surrender especially if a non-intimate procedure is to be carried out.

Mr. President, we have to remember that the police has to take the request to a higher authority in order to get permission to carry out such tests. As Senator Nicholls said, any action by a magistrate can be reviewed at a higher level. Therefore, if an order was given and the individual did not like the order, then they have access to a higher court so that the order by the magistrate can be challenged at a higher level.

I believe that there are a lot of safeguards in this legislation. The State does not take lightly to invading a person's liberty but at the same time the greater good is, justice must be done. I am happy to know that a lot of safeguards are built into this legislation.

Mr. President, I agree there may be some areas where the language could be tighter but that is so in almost every Bill. I heard the word loose being used, although that was a bit harsh. Almost in every piece of legislation we have to do amendments. Legislation is drafted by human beings and these things would occur.

Mr. President, I am not at war with Senator Stuart on this occasion. We find no fault with Government's motives. Sir, that is one of the very few times that I agree with Senator Stuart. No one can fault the Government's motive with regards to this Bill. When we strengthen the criminal justice system in Barbados we are making it easier for the citizens of this country to live peaceful lives because we are making it more difficult for the criminals to interfere with innocent people.

Sir, I think that must be the overriding consideration. We want to build a Barbados where the rule of law is respected and where citizens can go about their business without fear and in peace. This Bill will go a long way because it will send a signal to those who have evil in their minds. The Government is going to use every method at its disposal to make sure that the decent citizens of this country are left alone. We are going to use our young scientists to ensure that we have a better society.

I could urge all Honourable Senators to agree with Senator Stuart that the Government has no ulterior motives here. Our intentions are clear. We just want to build a better Barbados. If we have any difficulties with some of the words that are incorrect, then let us change them but let us pass this Bill and send the correct signal to the rest of Barbados that while we are improving the economy and the social system, at the same time we are making it difficult for persons with evil in their minds to get by.

Sir, I want to commend this Bill to this Honourable Chamber and wish that all Senators on all sides give it their ready assent.

I thank you, Sir.

Mr. PRESIDENT: Senator Linton.

SENATOR I. St.C. LINTON: Mr. President, I rise in full support of this Bill that is before us. I am going to be brief. I want to say that justice is a divine principle and justice must not be only seen in the light of the accused but the victim of the crime must also receive justice.

In the concerns expressed by Senator Stuart, perhaps because he is an attorney generally in defence of an accused persons. What I heard today from Senator Stuart and some other Senators is a weightier position to the benefit accused persons in regard to this Bill that is before us. Generally, in the society today there is a lot of sympathy for persons who commit crimes.

Mr. President, in spite of the fact that I support justice and mercy on their part, there must be some concern for the victim. Senator Stuart used a mathematical figure this morning but I call it an adage, a thousand persons should go free rather than one innocent person losing their life in. There must be a balance to the approach to justice in this country. We have to put safeguards in place in this country, not only for those who are charged or accused but those who have suffered crimes.

The Democratic Labour Party's major campaign during the election campaign was crime and violence. Since this Bill is providing forensic testing, we should seek to understand that DNA testing or profiling is, perhaps, one of the best situations that could provide us with such justice both for the victim and the accused. It also presents an element of mercy for those who might be convicted of crimes.

S25:16.10

Sequence 25

Friday, February 18, 2005

Senate 25, sequence 26, 4.10 p.m.

Senator I. St.C. LINTON: I consider DNA testing as a witness for justice, and better than any other witness for both, as I said, persons accused or persons who are victims of crime. I also want to say that we must absolutely understand that a Bill like this which comes before us, the Constitution of Barbados should be a witness to it as well. There is no altering of the Constitution in my understanding here but simply to have the highest law in

the land to witness these procedures and to make sure, that in the provisions of the fundamental rights of the Constitution that justice is obtained both for the accused as well as the victim.

Sir, I think I am the second because Senator Husbands made this point very strongly and this considering must come. In regard to legislation that is coming before the Parliament of Barbados, I regard the Other Place to be the first point of legislation and I believe that those who sit there have a responsibility to read and study the legislation.

The points raised here by Senator Stuart as an Opposition member of The Senate, in support of his Party, never came into the consideration of his fellow Party persons in the Other Place.

Mr. PRESIDENT: Senator, I must stop you. Sir, Standing Order 34.(8) is very specific about raising matters in relation to conduct of Members of either House.

Senator I. St.C. LINTON: Sir, I am very sorry and thank you.

I am simply saying that politicians residing in particular Parties generally who are elected by the people must be worthy of the calling that they have come to because, the people put them there on their own behalf and we should be enlightened by politicians in particular Parties to give us an understanding of what the Government is doing, regardless of the Party.

Therefore, I want to compliment Senator Stuart for his presentation here this morning and he has drawn some important understanding to us, not just as Senators on all three sides, but to the people of Barbados to give them an understanding that we in these legislative bodies should be willing to bring to our knowledge these integrated values when it comes to justice, righteousness and exercise of mercy.

I want to say to this Chamber that I was pleased last Sitting when one of our Senators identified discrepancies in the legislation and corrected it, but it must not be used to devalue the importance of legislation. We should be able to point out any deficiencies but when the deficiencies do not create a problem in the legislation, we just draw attention and have the corrections made but it should never be used to devalue the purpose of legislation. The legislation before us today is perhaps the most marvelous piece of legislation to come before any legislative body.

I support this Bill, but I also want to crave my own indulgence here, Mr. President. I know this is important but I also have a right in the Constitution to worship as I would

like, so I would like us by God's grace to get through this Bill before a certain time.

I thank you, Sir.

Senator Miss P.E. PARRIS: Mr. President, I rise to lend my support to the Forensic Procedures and DNA Identification Bill, 2005 which is before this Honourable Chamber. I am not looking at it from a legal perspective. I do not have a legal mind, but I am looking at it from an economic one when the Forensic Centre is completed.

Sir, I see this is providing job opportunities for Barbadians who would be qualified to work in the Forensic Centre. We have young persons who are overseas doing studies in pathology and chemistry, and these persons can be employed in this centre.

Presently, we are delivering technical assistance to nine of our Caribbean neighbours and when the Forensic Centre is completed, it would be a model for the Caribbean. This can be seen as an achievement for Barbados and I know that the Opposition Senators are proud of such an achievement, like all other Barbadians.

The results of the DNA testing will be used as evidence for persons who are charged with criminal offences and we will not only have to rely on confessions or any other evidence. Persons will give consent before the samples are taken, and this gives some degree of fairness to accused persons. They are given detailed information on the procedure that will be used. The privacy of the accused person is also protected. The suspect is allowed to have an independent analysis, if they are desirous of having one.

Sir, when the Forensic Centre is completed, a newly designed training facility, equipped with multimedia amenities will be available at this Centre. Training sessions will be held in conjunction with the Regional Police Training Centre, and persons will be given an overall appreciation of the value of forensic services, as well as the relationship of these services to the justice system in Barbados.

I can appreciate the value of training given to any employee as it enhances their ability to effectively perform in their various roles, so I see this training facility as a plus for the persons who will be working in this forensic area.

This Bill will also allow Barbados to seek international accreditation and Barbados would become the third English speaking country which will be able to perform anti doping tests in sports. As Barbados prepares for the World Cup 2007, we will be able to offer this service and in the long term, we will be able to offer the service in any other sporting activity.

Senate 25, sequence 26, 16:20:14

Friday, February 18, 2005

SENATOR Miss P. E. PARRIS: The Opposition finds great difficulty in supporting this Bill that is providing employment for Barbadians and is expected to earn some \$40 million. Mr. President, I am not surprised that the Opposition is not supporting this Bill because they have got accustomed to preaching gloom and doom, and that is one of the reasons why they would not want to support this Bill.

Mr. President, as this Bill seeks to protect the rights of individuals, I would like to commend it to this Honourable Chamber and urge all Honourable Senators to do the same.

I thank you.

Her Honour Senator Dame Patricia SYMMONDS: Mr. President, much has been said to justify and commend this Bill to this Honourable Senate, so I am not going to reiterate what has already been said. Senator Nicholls gave an excellent speech, stressing the safeguarding of the rights of the individual and pointed out certain things in law to refute what had been said by another Honourable Senator, and so I am not going to repeat any of that.

However, Mr. President, I do wish to say that as usual this Government has shown imagination and foresight in bringing this Bill before us. In doing a bit of research and rereading some of what I have read before about DNA technology, I have found that the history of DNA discovery is a very intriguing one.

Mr. President, whatever success the world enjoys with DNA technology, it owes it primarily to two scientists, both of them British, both of whom have been given the Nobel Prize in 1962, I think it was, for discoveries, and an American. They are James Watson who is an American, Francis Crick and Maurice Wilkins who are British. James Watson was the Bio-chemist, Francis Crick was the biologist and Maurice Wilkins was the physicist. They combined their skills to elucidate the chemical structure of the DNA molecule.

Mr. President, as has been emphasised, it is that DNA that is responsible for our genetic trait and that of any living organism. It has been said that if you were to unravel a person's DNA that it could reach the moon and back. It is also responsible for the hereditary properties in living organisms. These scientists did research with the lowly fruit fly and from that lowly form of life, scientists were able to understand what was DNA.

Mr. President, what is important is that they had discovered the genesis of certain types of cancers and leukemia in human beings. In plants they have been able to provide different types of pest resistant and weather resistant grains and thereby been able to feed more people. One of the most advanced discoveries has been in insulin therapy for diabetic. Before, it used to be in two forms, beef insulin and pork insulin. Through DNA there has been an advanced in diabetic research. I think this is important where the incidence of diabetes in Barbados is so high.

Mr. President, what is also very important is that it is the discovery of DNA that gives more conclusive proof of paternity. Just recently an attorney said to me that he was waiting for this Bill to be passed because he had a case pending and it would depend very much on the findings of paternity.

Mr. President, I am sure that many Honourable Senators here watched the O. J. Simpson trial and would recall that Barry Scheck and a Peter Newfield set up what was called an "Innocence Project" at the Benjamin N. Cardoza School of Law which is a non-profit legal clinic. That clinic handles only cases where post-conviction DNA testing of evidence can produce exclusive proof of innocence. Students handled the case work and it is supervised by a team of attorneys and clinic staff. Most of the clients are the poor and the forgotten whose only hope rest in biological evidence from their cases which can still be subjected to DNA testing.

Mr. President, we know that DNA testing has been an important factor in changing the criminal system abroad. I am sure that we realised that it will do the same thing here to an even greater degree than it has been done in other places. DNA testing has revealed that there have wrongful convictions. I think what is important is that it is a question not only of convicting those who are guilty but in proving the innocence of those who have been wrongly convicted. I think that is very important as it will help to exonerate a great many people who are on death row.

Mr. President, concerns were expressed by my very good friend Senator Newton about the police and perhaps the standard of English. Nobody could be more concerned about the standard of English in Barbados than I. I have to say that standards today in the police force are much higher than they were years ago. At one time I used to help with language at the Regional Police Training Centre. Although we might say, and I believe in this Honourable Chamber that I have thought so too, that perhaps the entry requirements are at a minimum, it does to rest there. They do have refresher courses. There is training and retraining for those who enter with minimum standards and so the whole language has improved as well as other areas.

Senate 25 Sequence 27

4.30 p.m.

Friday, February 18, 2005

Her Honour SENATOR DAME PATRICIA SYMMONDS: Mr. President, for those persons in higher ranks, there is overseas training programmes in the United Kingdom at Hendon College; in the United States of America at the FBI National Academy; in Canada at the Police College; in Jamaica there is the Staff College; and in Barbados there is BIMAP. Therefore, I do not think that we need to fear too much about that.

Mr. President, I remember once being reluctant to sign something that had been written but I just asked politely to let me make some corrections. I was allowed to do so and then it was signed. When we think of the importance of the Bill, I think that is a minor concern.

Mr. President, this Bill sets out the framework for legislation for the first time and, as has been pointed out quite ably by other Honourable Senators, there are only four centres in existence, two of which are in North America, namely Montreal and California. Therefore, this Forensic Centre will be of immense benefit, not only for its foreign earning potential, not only for job creation, although that too is important but above all, its benefits to the criminal justice system and those needing proof of paternity. Therefore, I think that these concerns should eviscerate any other kind of concerns.

Mr. President, I am sure that all thinking Senators here will support this Bill and will vote for it. With those few words, I wholeheartedly support this Bill. I thank you.

SENATOR the Hon. Miss L. V. EASTMOND: Mr. President, first of all, I would like to say that I rise in support of this Bill, which, as we know, deals with forensic procedures. It is called the Forensic Procedures and DNA (Identification Bill), 2005.

Mr. President, I would wish to start by putting the Bill in context in a very general way. That is to start out by saying that all legislation that are passed, are passed and are placed within an already existing framework of law within Barbados. That is both the common law and our law that is based on statute.

Mr. President, sometimes this is where we get a lot of difficulty because often individuals look at a Bill that is before us and assume that the Bill can be read on its own, when, in fact, the Bill has to be read, taking into contemplation all other legislation that exist.

Mr. President, the other thing I would like to say in order to put the Bill in context - because I am getting the impression by the contributions made so far, and there have

been excellent contributions, which would make my work a bit easier this evening - this particular Bill is referring to both forensic procedures and DNA identification. Therefore, there is going to be some forensic procedures that do not necessarily fall within the context of DNA identification.

I believe that many of us, when we had the Bill in contemplation earlier, were thinking that in every instance we were referring to DNA samples. That is not the case. If we look at the Interpretation section, we would see that it refers to forensic procedure, where that is defined as an "intimate" and a "non-intimate" procedure. Those two procedures are then defined. I would refer to a number of them. An "intimate" forensic procedure includes the taking of sample of blood or the taking of a dental impression.

Mr. President, there are then "non-intimate" forensic procedures and these include the taking of a sample from a nail or under a nail; the taking of a photograph, an impression or cast; the taking of a handprint, footprint, fingerprint or a toeprint. Therefore, in every case, when we are talking about individuals being involved in these procedures, they are not all "intimate" procedures.

Mr. President, I am sure that any Honourable Senator who has had a burglary at his or her home, that it is the ordinary police officers who come and lift fingerprints from that crime scene. I do not think that there is any need to get a medical practitioner to do that or to take a photograph. Therefore, there are different forensic procedures in which we would be engaged and depending on the type of procedure, that is when one seeks to put certain safeguards in place.

Mr. President, I believe that the legislation seeks to make a distinction between those procedures with which we should be concerned and those individuals who might consent to these procedures, who we should be concerned about. Sir, for example, a child is treated in a very special way. That involves the consent or participation of a parent or guardian in the process. There is also a reference made to incapable persons, where, in some instances, an incapable person is not ever considered to be capable of giving consent to such a procedure. Sir, there are safeguards in place.

Mr. President, there is a particular provision that reference has been made to, for example, section 3l, where there was a concern about a police officer being engaged. Sir, section 3l speaks of an authorised person and speaks of a police officer but it speaks of an authorised police officer. Therefore, that police officer still requires authorisation to carry out certain acts.

Sir, the Bill then goes on to put certain safeguards in place as to how those procedures should be carried out.

Mr. President, another example is that of section 35 and the sections following that which speak about a police officer. In section 35 it states that:

(c) "police officer" means a police officer who is an authorised person under section 36.

Section 36 says that:

"An authorised person may carry out a non-intimate forensic procedure referred to in section 35, on

(a) a serious offender other than an incapable person,

(i) with the informed consent of the serious offender;
or

(ii) by an order of a magistrate under Part 1V."

Mr. President, therefore, when we see references being made to police officers within the various sections in the legislation, we have to look to see whether or not the police is authorised, or whether or not there are other definitions at which we should be looking in the Act.

4.40 p.m.

Friday, February 18, 2005

SENATOR the Hon. Miss L. V. EASTMOND: At the beginning of the Act, considerable care is made to set out the procedures that one must get an order of the court, et cetera. Obviously, in every instance when we are talking about someone being involved in a procedure, we cannot go back to the sections that we have mentioned before and it is understood that the Act must be read as a whole. Therefore, it is expected that when reference is being made to samples being taken from suspects or volunteers, all of that is taken into account when we are looking at the actions of police officers etcetera.

Some reference was made to an individual in Section 41 where the serious offender is given an opportunity to communicate with his attorney-at-law in private, unless there is reasonable suspicion that he is likely to destroy or contaminate any evidence. I believe that this is only practical. A lot of things are said about the law, many not favourable, but I believe that the law seeks to be very practical.

Sir, if you have a situation where one hopes to take evidence from an individual, if that individual went to another room, it would afford him an opportunity to destroy the evidence. It seems to me to be sensible not to allow them the circumstances where they can destroy the evidence.

Sir, on an ordinary day in Barbados, on the call-in programmes, you would hear someone say that the police allowed X, Y, or Z to leave and then they could not find the person again, then everybody would call in and say that the police were foolish, that the law was foolish, that whoever passed it was foolish and that all of us are foolish. Therefore, one has to be practical and sensible in these particular matters to ensure that the law is not made a fool of in any kind of circumstance. Those are the situations in which an attorney-at-law may be circumscribed in terms of being able to communicate with his client.

All of those things are balanced against the fact that when a Consent Order is being sought, there is reference in the legislation to the person being present and that these hearings shall be conducted in the presence of the suspect concerned.

Sir, there are a number of safeguards to ensure that the suspect, in as many instances as possible, is not taken advantage of.

I also want to respond to an issue raised with respect to the exchange of information. I made the point earlier that legislation being passed falls within the context of an existing legal framework and an accepted practice by the Government of Barbados over a number of years, before and after Independence. Sir, the exchange of information under our Double Taxation Agreement is something that we had in place before Independence so this exchange of information is nothing new. It is within that context that certain safeguards are put place. Barbados does not exchange tax information with any country unless it has a Double Taxation Agreement in place and there is reciprocity with respect to that information.

Barbados also has agreements with countries to exchange information dealing with money-laundering activity. We also have exchange of information agreements dealing with other criminal matters and extradition treaties.

Mr. President, if we are going to have extradition treaties where we are going to agree to send the entire body of the person out of the country, one would think that would be more serious than sending a DNA sample. We have had agreements like that for a consideration period of time but now, within this agreement, there is a provision which states that Barbados may enter into an arrangement with the Government of another country under which information from a DNA data base can be exchanged.

Sir, these matters are never entered into lightly by this Government or any other Government. This is something that we have been consistent about over the years in terms of our willingness to exchange any kind of information but, first, we always ensure that there is reciprocity.

In the past some countries might have been more interested in our information than we were in theirs but I have also heard individuals complained that when you request information from foreign countries like the United States of America, they send you so much information that you do not know where to start in terms of going through the information.

Sir, when an Exchange of Information Agreement is put in place there are certain safeguards. For example, you request a degree of secrecy in terms of the information exchanged and you require that the information is not passed on to any third party without the consent of the Government. The Government and the ministers who are going to be advised by the public officials should be mindful that we need to protect our sovereignty. I believe that record of this Government shows it is mindful of that when they dealt with the Shiprider Agreement, OECD and International Court of Justice. We did not rush ahead and signed those agreements where we thought that our rights with respect to intellectual property would be compromised.

I believe that there is a considerable amount of evidence to show that when Barbados enters into agreements to exchange information with any country that we do not take it lightly and I do not believe that there is any evidence to suggest to that in these circumstances we would take it lightly.

Sir, I wish to speak briefly on the constitutional issue. Today, I expected an outstanding contribution from the Honourable Senator Stuart. In fact, I want to let you in on a little secret. Sir, because I expected to hear this brilliant contribution from Senator Stuart, I read the whole Constitution instead of only Sections 13 and 49.

Asides.

SENATOR the Hon. Miss L. V. EASTMOND: I had brilliant constitutional lecturers like Mr. Errol Thomas and the Honourable Kenny Anthony, now Prime Minister of St. Lucia. We not only saw it as educational exercise, we wanted to read the Constitution because we thought it was interesting.

S25/16:50

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SENATOR the Hon. Miss L. V. EASTMOND: Sir, the reason we are saying that we are altering section 13 of the Constitution is to ensure that we do not pass a piece of legislation that can be struck down for being in breach of the Constitution. Senators Stuart and Newton spoke and

they maybe, of the view that there was no need to speak about the alteration of the Constitution. Senator Nicholls spoke and he believes that there is a need to refer to altering section 13 of the Constitution. I looked at the provisions in section 13 of the Constitution and the truth is, you can find an argument on both sides. If you can find an argument on both sides, the safer thing to do is to say that you are altering section 13 of the Constitution to the extent necessary to best ensure the attainment of the purposes specified.

Mr. President, logic would tell me that if there is no need to alter the Constitution in order to effect the purposes then it would not be altered. Senator Linton made an important point and I believe that would have helped to guide the Attorney-General's office in taking this course. Something as important as this, I believe that it was useful even if not necessary to ensure that it was passed in such a way that we have paid as close attention to the Bill as we have at this moment.

Mr. President, if we were passing this Bill by a simple majority and not a two-thirds majority, I do not believe that everyone, including the public, would have paid as much attention to the Bill as we have seen. I believe that is very important. Therefore, I cannot find any fault with the approach that would say that if you recognise that they could be arguments on both sides, that you take the step and precaution necessary in terms of stating on the face of the document that there is an alteration to the Constitution and that you need a two-thirds majority.

I am very pleased with the step that Barbados has taken in terms of ensuring that we now have access to these forensic procedures including DNA testing and that we have also set up the institutions necessary. The Director of the Forensic Sciences Centre is identified in the Bill and the concerns about whether the Director will destroy information or the possibility that information will be given away, I think that there has to be a presumption. There is nothing that I know in terms of that particular post that would suggest to me that individual would be so contemptuous of a court order, that if the court ordered that materials should be destroyed that person would not destroy them.

Mr. President, my good sense also tells me that there are procedures within the context of our court procedures to deal with persons who refuse to carry out orders of the court. It also tells me that a person who holds such a position within the government service and refuses to carry out an order of the court, that person would also be dealt with within that context.

Sir, that is why I made the point earlier that all of the legislation that we pass here falls within an existing legal framework and, therefore, it is not in every single instance

that we need to repeat penalties, procedures and actions that would be taken with respect to any particular situation. I think that it is very important that we bear that in mind for other pieces of legislation that we would come across.

Sir, in terms of the DNA database, concerns were expressed about the storage of information on a database. I know that when individuals think about storing information on a database they may think that it is something new but there is a lot of information in Barbados that is already stored on databases. The Land Tax Department, National Insurance Department and other government agencies store information on a daily basis on our databases. They do not all have to be high-powered technical databases with specific software. Sir, when you have a word document and you create a table and you store it on a database, it is information that you have stored on a computer system. I have data on my computer at home.

Sir, within the context of Barbados, for many years we have been putting information of databases. In terms of additional work that needs to be done with respect to protecting that information, legislation will soon be considered within that context as well.

Mr. President, I have no difficulty with supporting this piece of legislation. I am pleased that most Honourable Senators in their presentations supported the good intentions of the Government in terms of putting this legislation in place. We will see how this piece of legislation works, as we see with all legislation. Sir, when the time comes and there any amendments are to be made, those amendments will be made. That is the case with all legislation that we have passed and that is why we have amended legislation on a fairly regular basis. It does not necessarily mean that anything is wrong with the thinking at the time but often the thinking changes. We have no desire whatsoever to encroach on the fundamental rights and privileges of any Barbadian.

Mr. President, thank you for your indulgence and I offer my support for this Bill.

Mr. PRESIDENT: Senator Lowe.

SENATOR Dr. D.S. LOWE: Mr. President, I rise to make my contribution to this debate and to certainly congratulate and endorse the presentation made by my colleague, the Honourable Leader of the Opposition Business in the Senate and generally of the contributions made by others. I believe that all of us would have come to this Chamber anticipating that there would be some vigorous debating, particularly since the question of freedoms and rights sit at the heart of this particular Bill.

Sir, I believe that the records of history would show that whenever discussions on rights and freedoms occur,

those who are engaging in such discussions find it necessary to pursue those types of debates with passion and a certain degree of sincerity, understanding that while one may sit on one side of the political fence today, as one of the Honourable Senators quite aptly said, tomorrow that same person may be sitting on the other side of the fence.

17.00 p.m.

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Senate 25, sequence 31, 5.00 p.m.

Senator Dr. D.S. LOWE: The decisions we make today, relative to the guarding of our freedoms, under the Constitution of this great country, will not only impact upon our generation but will continue to impact upon generations to come, because at the heart and soul of our democracy, is the freedom it provides its citizens.

Sir, I understand why in some cases the debate would have gotten vigorous because, I would like to be on record, as I believe would most of us that when generations tomorrow review this particular Act, the Annals of this Chamber would reveal that we all took care in antagonising the content of this Bill to ensure that content reflects what we believe to be the moral, ethical and social rightness of why we are here in this Chamber.

I thoroughly enjoyed listening to the debate today and certainly have been energised by my colleague, particularly moved by the presentation by Senator Barker who, perhaps, in a mood unexplainable tried to ensure a consensus in agreement. I hope that is an endowment that is permanent and not just a fleeting moment because of the nature of this particular debate.

Mr. Speaker, as I listened, I thought at this stage of the debate whether or not it was necessary to get involved because, really, I think a lot of the issues have been brought forth. There are a couple of areas that I want to visit relatively quickly.

Sir, one has to do with the collection of evidence. The real power of this forensic science does not absolutely rest in the language of this legislation but it rests on the practices that happen after the legislation has been enacted. Those practices to me are significant because the real value of forensic evidence, as I understand it, only come to play when the collection of evidence is done following the stipulated rules and regulations, as set forth by some document.

I am sure that those who would now proceed to engage in the collection of evidence would not refer to this

piece of legislation but that their work perhaps would be guided by some mandate that stipulates clearly what the procedures, the practical elements of making this work would be.

There is a saying, as I understand it in forensic science that what goes in comes out. Therefore, if contaminated evidence goes into analysis, a contaminated result would be achieved. I thought to myself, perhaps that is important because what that says to me, Mr. President, is that the operational standards of the Forensic Centre would have to be clear and well-defined. Those persons who would be collecting forensic evidence must be duty qualified, bearing the competencies necessary to reflect the accuracy or the pureness of the science.

Therefore, I would want to believe, Mr. President, that we would have to be, in terms of protecting people's rights, extremely careful, and indeed, guarded to ensure that those persons who are involved in the collection of evidence, do it following the law.

Sir, a lot of us sometimes frown on the suggestion that law enforcement officers can at times be very careless in how they do their business, that is why it is necessary to set up bodies to look at certain areas of police practice. We know that history reflects upon certain landmark cases, the world over, where the contamination of evidence may have resulted in a guilty person being set free, because the burden of proof necessary to be gleaned from the evidence was considered to be compromised because of the contamination of a crime scene.

Mr. President, we know that there are times when crimes that involve fatalities occur, it takes the police too long to get to the scene. From time to time, bodies go into rigor mortis because of the extended delay in the arrival of the law enforcement persons, and by that time crime scenes are trampled by persons who are not forensic scientists but persons who, out of curiosity or sometimes persons who, out of mal-intent may choose to go and contaminate the site. Therefore, the caution that I would want to extend is that as we proceed on this road that so many of us believe is a worthy road to travel relative to the advancement of the criminal justice process in the country, it would be necessary to ensure that if we place this kind of emphasis on the use of forensic evidence, those persons who are involved in the collection of evidence are duly qualified.

Mr. President, I would move a step further. I would also suggest, if my understanding is correct, the storing of evidence is also of critical importance, not only in the transportation of that evidence from the scene to the lab, but when it gets to the lab, the storing of it there, to ensure that there is no in-house contamination, the temperatures which are necessary to preserve the samples are correct, and persons handle the samples in a manner where they

cannot transport contamination from themselves to the samples. Again, Sir, if the evidence is contaminated going in, the result would be contaminated.

Mr. President, there are people in this country who, every day have queries about rights and freedoms. I would want to know at the end of the day, based on the contributions of all Honourable Senators who spoke on this particular Bill, they feel a lot better thinking that if, perhaps, they fall on the wrong side of the law, as an Honourable Senator said today that, maybe, one of us could fall on the wrong side of the law, whatever befalls the situation, we would have participated in a process which helps to guarantee the protection of our rights and freedoms under the Constitution.

Therefore, we have to look at the storing of evidence. I would like to see, or at least have the Honourable Minister and Leader of Government Business tell us whether or not the forensic lab or centre has compiled any such document that would guide the execution of the science at the lab or wherever the site is that the science would be needed.

This is important and you cannot have confidence in any forensic environment, where there is no evidence or documentation of clearly spelled out procedures, or what are required for practitioners to become a part of the practice within that environment.

Senate 25, sequence 31, 17:10:15

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SENATOR Dr. D. S. LOWE: I am a little concerned about that because the description of a police officer's job at present does not include any kind of training that would allow him or her to be so intimately involved in the process. I am saying that if they are going to be involved, I would hope that the training, one of the Honourable Senators talked about, be put in place to ensure that when they become involved in the process they have all of the competencies necessary to make the delivery of that particular service a delivery that is proper and that the service works to the benefit of protecting the rights and freedoms of our people.

Sir, the other issue was about the disposal of evidence, and I think that was made. However, I would like to make the point that if evidence sits around, and an Honourable Member said that perhaps it is an administrative function to dispose of evidence... Once that period of disposal has been determined, I would like to know what the Forensic Centre methodology for disposal is going to be and what would be the true stipulation of who is involved with the disposal of evidence. It is not uncommon for functionaries not to see the importance of

the task that they have been given. Sir, therefore we would not want any kind of discrimination against any citizen resulting from the poor handling or disposal of evidence that could be used by insurance companies or by anyone in the country because it has not been properly disposed of. I think that is one of the things that has to be clearly examined and tightened up because when you put your DNA on the line, you put your entire existence on the line.

Mr. President, I thank you.

Senator G. P. I. GOODING-EDGHILL: Mr. President, I too rise to support the Bill before this Honourable Chamber and I am going to be particularly brief.

Mr. President, I have to say that this Forensic Procedure and DNA Identification, Bill, 2005 which is before this Honourable Senate is a major step in advancing justice through DNA technology. As legally admissible confessions are becoming more and more difficult to obtain and with the limitations that are imposed on investigators, it is absolutely necessary that we use DNA technology to maximise justice in any society, particularly our society.

Mr. President, Senator Lowe made a remark not so long ago when he made reference to the police. He said that he had a little concern about police officers collecting evidence. Mr. President, I think he would come to regret that statement. All over the world, Mr. President, police officers are involved in collecting evidence particularly DNA evidence, so it is unfortunate that the Senator would wish to use this as an opportunity to suggest that local enforcement officers are incapable of collecting evidence, but I would come back to him because he would have to defend that statement in due course.

Mr. President, I want to go and speak a little to the purpose of the legislation. Prior to this year, scientific investigations conducted by the Forensic Centre have been carried out under the umbrella of the Evidence Act, particularly the Drug Abuse (Prevention and Control) Act. As the services were limited, the legislative framework proved adequate at the time. However, with the expansion of investigations and the establishment of DNA profiling a review was absolutely necessary. The draft Forensic Procedures and DNA Identification Bill has been prepared to support present and future forensic activities of the Centre including DNA identification, as well as to provide a framework for the eventual regulation of private forensic centres. Sir, it speaks to the vision as to how we want to go in Barbados.

Senator Parris made reference to the future of the Centre in terms of its revenue, particularly its foreign exchange generating capacity and the creation of employment opportunities, so I would not want to repeat

those issues. However, I would like to say that what we have in Barbados is certainly going to continue to be the envy of the Caribbean. The Bill, as far as I gather, has been modelled from the Australian Crime Forensic Procedure Act, 2000. The Bill sets out a very broad framework for the utilisation of forensic services as part of the criminal justice system in Barbados.

Mr. President, there has been a lot of talk about the database system and how it would work and there have been suggestions as to the integrity of the database system. Mr. President, again in the developed world, particularly in the United States of America, we have seen and we know that they have database systems and there are developed, there are several centres responsible for database collection. You have individuals who maintained DNA profiles derived from crime scenes, missing persons, unknown deceased persons, serious offenders, volunteers or suspects. Therefore, the Bill sets out and basically ensures that the Forensic Services Centre will adequately and securely maintain electronic data profiles relating to crime scenes, evidence and convicted offenders. Therefore, I do not think there should be any major concern about the preservation or the security of DNA profiles derived from persons.

The Opposition also made reference in their earlier presentation about the Status of Children Reform Act. It is important to note that as part of the measures contained in the Bill, that it is absolutely necessary that you would have to amend the Status of Children Reform Act, Chapter 220. It would require a further amendment in order to allow for the application of DNA forensic analysis to ascertain parentage et cetera. I would go further and say that there would also have to be a further amendment to the Evidence Act to support the Bill before this Honourable Chamber. I do not believe that there is any need to alarm the society in giving the impression that the legislation is weak. The legislation is very strong, Mr. President, and, like I said in my opening, it would definitely help in advancing and enhancing justice through DNA technology.

DNA technology, Mr. President, is very necessary. It is increasingly vital to ensure accuracy and fairness in the criminal justice system. DNA testing can be used to identify criminals with incredible accuracy where biological evidence exists. DNA technology can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes. We can use DNA technology to protect the innocent as well as to identify missing persons. There are several examples of the successful use of DNA profiling, for example, in the United States of America.

Senate 25 Sequence 32

5.20 p.m.

Friday, February 18, 2005

SENATOR G. P. IAN GOODING-EDGHILL: Mr. President, you will recall sometime ago in 1999, the famous Green River killing, where, in 2001, the New York authorities had linked a man, through DNA evidence, to at least 22 sexual assaults and robberies that had terrorised that city. Sir, DNA evidence provided a major breakthrough in a series of crimes that had remained unsolved for years.

In 2002, authorities in Philadelphia, Pennsylvania and Colorado, used DNA evidence to link and to solve a series of crimes, including rape and murder, which were perpetuated by the same individual. Therefore, we can reasonably conclude that if we want to protect and to secure our society, if we want to ensure that justice is done and that we protect innocent people, there is no question whatsoever, that DNA is very useful.

Mr. President, it is particularly successful in solving crimes in two ways. In cases where a suspect is identified, a sample of that person's DNA can be compared to evidence taken from the crime scene. The results of this comparison may help establish whether the suspect has committed the crime. In cases where a suspect has not been identified, biological evidence from the crime scene can be analysed and compared to the offender's profile in DNA databases. Therefore, once again the database can help us. It will protect the innocent and there is much evidence of this around. We can go back to several areas elsewhere in the more developed countries where we have seen that after being incarcerated for long periods, innocent persons were finally released. They were exonerated because of post-conviction DNA test, as they are referred to.

Mr. President, the issue the police officers and other people at the criminal justice system being trained in the proper collection, preservation and use of forensic DNA evidence, it would be fundamental that they would be trained. With any new introduction of legislation, policies, regulations, et cetera, there is a certain element of training required and it is, therefore, reasonable to conclude that if Government is going to roll out substantial legislation and regulations, that there would have to be an element of training.

Mr. President, my understanding is that substantial consultation have been had with the judiciary and, therefore, we can tell that the planner were involved in a cross-section of dialogue, in order to assist everybody in understanding the process.

Mr. President, I feel relatively secured that since the fundamental knowledge of DNA technology is central for police officers to collect and to store evidence properly, for prosecutors to introduce it successfully in court, and for

judges to rule correctly on its admissibility, that there will be a number of training sessions. Sir, if I am not mistaken, perhaps training sessions have already started and there are some persons, who, perhaps on their own, have gone elsewhere and have commenced training activity.

Mr. President, I do not think we need to worry about whether or not the police officers or others in the criminal justice system would have the necessary and appropriate training to execute the collection and storage of DNA evidence. Certainly we have well-trained persons working in this area in Barbados and we have a number of other Barbadians who are recognising the value of forensic sciences and who are now moving in that direction with regards to their studies. Therefore, I do not think that we need to fear what will likely to come about as a result of this legislation.

Mr. President, I can only say that any person refusing to support the Bill before this Honourable Chamber will perhaps be an admission that persons are not interested in their safety and security or that they are not interested in protecting the innocent. Maybe they will not be interested in exonerating persons who are mistakenly accused or convicted of crimes, or that perhaps they do not want to ensure the accuracy and fairness in the criminal justice system.

Mr. President, I will support this Bill before this Honourable Chamber and I encourage all Honourable Senators to join with the Government in supporting it.

Mr. President, I am much obliged to you.

SENATOR R. W. GRANT: Mr. President, in my very short presentation I would want my voice to be heard, along with the voices of the Honourable Senators on this side, in support of the Forensic Procedure and DNA (Identification Bill), 2005.

Mr. President, Barbados is a country well-positioned in the very near future to become a developed country, a country integrated in the modern aspects of governance of science and technology. Sir, the utilisation of modern technologies and the effective use of forensic science to assist us in solving legal problems in the courts of law, is very important.

Mr. President this Bill which is before this Honourable Chamber provides the ability to doing precisely that. The point has been made, and I think that it needs to be reiterated, that within this Bill, there is the element of ensuring that the rights of individuals are protected. Reference was made throughout the debate to clause 31, which speaks to:

“An authorised person or a police officer, who is authorised to carry out a forensic procedure on a person, may use such reasonable force as is necessary

(a) to enable that procedure to be carry out; or

(b) to prevent loss, destruction or contamination of any sample.”

Sir, further, clause 32 (1) makes reference to the fact that:

“The Act does not authorise the carrying out of a forensic procedure in a cruel, inhuman or degrading way”.

Sir, that is very important because it identifies and gives due regard for persons human rights and dignity.

Mr. President, it is very clear that in ensuring that we bring this Bill before this Honourable Chamber, that every consideration was given to ensuring that the rights and basic dignity of all people would be protected and that there is no indication, whatsoever, that there would be any infringement on those rights.

Mr. President, I would like to speak very briefly to the purpose of the legislation because it has been prepared to support present and future forensic activities of the Forensic Services Centre, which include DNA testings and the various blood works. Sir, an aspect of the Bill also speaks to international accreditation.

5.30 p.m.

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SENATOR R.W. GRANT: This is very important because it allows Barbados to be able to sell and offer these types of forensic services within the global scientific market. As I stated earlier, Barbados is on the path of becoming a developed country and all of these aspects are very important in that end result.

Sir, I believe that this Bill is of extreme importance. It will not only protect the rights of the people but it will ensure that we can properly utilise science. I accept that in no aspect of life one can speak of anything with 100 per cent certainty. This Bill allows us to use science to be better able to make a determination, not only to issues of criminal activity but also in relation to issues dealing with parenting and the determination of who are parents.

I believe that this Bill is very important and I simply want to join with Honourable Senators in supporting this Bill and encourage all Honourable Senators to do likewise.

I thank, Sir.

Mr. PRESIDENT: Senator Sir John Goddard.

SENATOR Sir John GODDARD: Mr. President, over the years I have participated in many debates in this Honourable Chamber and in my opinion this has been one of the better debates. This has come to be no surprise to me because we are dealing with two very important and fundamental issues.

Sir, the first one is justice. There is a craving for justice in every human heart and if we can improve the quality of justice by the better use of DNA analysis, the whole society benefits.

Secondly, there is the question of an individual's rights and privileges and that is placed alongside justice because you cannot have one without the other. This is a very important Bill and I am proud that my colleagues have visited the Bill and contributed so much to it.

Mr. President, we have heard different points of view and I think that is the way it should be. I think that we are all at one in agreeing with the objective of this Bill, which is to improve justice and preserve the fundamental rights and freedoms that we enjoy and some times take for granted.

Mr. President, I have no difficulty in giving this Bill my full support.

I thank you.

Mr. PRESIDENT: Senator Griffith.

SENATOR HON. E.R. GRIFFITH: Mr. President, let me thank all Senators for their contributions to this debate. I agree with Senators who have spoken before me that it has been a very interesting debate.

Sir, I have taken note of the various concerns which have been raised. In my discussion at lunch with the legal advisors, they were able to give me some advice on some of the issues. For example, on the issue raised in relation to one of the Schedules, they advised me that is a matter that can be dealt with outside of this discussion by an Order. Therefore, there is no need for us to worry about it because it is not a fundamental issue.

Mr. President, the Bill before us speaks about the forensic procedures and DNA identification. I want to spend a little time on this because there are two different issues. If we get it right, we would not be unduly worried about the role given to the police in Clause 31 because all of us know that at the moment the police is engaged in the conduct of certain forensic procedures, fingerprinting, photographing and things of that nature.

We must not assume that the types of procedures in which the police will be engaged are intimate ones because there is a distinction made in the Act between intimate procedures and non-intimate procedures. The intimate ones relate essentially to the DNA identification and DNA profiling issues and the Bill is very clear on who should do what and under which circumstances.

I am going to presume that the members of the Royal Barbados Police Force and the persons who are working in the Forensic Centre are persons of integrity and that they will carry out their duties with the utmost integrity. I am not going to make any other presumption and, therefore, I am not going to attribute any other motives to them at this stage.

Sir, we have procedures in this country to deal with persons who fail to carry out their duties. This particular Bill before us sets out what is expected of the various individuals and in what circumstances and it also sets out how they will be dealt with if they do not follow those procedures.

Unlike a few Senators, I am not of the view that we cannot expect anything but the best from our Royal Barbados Police Force or the staff of the Forensic Centre. I have the utmost confidence in them and I expect them to fulfill that confidence.

Mr. President, as a society, we have to trust the people that we put into positions. Human nature would fail from time to time but we have to proceed on the basis of trust. Therefore, I am proceeding on that basis and I would urge all Senators to do likewise.

Sir, the Bill sets out the various protocols which will be followed in relation to the DNA profiling. Let me say, in relation to an issue raised by Senator Lowe, that the Forensic Centre has been functioning for quite some time and that forensic procedures have been carried out in Barbados for some time.

Sir, DNA profiling is new and they have not yet engaged in those and the legislation is seeking to create the legal basis for them to get involved in that. To date they have not been engaged in the DNA profiling but they have been carrying out forensic services for the Queen Elizabeth Hospital, courts and private medical institutions, so that is not an issue.

Mr. President, the lab is set up on the basis of advice from the DNA Advisory Board which sets the international standards. They have developed in-house protocols which would enable us to adhere to those standards. In fact, in the Bill there is reference to the Director of the Forensic Services Centre relating to experts in that area in an effort to follow the international standards. We are not expecting

anything less than the best from the Forensic Centre when it gets involved in the DNA profiling subsequent to the passing of this Bill.

Mr. President, there was an issue raised by Senator Marville. It was not a serious issue but I would just mention it. It is in relation to Part III when Senator Marville looked at the heading and said, "Non-intimate forensic procedures by order of a police officer". Then he explained that we do not know what level of police is involved and that is true if you look at the heading.

Sir, if you read Clause X, which is the first clause under Part III, you will know what it means because it is clear. It says:

"Subject to this Part, an authorised person may by order of a police officer of the rank of inspector or of a higher rank..."

S25/17:40

Sequence 34

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SENATOR HON. E.R. GRIFFITH: Sir, to look at the heading and then suggest that it is not correct. The paragraph is clear.

Mr. President, I think reference was made by Senator Stuart to Clause 31. There is reference to a police officer who is authorised to carry out a forensic procedure. The police officers have been carrying out forensic procedures for a long time. They have been doing fingerprinting and photographing for a long time. I had on one occasion to go to Central Police Station to get a Police Certificate of Character and I had to be fingerprinted in order to get that Certificate of Character. I did not suffer any ill-effects by doing that. They have been carrying out that function for a long time.

Sir, it is incorrect to assume that we are speaking here about DNA identification, so there is no issue here about a police officer who is authorised to carry out a forensic procedure if it relates to fingerprinting and photographing and things of this nature.

Mr. President, other issues were raised. There were not fundamental but nevertheless I raised that with legal people. There was an issue with reference to sections which spoke about an indictment liable for a fine. The advice given by the drafting officer is that it is a style which they used before. It is not a fundamental issue because we have a history of proceeding on the basis that a person is innocent until found guilty and that there has to be trial to determine the liability of the person. One must not presume

that this section should be interpreted to mean that a person would be fined without being tried. That is what was being suggested.

Sir, with those few issues I will bring the debate to a close and move that this Bill be read a second time.

A division has been called for.

The Bell was rung.

DIVISION

The question that the Bill do now pass was put and resolved in the affirmative, the Senate divided as follows:

Noes: SENATOR HON. E.R. GRIFFITH, SENATOR the Hon. Miss L. V. EASTMOND, SENATOR T.E. BARKER, SENATOR R.W. GRANT, SENATOR I. St.C. LINTON, SENATOR Mrs. S.A. HUSBANDS, SENATOR P.E. PARRIS, SENATOR G.P.I. GOODING-EDGHILL, SENATOR G.P.B. NICHOLLS. SENATOR Sir Allan FIELDS, SENATOR the Very Rev. H.E. CHRICHLOW, SENATOR the Hon. Mrs. V.E. NEWTON, Senator Sir John Goodard,er Honour Senator Dame Patricia SYMMONDS, SENATOR Dr. F. L. CHANDLER - 15

Noes: SENATOR F.J. STUART, SENATOR Dr. D.S. LOWE - 2

Abstention: SENATOR R.O. MARVILLE - 1

Mr. PRESIDENT: The Clerk has reported to me that the result of the division is 15 Honourable Members voted for, and 2 Honourable Members voted against and there 1 abstention.

On the motion of SENATOR HON. E.R. GRIFFITH, the Senate resolved itself into Committee on the Bill, Senator Dame Patricia SYMMONDS in the Chair.

Committee

SENATOR Dame Patricia Symmonds: The Honourable Senate is now in Committee.

Clause 1 was called and passed. called.

SENATOR F.J. STUART: Madam Deputy President, I just want to draw attention to a point which I believe was made by Senator Newton earlier that the definition of forensic procedure means both intimate and non-nontimate forensic.

Madam DEPUTY PRESIDENT: Senator Stuart, I am sure that you recognised that was a typographical error and I can assure you that these things have already been

drawn to the attention of someone who is in authority and has assured us that those changes will be made. Thank you for drawing it to our attention.

Part 1 was called and passed

Part II was called and passed.

Parts III to V inclusive were called and passed.

Part VI was called.

SENATOR F.J. STUART: Madam Deputy President, I just want the Honourable Leader of Government Business to clear something for me. Clause 35 defines "police office" as meaning police officer who is an authorised person under section 36. Section 36 uses the expression "an authorised person", which has already been defined in Clause 2 meaning a medical practitioner, a dental practitioner, a dentist or a forensic scientist. A person who is a suitably qualified person, approved by the Minister to carry out the procedure.

17.50 p.m.

Sequence 35

Friday, February 18, 2005

Senate 25, sequence 36, 5.50 p.m.

Senator F.J. STUART: I am just asking the Honourable Senator to indicate who is likely to be authorising the police officer, if the police officer in clause 36 is different from the authorised person in Clause 2 of the Bill.

Senator the Hon. E.G. GRIFFITH: Madam Deputy President, of course, I would have to take legal advice on it but it appears to me that it could easily be under an order of a magistrate. I would have to clarify that with the legal drafters.

Madam DEPUTY PRESIDENT: Thank you both, Senator Stuart and Minister Griffith.

The question was put to the Senate and agreed to.

Part VI, clauses 35 to 47 were passed.

Part VII, clauses 48 to 54 were called and passed.

Part VIII, clauses 55 to 58 were called and passed.

Part IX, clauses 59 to 63 were called and passed.

Part X, clauses 64 to 75 were called and passed.

Part XI, clause 76 was called and passed.

Part XII, clauses 77 to 85 were called and passed.

Part XIII, clauses 86 to 92 were called and passed.

Part XIV, clauses 93 and 94 were called and passed.

The First Schedule was called.

Senator G.P.B. NICHOLLS: Madam Deputy President, may I draw the Committee's attention to page 70 of the Bill. Clause 2 at the beginning reads:

"(2) A police officer who is of the opposite sex to that of the suspect may only be present during the carrying out of a forensic procedure where it would not be reasonably practicable to have present the officer of the opposite sex."

Madam DEPUTY PRESIDENT: Yes, that has already been drawn to the attention of the Honourable Chamber, Senator Nicholls, but thank you very much. It has been dealt with and we have been assured that can be done without any change to this immediately.

Honourable Senators, I wish to point out that this is just a typographical error and, as had been mentioned previously, that will be changed, to read,

"(2) A police officer...of the same sex."

Instead of:

"(2) A police officer...of the opposite sex."

Thank you, Senator Nicholls.

The question was put to the Senate and agreed to.

The First Schedule became the First Schedule to the Bill.

The Second Schedule became the Schedule to the Bill.

The Third Schedule became the Schedule to the Bill.

On the motion of Senator the Hon. E.R. GRIFFITH, Madam CHAIRMAN reported to His Honour The PRESIDENT, the passing of one Bill, with amendments, in Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of Senator the Hon. E.R. GRIFFITH, the Bill was read a third time.

Senate 25, sequence 36, 18:00:14

Friday, February 18, 2005

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I wish to draw to your attention that this Bill requires a two-third majority vote for its passage since it deals with an alteration of a section of the Constitution.

A Division has been called for.

The Senate dividing as follows:

AYES: SENATOR the Hon. E. R. GRIFFITH; SENATOR the Hon. Miss L. V. EASTMOND; SENATOR T. E. BARKER; SENATOR R. W. GRANT; SENATOR I. St.C. LINTON; SENATOR Miss S. C. V. HUSBANDS; SENATOR Miss P. E. PARRIS; Senator G. P. I. GOODING-EDGHILL; SENATOR G. P. B. NICHOLLS; SENATOR Dr. F. L. CHANDLER; SENATOR A. C. FIELDS; SENATOR the Very Reverend H. E. CRICHLAW; SENATOR the Hon. Mrs. V. E. NEWTON; SENATOR Sir JOHN STANLEY GODDARD; Her Honour Senator Dame Patricia SYMMONDS. 15

NOES: SENATOR F. J. STUART; SENATOR Dr. D. S. LOWE. 2

ABSTENTION: SENATOR R. O. MARVILLE. 1

On the separate motion of SENATOR the Hon. E. R. GRIFFITH, the Bill was passed and cited as the Forensic Procedures and DNA Identification Act, 2005.

ADJOURNMENT

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I beg to move that the Senate do now adjourn sine die.

The question that the Senate do now adjourn sine die was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Senate accordingly.

Senate 25 Sequence 37

6.03 p.m.

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EDITORIAL NOTES — NOT PART OF THE REPORT

Prepared with the transcript; for checking against the recording and the Minutes.

EDITORIAL QUERIES

Points noted while preparing this report from the edited transcript. The text has not been altered except where stated.

Q1. Masthead. The session is not stated in the source, so no session line is printed.

Q2. Division on second reading. Both lists in this division are headed 'Noes'; the first list of 15 Senators, who voted for the Bill, should presumably read 'Ayes'. The question is also recorded as 'that the Bill do now pass', although the Senate then went into Committee. Printed as in the source.

Q3. Division on second reading, names. The first list spells 'CHRICLOW' (elsewhere CRICLOW), runs together 'Senator Sir John Goodard,er Honour Senator Dame Patricia SYMMONDS', and gives 'Mrs. S.A. HUSBANDS' where the speech headings and the later division have 'Miss S. C. V. HUSBANDS'. Printed as in the source.

Q4. Take-slips about 11.30 a.m. and 12.20 p.m.. These take-slips are dated 'Wednesday, February 18, 2005'; the sitting was on Friday, 18th February, 2005, as other take-slips state. Another take-slip reads '17.50 p.m.'. Printed as in the source.

Q5. Report of the Committee of Selection. The report is headed '(First Session of 2003/3008)', presumably 2003/2008. Printed as in the source.

Q6. Order No. 2, title. The Order is headed 'FORENSIC PROCEDURE AND DNA IDENTIFICATION BILL, 2005'; the Leader of Government Business and the third-reading citation give 'Forensic Procedures and DNA Identification', and two Senators call it the 'Forensic Procedure(s) and DNA (Identification Bill), 2005'. Printed as in the source.

Q7. Committee. One speech heading reads 'Senator the Hon. E.G. GRIFFITH' (elsewhere E. R. GRIFFITH); the first Committee entry reads 'Clause 1 was called and passed. called.'; and both the Second and Third Schedules are recorded as becoming 'the Schedule to the Bill'. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The Senate met at 11.15 a.m. on Friday, 18th February, 2005, with the President, His Honour Senator Sir Fred Gollop, in the Chair; prayers were led by Father E. Massiah. The Leader of Government Business, Senator the Hon. E. R. Griffith, laid financial statements and annual reports of the Barbados Marketing Corporation and the Barbados Agricultural Development and Marketing Corporation for years from 1992 to 2000. The Senate adopted the report of the Committee of Selection, made after the passing of Senator Branston Collymore, nominating Senator Sir Roy Trotman to the Standing Orders Committee and Senator R. O. Marville to the Joint Committee on Public Accounts. The Computer Misuse Bill, 2005 was read a first time.

Senator Griffith, Senator F. J. Stuart for the Opposition, Senator Sir John Stanley Goddard for the Independent Senators, Senator Dame Patricia Symmonds and the President congratulated Senator Sir Allan Fields on his knighthood, and Sir Allan replied.

Senator Griffith then moved the second reading of the Forensic Procedures and DNA Identification Bill, 2005 (Order No. 2), which gives a legal basis to the Forensic Services Centre opened in 2003, and took the Senate through it Part by Part, including orders for forensic procedures, volunteers, destruction of forensic material and the DNA database. Senator Stuart said that the Opposition did not fault the Government's motives but would not vote for a Bill that non-textually altered section 13 of the Constitution, the right to personal liberty and to consult an attorney in private, or for police officers carrying out forensic procedures; he wanted more appeal procedures and sanctions for failure to destroy material. Senator G. P. B. Nicholls replied for the Government and withdrew the word 'invective' at the President's request; Senator Stuart rose on a point of order.

Senator the Hon. Mrs. V. E. Newton supported the Bill while confessing difficulties, and Senator R. O. Marville pointed out the misprint 'non-nontimate' in the definition of forensic procedure. Senators Dr. F. L. Chandler, Miss S. C. V. Husbands, the Very Reverend H. E. Crichlow, T. E. Barker, I. St. C. Linton (stopped by the President under Standing Order 34(8)), Miss P. E. Parris, who said the Bill was expected to earn some \$40 million, Dame Patricia Symmonds, the Hon. Miss L. V. Eastmond, G. P. I. Gooding-Edghill, R. W. Grant and Sir John Goddard supported it. Senator Miss Eastmond explained that section 13 was being altered so that the Act could not be struck down as unconstitutional. Senator Dr. D. S. Lowe spoke for the Opposition on the guarding of constitutional freedoms. Senator Griffith replied.

The second reading was carried on a division by 15 votes to 2 (Senators Stuart and Lowe), with Senator Marville abstaining. In Committee, with Senator Dame Patricia Symmonds in the Chair, Senator Stuart asked who would authorise a police officer under clause 36, and Senator Griffith said it could be under a magistrate's order but he would take legal advice; the Deputy President said

that the misprints, including 'opposite sex' for 'same sex' in the First Schedule, would be corrected. Senator Griffith noted that the Bill required a two-thirds majority as it altered the Constitution, and on third reading the Senate again divided 15 to 2, with one abstention. The Bill was passed as the Forensic Procedures and DNA Identification Act, 2005, and the Senate adjourned sine die.