
THE

House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2004

HOUSE OF ASSEMBLY

Tuesday, August 13, 2002

Pursuant to the adjournment, the House of Assembly met at 11.20 a.m. on Tuesday, August 13, 2002.

PRESENT

His Honour I. A. ROETT, G.C.M., B.A., Dip. Ed. (Speaker)

His Honour J. M. EDGHILL, J.P. (Deputy Speaker)

Hon. Sir Henry FORDE, K.A., Q.C., M.A., LL.M. (Cantab.)

Rt. Hon. O. S. ARTHUR, M.Sc. (Econ.) (Prime Minister, Minister of Finance and Economic Affairs) (Minister of the Civil Service)

Hon. Miss M. A. MOTTLEY, LL.B. (Attorney General and Minister of Home Affairs) (Leader of the House)

Mr. D. J. H. THOMPSON, LL.B. (Hons.) (Leader of the Opposition)

Hon. Sir Harold St. JOHN, K.A., Q.C., LL.B.

Mr. L. R. TULL, Q.C., M.A. (Oxon.)

Dr. the Hon. R. L. CHELTENHAM, Q.C., M.A., M.Sc. (Econ.)

Hon. Miss B. A. MILLER (Deputy Prime Minister, Minister of Foreign Affairs and Foreign Trade)

Mr. G. W. PAYNE, LL.B.

Hon. R. C. EASTMOND, B.A. (Hons.), Dip. Ed., LL.B. (Hons.), L.E.C., J.P. (Minister of Labour and Social Security)

Mr. D. CARTER (Chairman of Committees)

Hon. R. N. GREENIDGE, B.A., LL.B. (Minister of Education, Youth Affairs and Sports)

Hon. G. A. CLARKE, B.Sc., Dip. Ed., J.P. (Minister of Housing and Lands)

Hon. R. D. MARSHALL (Minister of Public Works and Transport)

Hon. H. F. LASHLEY (Minister of Social Transformation)

Hon. R. St. C. TOPPIN, LL.B. (Minister of Commerce, Consumer Affairs and Business Development)

Mr. D. St. E. KELLMAN

Hon. Miss H. E. THOMPSON, LL.B. (Minister of Physical Development and Environment)

Mr. M. Z. WILLIAMS

Mr. T. A. PRESCOD, B.A.

Rev. J. J. S. ATHERLEY, B.A., B.Sc., J.P. (Parliamentary Secretary to the Attorney General and Minister of Home Affairs)

Mr. D. T. GILL, B.Sc.

Hon. N. A. LYNCH, B.Sc., M.B.A. (Minister of Tourism and International Transport)

Hon. A. P. WOOD, B.Sc., M.Sc. M.Phil., J.P. (Minister of Agriculture and Rural Development)

Hon. R. R. FARLEY, B.Sc., J.P. (Minister of Industry and International Business)

Hon. Miss C. Y. FORDE, J.P. (Minister of State, Ministry of Education, Youth Affairs and Sports)

Prayers were taken by Reverend Canon Ivan Harewood.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, July 30, 2002.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg to move that the Minutes for the Honourable the House of Assembly for its meeting of Tuesday, July 30, 2002, which Minutes have been circulated, be taken as read.

Rt. Hon. O. S. ARTHUR: I beg to second that, Sir.

Mr. SPEAKER: If there are no corrections or observations, then let these Minutes stand confirmed.

SUSPENSION OF STANDING ORDERS

Hon. Miss M. A. MOTTLEY: Mr. Deputy Speaker, I beg to move, Sir, that Standing Orders Nos. 6, 16, 18, 20, 42(5), 43 and 44 be suspended for the remainder of today's Sitting.

ORDER NO. 7 – CONSTITUTION (AMENDMENT) BILL, 2002

Hon. Miss M.A. MOTTLEY: Mr. Speaker, these amendments which are before this House reflect a commitment on the part of this Government to allow the law of Barbados as it stands to be capable of being executed. I say this, cognisant that when this parliamentary term began on February 16, 1999, His Excellency the Governor-General during his Speech from the Throne made the following comments:

“Having regard to the composition of this Parliament and with a view to giving the fullest expression of the will of the Government and the people of Barbados my Government, without prejudice to the future enactment of constitutional amendments recommended by the Constitution Review Commission will shortly seek to amend the existing Constitution to reverse the effects of the Pratt and Morgan line of cases.”

Sir, that is as clear an expression of policy as to be expected, rooted in the knowledge, with the majority given to this Government, and making it entirely within the will and parameters of this Government to achieve successfully that policy which seeks to reverse a range of decisions beginning in 1993 with the case Pratt and Morgan, all delivered by the Judicial Committee of the Privy Council with the stated intention on the part of this Government that the laws of this land, as stated in the Offences Against the Person Act and the Constitution of Barbados, should be allowed to be carried out.

Mr. Speaker, this is a matter that has attracted tremendous public debate throughout the entire Caribbean and I daresay that it is one of the most vexatious aspects of our modern jurisprudential and constitutional development as independent states. Even though these countries of the region have chosen to assert their political independence, our understanding of the process and structure of Government is that the legislature and the executive constitute two aspects but the judiciary and the Head of State constitutes the other two.

In those circumstances we, though being politically independent, have the anomaly that we continue to have the

highest court of our land outside of the geographical jurisdiction of our country.

This matter will be addressed later by me in the process of my presentation because for the course of time over our independence, these have been the arrangements which have governed our judicial process.

Mr. Speaker, in 1993, the Judicial Committee of the Privy Council sitting in London determined that while they could not state that the application of the death penalty was unconstitutional in respect of the territory of Jamaica that, in truth and in fact, the delay which occurred was such that they felt it constituted cruel and inhumane punishment and that since no such delay occurred prior to the independence of Jamaica in these circumstances any delay on death row after the sentence of death was conferred was to be construed as being unconstitutional.

Mr. Speaker, it is fair to say that in spite of the fact that the Judicial Committee sat then as the final Court of Appeal in Jamaica and, therefore, was binding on Jamaica and not necessarily Barbados, Trinidad or any other Caribbean territory, it has generally been accepted that these pronouncements have persuasive authority and to that extent a series of consequences began. Those consequences led to a number of persons who were already sentenced to death having their sentences commuted to life in prison.

Those of us in Barbados will remember the famous cases of Bradshaw, Roberts and others who, in spite of the heinous nature of the crime and the judgment of the jury and Court of Appeal, now have the opportunity to spend their lives in prison instead of the sentence of the court being carried out.

Mr. Speaker, it is fair to say that this has outraged the population of Barbados and the wider Caribbean that persons who have, after due process, been found guilty of a crime of murder can continue to live at the expense of the State in circumstances where the sentence of the court was contrary and the sentence of the court was that they should suffer death by hanging.

Mr. Speaker, this is a difficult thing for a population that believes itself to be independent to understand. This is a matter which the average man in the street finds the greatest difficulty with because he understands that we became independent in 1966 and that we have responsibility for our internal affairs, that Parliament acts as a sovereign entity and that the institutions of this country act as sovereign entities. But, the nicety that has allowed the Judicial Committee of the Privy Council to remain as the final Court of Appeal is something that has distanced many citizens from the Government of this country and although the Government for wider reason has asserted that this situation should change, it has not happened to date.

Mr. Speaker, I believe we have a responsibility as a Government recognising that the twin pillars of the Constitution rest upon the sovereignty of Parliament and the rule of law to ensure that the rule of law is always maintained.

Mr. Speaker, I strongly believe that the paramount obligation of a Government is to protect its citizens. If we accept that the obligation is to protect its citizens, then it must be done in the context where the rule of law is upheld and maintained at all times. There is no more heinous crime in any civilised society than the rule of law not being applied or being observed in the breach. Sir, that then sets a cancer that eats at the fabric of the society, such that our capacity to maintain order and transparency and the evenhandedness of the application of rules disappears. I believe that we confront a crisis in this society where we are prepared to say in the face of rising lawlessness and increasing crime that one group of people should obey the law but the State does not have to apply the law in its most fundamental form, particularly when the life of another citizen is taken.
11.30 a.m.

Sir, that is simply the dilemma that we face as a Government. We face it in the context of subcultures within our midst in the region that already reflect serious mistrust in the institutions of government, institutions of the law and we who have the opportunity to interact with elements of this subculture, persons who adhere to this subculture, often hear them dismiss in one word the entire establishment and framework that uphold the rule of law. Sir, they simply tell you that all is 'Babylon'.

Sir, 'Babylon' said so much to those who understand the language. I say that if you also understand that their subculture had its own codes of ethics and values, even if we disagreed with them in part, one of the things that they required of the rest of the society was sincerity, honesty and lack of hypocrisy. It is very difficult to tell persons that they should not breach the law but that the State, in one of its most powerful obligations that it has in protecting citizens, is not able to fully carry out the law.

Mr. Speaker, I started in this vein because I think that it is important that we place this amendment in the context of what is happening in our societies within the region and this is not unique to Barbados. This is a phenomenon that we see throughout the entire Caribbean. It is one with which we must grapple because if power resides in you, then one thing that you cannot do as a Government is to appear helpless and to appear as though you can do nothing about the state of affairs within your midst.

Therefore, I believe very strongly that this Government has the right approach when it determined through His

Excellency's Speech in 1999, that it was absolutely committed to using the legislature to reverse for the future application of matters, the lines of decisions established from Pratt & Morgan and cases flowing therefrom.

Sir, this does not reverse those decisions themselves, but what it does is set a framework for the future application and interpretation of the laws of Barbados. I believe that the public must be told squarely, fairly and up-front that these amendments do not offer an immediate solution. These amendments are not intended to be retroactive. They cannot be. You cannot change the rules of the game on a person midway in the game. This Government, in all that it does, will seek to uphold the rule of law and to afford citizens the right to due process and to the protection of the law as guaranteed by Section 11(c) of our Constitution.

Therefore, Clause 5 of this Bill will make it absolutely clear that the amendments that we seek to bring before this Honourable Chamber, in fact, does not apply to any person on whom the sentence of death was pronounced before the coming into the operation of these amendments. I want to make that absolutely clear, Mr. Speaker, because it is not intended to excite unnecessary and unreasonable public expectation, that as of next week or in three months time, those people who are already convicted of murder will be hanged if their appellant process is completed.

Therefore it means that these amendments will apply to any person found guilty from the October 2002 Assizes onwards as it relates to the amendments of Section 15 of the Constitution in respect of deeming that a mandatory death sentence, that delay on a death row, that prison conditions cannot constitute cruel and inhumane treatment and, therefore, cannot be found to be unconstitutional within the laws of Barbados.

Sir, I make this point because recently four persons had death warrants signed. I want to say specifically that these four persons have already been convicted of murder and, therefore, the amendments of Clause 2 of the Bill, with respect to cruel, unusual and inhumane treatment will not apply to them.

Mr. Speaker, what will apply to them in the Bill is the section in relation to the amendment of Section 78 subsection 6 of the Constitution, since they have not yet petitioned an international human rights body, when that section – as it does – empowers the Governor-General in accordance with the advice of the Privy Council to set prescribed time limits within which they must petition the international human rights bodies and within which the Privy Council is entitled to wait for a report, that section would apply to them.

Sir, I can only say to you that I will come back and update this Honourable Chamber as to the developments in relation to that appellant process. Sir, let it be known that these amendments apply to, in relation to cruel, unusual and inhumane treatment, only those person who have not been convicted of murder. Therefore, the next Assizes that we have it is possible, it may not happen but if it does happen, the next person convicted of murder will have to operate within the context of these amendments under Clause 2 of this Bill.

Mr. Speaker, it is significant to me that we have to explain carefully to the public the kind of environment within which the Caribbean has been operating internationally in respect of this desire to maintain the death penalty as a valid and legal punishment within the laws of our lands. The truth is, there has been a strong and effective lobby at the international level, some would even venture to suggest that it may well be a concerted attempt on the part of international human rights bodies working in tandem with some countries to ensure that the Caribbean countries remove from their statute books, the death penalty.

I believe that you would have to be blind not to recognise that there is overwhelming support for the maintenance of the death penalty in the Caribbean. Caribbean people believe, and it may have to do with the smallness of the societies since unvariably the victim as well as the perpetrator is usually known to the average population. It may have to do with the strong religious character of our societies which root a lot of their beliefs in the Old Testament: "an eye for an eye". It may have simply to do with our socialisation, but whatever it relates to, the reality is that Caribbean people believe that if you take a life then you must be prepared to lose your life at the sentence of a court after due process.
11.40 a.m.

I want to reinforce after due process because it is an irony of significant proportion that the region of the world that is perhaps best known and best practices the precepts of democracy and the maintenance of the rule of law is the region of the world that is most under attack from these international human rights bodies. We do not hear them attack sufficiently other regions that know what it is to violate the rights of the average citizen day by day. But in the Caribbean where there has been a strong commitment to the precepts of good governance, to the precepts of free and fair elections, to the precepts of democracy, to the precepts of the maintenance of the rule of law you would now believe if you lived in a developed country or in other parts of the Commonwealth that the Caribbean was guilty of the most blatant human rights obligations that it was possible to be guilty of.

What are the facts, Mr. Speaker? Every single human rights convention recognises the death penalty as a legitimate

penalty of a court to be used by States in serious cases. Let me carry you through them.

The United Nations Convention is known as the International Covenant on Civil and Political Rights. Article 6 of that Convention recognises the validity of the death penalty used by the State in serious cases. Mr. Speaker, these facts have to be known. The American Convention on Human Rights which governs those States largely aligned with the Organisation of American States in Article 4 recognises the death penalty as a legitimate penalty to be exercised by the State in serious cases. We are not members of Europe but it cannot escape attention because many of our constitutions in the sixties in particular derive from the European Convention on Human Rights. Article 2 of the European Convention on Human Rights affords the State the right to use the death penalty in serious cases.

Mr. Speaker, when it is said across international journals and across international media that the Caribbean continues to exercise a barbaric penalty in a civilised world as if we are guilty of the most flagrant breach of human rights let it also be known that the conventions to which they are signatory and which we generally accept govern the conduct of social and human relations between citizens and between citizens and the State recognise that the death penalty is a legitimate punishment.

What is the death penalty used for? What are these crimes? Do we seek to use the death penalty in Barbados for theft? Do we seek to use the death penalty in Barbados for burglary or robbery? The death penalty in this country, Mr. Speaker, is reserved for the kind of murder under the Offences Against the Person Act. The death penalty in this country though not used within living memory is available for the offence of treason. Indeed, Mr. Speaker, recognising that where death follows in the context of a terrorist act this Parliament has agreed that in circumstances where the crime of murder is committed in the context of a terrorist act that it should also be available for that crime.

I, therefore, find it very difficult not just as a Member of this Government but as a citizen of this country to accept the condemnations and the judgments of persons who have no knowledge of how this society is either organised or functions and who seek not just to pass those judgments but to tie their perception of how the world should be ordered to other aspects of our international relations with them.

Mr. Speaker, you do not have to go far. A former Prime Minister of Sweden went so far as to indicate at an intergovernmental meeting of the European Union that the abolition of the death penalty should be placed high on the agenda as a pre-condition for enhancing trade and investment in the Caribbean. In 1999, in June, a UK Member of Parliament, Chris Mullins, stated these words

with reference to a debate addressing the use of the death penalty in Jamaica and Trinidad & Tobago and I quote:

“When the High Commissioner of Jamaica tells me that his country has a sovereign right to do what it wants, I accept that this is so. However, we have a sovereign right not to provide Jamaica with aid, trade preferences and debt relief. The Government has rightly committed to an ethical policy seeking to forge clear connection between the countries that we choose to help and the degree of democracy and civilised behaviour in them. The principle should be applied forcefully in the Caribbean.”

Mr. Speaker, I told you that I, like the counter-cultures in the Caribbean, abhor hypocrisy and I want to know whether the American Government or any other government in Latin America or any other government in Asia is told that their trade relationships will be compromised if they do not adhere to all of the principles of democracy and human rights. I want to know whether those comments would have issued from anyone in a UK Parliament in relation to the manner in which the President of the United States of America was elected. I want to know whether those comments would have been coming forth from a UK Parliament in relation to the way in which the former Minister of Finance of Malaysia was tried and convicted. I believe, Mr. Speaker, very strongly that there has to be respect at the international level and we do not seek to tell countries what laws should be part of their jurisdiction. We do not seek to tell countries what laws are necessary and reflect the international community and therefore may have a disconnection with their own national mores and national cultural position.
11.50 a.m.

Mr. Speaker, I believe very strongly that we have a right in the Caribbean, being Governments accountable to the people of the Caribbean, to express the will of Caribbean people, through the sovereign act of Parliament, ensuring that what is here is respected. We are not seeking to introduce anything new. We are simply seeking to give effect to what already exists on the Statute Books and has existed as the law of this land since the 17th Century.

I believe that in the same way we must respect the right of wider countries in diverse, ethnic moorings, customs and values that this right must be respected within the Caribbean on the part of the national people.

I also believe, Mr. Speaker, that we have been seeing in the post Cold War era that the one thing that confronts the world is the extent to which people of different ethnic and religious backgrounds are unable to live together harmoniously and cohesively.

We saw it in Africa with Rwanda. We saw it in Europe with Bosnia and Serbia. We see it in Asia and Sri Lanka with the Camels and the Sri Lankan Government. Almost every region of the world, since 1990 in particular, has had some kind of outburst, reflecting the inability of people of different ethnic or religious background to live in the same geographical space, harmoniously.

One of the lessons that we have tried to glean from that, as part of a civilised group of nations, as part of humanity, is that there has to be respect for ethnic diversity. There has to be respect for the traditional customary moorings of people. All we assert today, Mr. Speaker, is the right for that level of respect.

I do not want to dwell any more on that point, Mr. Speaker, but suffice it to say, that this is a matter on which we feel strongly, not only as Governments but as citizens of this region. It is a matter which helps to define our sovereignty as countries, and it helps to define my view of the extent to which we will continue as independent nations, proud of what we stand for and capable of forging a future for our people in the image in which we believe it should be, and not simply because someone says that their perspective is a better perspective.

We felt it in many challenges as a Government over the last decade, whether in the Ship Rider Agreement, whether it is to determine and assert the sovereignty of this Parliament as it relates to taxation in the OECD matter. And now whether it resides within the bosom of this Parliament to assert its right to recognise and respect the rulings of the final court of the land. We recognise them and respect them but beg to differ because every day – and not just the Judicial Committee of the Privy Council – courts find aspects of legislature and everyday Parliaments across the world correct those deficiencies. Now, all we seek here to do is to ensure that those deficiencies, as outlined by the Judicial Committee of the Privy Council in a series of cases, can be appropriately corrected by another arm of Government, namely, the legislature on the advice of the Executive.

Mr. Speaker, it is necessary for me to go into a little recount of the case law which has come about in 1993, and for the benefit of those who have not necessarily followed the developments in this arena, that they should properly understand what has transpired over the last nine years. As I indicated, the first in these line of cases was the case of Pratt and Morgan and the Queen. This is an appeal which went to the Judicial Committee of the Privy Council and which in fact, was an appeal from the country of Jamaica and sought to speak to the issue of delay on death row.

As I indicated, the Judicial Committee felt then that the mere application of the death penalty could not be construed

as unconstitutional because, in truth and in fact, it reflected the position of the *status quo*, prior to the independence of Jamaica and issuance of the savings clauses in the Jamaican Constitution, prevented any law which existed prior to independence, deemed not to be in conflict with the unusual and inhumane provisions of the Constitution.

What they did, Mr. Speaker, was to rule that the length of time, which a person was kept on death row, in fact constituted cruel, unusual and inhumane treatment. In so doing, the length of time that transpired in Pratt and Morgan was much longer than any time that would transpire prior to independence and in the circumstances, it would not have been said to have saved. Therefore, delay on death row was deemed to be unconstitutional.

I want to say, Mr. Speaker, that we generally agree that no person should be kept on death row for any inordinate period of time. We feel strongly that where the sentence of the court is passed and the appellate procedures have been exhausted, that the State has a duty to act swiftly. It is unfortunate that the rules which govern that in Barbados, subsidiary legislation issued in 1976 are no longer following, and like Jamaica, have fallen into disuse.

It is significant that the court reflecting on Pratt and Morgan made the point that the European Commission would have normally determined that seven years would have been the kind of time-frame that would have been acceptable in Europe. Sir, having said that, the Judicial Committee then goes on to say, but we are going to say that it is going to be five years in the Caribbean, where the countries are developing countries, where the institutions may not be as plentiful or as developed as in Europe, and set a lower threshold for Caribbean countries, than that which they admitted exists in European countries.

Mr. Speaker, I am baffled. I respect the decision of the Committee but I am baffled. I simply say that that proved the Administration of Justice is putting the Caribbean into a serious tail spin.
12.00 noon

Mr. Speaker, many countries then have to move to adjust their systems to allow for that five-year time limit.

Mr. Speaker, after the case of Pratt and Morgan v The Queen, there were other cases where it was reduced between 3½ and three years. In Henfield v The Attorney General of the Bahamas, 1997 Appeal case, at page 413, there was an overall period of 3½ years following the sentence of death that would have been seen to be so prolonged as to render an execution as being inhumane punishment, which was contrary to the Constitution.

Therefore, not only have they started at seven years in Europe, they started at five years but came to four years later

in Pratt and Morgan v The Queen, in Henfield v The Attorney General of the Bahamas and carried it to 3½ years. Therefore, we in the Caribbean, out of a sense of goodwill and trust, adjusted our systems to live within the five-year limit. We are not too happy about it but yet we have accepted that a convicted person should not be on death row for a prolonged time. Therefore, in Barbados we have made sure that the record could be expedited speedily, that the matter could go from the charge stage to the court of appeal stage within a maximum of 2½ years, then to the local Privy Council and the Judicial Committee within the remaining period. Sir, to the extent that the appellant goes to the human rights body, the appellant figures that it is going to be tight but they would make it.

Mr. Speaker, this process of turbulence continues to permeate the nine-year period to which I referred. I should say to the Honourable House that when, in 1999, the Governor-General reflected the policies of the Government, the previous Attorney-General had brought a Bill in the year 2000 which was read for a first time in this Chamber. Sir, about the same time the Bill was being read, a decision then came down in Neville Lewis *et al* v The Attorney General, 2000 volume 3, WLR, page 1785.

Mr. Speaker, what does that decision say? Sir, before Neville Lewis *et al* v The Attorney-General came Thomas v Baptiste, 1999, 54 WLR, page 387, which deals with petitioning international human rights bodies.

Mr. Speaker, Neville Lewis *et al* v The Attorney General says – and I am summarising for the benefit of lay persons without being exact to the law, the procedure which exists for the prerogative of mercy in many Caribbean constitutions, in Barbados and in Jamaica, it is exercised by the Governor-General on the advice of the Privy Council. In Trinidad and Tobago and in the Bahamas, it is exercised by the President on the advice of an advisory council, with a Minister being interposed between the Advisory Council and the President. Therefore, there are certain variations throughout the region.

Mr. Speaker, it has always been understood that mercy could only begin where justice ends. This is a famous statement of Lord Diplock which has been cited throughout many a legal institution, by many a law student, lawyers and judges, that once the courts have finished dealing with a matter, there is a power residing within the executive – not within the judiciary or arms of the judiciary – to determine whether mercy should be rendered and whether in sentencing of the court, not just in capital cases should, in fact, be applied. In fact, Mr. Speaker, it is interesting that so much would seem to be part of the executive powers, that in the Constitution of Barbados it comes under Cap. 6, entitled Executive Power.

Sir, throughout the course of history, many of the prerogative powers in the United Kingdom were deemed to be non-justiciable and could not be reviewed by the courts. Since the case of the Council of Civil Service Union vs Minister of State for the Civil Service in England, 1985 appeal case, page 374, there was then a body of thought beginning that there were certain aspects which were reviewable by the courts.

Sir, in a New Zealand case, *Burt v The Governor-General*, 1992, 3 New Zealand Report, page 672, the Privy Council had determined that these matters were not the subject of a review. In *Neville Lewis et al v The Attorney-General*, the Privy Council has taken a different position and has said that the prerogative of mercy, while being a prerogative power, there were aspects of procedural fairness which had to be adhered to; that the Governor-General and the Privy Council would have access to documents and that also the convicted prisoner should have access to those documents. The Privy Council felt that the convicted prisoner should have a right to written representation, which is set out in *Neville Lewis v The Attorney-General*:

“Their lordships have so far dealt with the matter on the basis that there is a right to put in representation. These should normally be in writing, unless the Jamaican Privy Council adopts the practice of oral hearing and unless their lordships are not satisfied that there was any need for, or to a right to an oral hearing in any of the present cases.

There was, however, in each of the present cases, a breach of the rules of fairness of natural justice, which means that the applicants did not enjoy the protection of the law, either within the meaning of section 13 of the Constitution or at common law. In considering what natural justice requires, it is relevant to have regard to international human rights norms, set out in treaties to which the state is a party, whether or not those are independently enforceable in domestic laws.”

Mr. Speaker, we have not just come here to take opposition to the Privy Council. We feel there is merit in a convicted prisoner knowing what material is before the local Privy Council that exercises the prerogative of mercy and also in having a right to make representation.

Sir, it is for that reason that we have recreated a new section 78(5) of the Bill which seeks to confer on that person in Barbados, a right to make written representation, either directly or through a legal or other representative.

Sir, this Government feels that is fair. It is not a judicial hearing, it is an act of the executive. Sir, a group of people will have material before them on which to render a judgment about a convicted person, then that convicted

person should have an opportunity to make such written representation. Sir, the practice is that whatever material that group has, it must now be shared with the appellant and we have agreed with that aspect of the decision. We have a difficulty with the other aspect of the decision that sought to distance itself from an earlier Privy Council decision, that reverses *Thomas v Baptiste*, that talks about whether the State has to wait for the conclusion of proceedings in an international human rights body before (1) exercising the prerogative of mercy and (2) if not so favourably exercised, to sign the death warrant.

Mr. Speaker, we feel that a State cannot be held to ransom by an international process over which it has no control, if that process is unduly long. We feel that there must be a reasonable period afforded to those persons who petition those bodies but that beyond that reasonable period, the State must be able to act. Hence section 78(6) so properly empowers the Governor-General, acting in accordance with advice from the Privy Council, to have through instrument, under public seal, a set of time limits prescribed within which both petitions must take place and the period of time under which they are under no obligation to continue to wait.

Sir, there is a reason for that. The same judicial committee decisions speak to the inordinate length of time that many of these human rights bodies take to complete matters. Many of them are undermanned and understaffed and, therefore, it has been known even within the European Union for cases to take as long as ten years to be resolved by the European Commission of Human Rights.
12.10 p.m.

Mr. Speaker, we feel that while we do not expect it to be the norm, if it happens, the State should not be prejudiced by it. I will say, however, that we do not believe the person should be given three or six months but that the time period given should be reasonable. Having been given a time period, there is then the knowledge that a decision may come within two months of that time period, then it is reasonable to wait.

Sir, we have confidence in the members of our local Privy Council and the Governor-General to exercise their discretion in the appropriate way. This is why Section 78(6) speaks to giving them a discretion that they may not wait if necessary because we believe they will exercise that discretion in the most appropriate fashion given the interest of the State and the interest of the convicted prisoner. We do not feel that in extreme cases we should be held to ransom because of the open-ended process and this is what we are seeking to do by the measure in Clause 4 of this Bill.

Sir, after the 2002 decisions then came the trilogy – Hughes and the Queen, Berthill Fox and the Queen and Reyes and the Queen. For the first time the Judicial

Committee confirmed in *Hughes and the Queen*, a decision of the OECS Court of Appeal which followed a pattern of decisions from the International Human Rights Body, that the mandatory death sentence was unlawful.

Mr. Speaker, I respect the right of the court to make those decisions but I have never seen more legal contortions and stretching of the English Language to be able to justify that the mandatory application of the death penalty, which existed prior to independence and prior to associated membership status in St. Lucia, is now unconstitutional in spite of the existence of a saving clause in the St. Lucian Constitution.

Mr. Speaker, the simple summary is that the court recognises this under Section 1(78) of the Criminal Court in St. Lucia passed in 1920 when it used the language that every person shall be liable to suffer death. They were in fact dealing with a mandatory provision even though the word 'liable' may sometimes be ambiguous. Mr. Speaker, we do not quarrel with that because, the truth is, that no one in St. Lucia treated it as any thing other than mandatory and if you are convicted of murder, the sentence of the court is death by hanging.

Section 12(84) of the same criminal code also stated that unless otherwise expressly provided, a court may sentence any offender to a less punishment other than death. Through the years, that section of the code has always been interpreted to mean that other than in the instance of murder, the court has the power to sentence a person to a lesser sentence in any act or any section of an act.

Mr. Speaker, as I indicated, the practice was always for the mandatory death penalty but the St. Lucian Constitution, like many others in the Caribbean, on independence contained a saving clause at paragraph 10 of Schedule 2 of the St. Lucia Order. The saving clause says that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention with Section 5 of the Constitution to the extent that any law in question authorises the infliction of any description of punishment that was lawful in St. Lucia immediately before March 1, 1967, the date on which St. Lucia became an Associated State. Section 5 to which they refer in the St. Lucian Constitution is the section that deals with cruel, inhumane or degraded punishment or treatment. This section purports on its passage to save from being deemed unconstitutional any law authorising the infliction of any description of punishment.

Sir, Section 1(78) of the criminal code was passed in 1920.

Section 1(78) of the criminal code says that whoever commits murder is liable and indictable to suffer death.

Section 12(84) says that a lesser sentence can be imposed other than death.

If you want to argue that there are degrees of culpability in every murder and that the judge should enquire whether hanging or life imprisonment is the appropriate sentence in each murder case, the reality is that the saving clause should have operated to save the punishment which was long deemed the punishment by Section 1(78) of the code since 1920. But what does the Judicial Committee do?

The Committee tells you that Section 1(78) requires a mandatory sentence and does not confer upon the judge any discretion. It does not authorise them to use the death penalty but it requires them to use death penalty. If you accept that it requires them to use the death penalty, then the savings clause says that the law in question authorises the infliction of any punishment before 1967. But all of a sudden, despite this being the practice, the will of the people and the procedure in the case where a man is killed, we now have legal contortions introduced that speak to the fact that because a matter is required, it is no longer safe in spite of the fact that it was the intention of the legislators on the passage of the Constitution.

Mr. Speaker, there are three aspects to Government. We respect the right of the judiciary to interpret and we also respect the right of the legislature to cure any deficiencies and mischief that may have been appropriately identified even by contortionist means. Sir, what do we really feel about the mandatory nature of the death sentence? Mr. Speaker, we get very fanciful as a global community or certain aspects of it.

12.20 p.m.

Sir, there is a Belizean case, *Reyes v The Queen*, where a man came home from work and saw his neighbour erecting a fence. He did not like it and took a gun and shot the man and his wife and they both died. He then shot himself but he lived. However, the Judicial Committee of the Privy Council said that the mandatory nature of his death sentence, being applied by the judge, means that he must not suffer death, having taken two lives.

Sir, on the basis of the construction as to whether class 'A' murder, the Belizean Parliament said that if you shoot somebody it is a class 'A' murder. Section 114 of the code, paragraph B, a class 'A' murder means any murder by shooting or by causing an explosion.

The Judicial Committee uses clauses within the Constitution to construe that because it is mandatory – they have already determined which murders are worse and deserve death and which ones deserve life imprisonment. That is what Parliament did in Belize. The Judicial

Committee now says, in effect, that the construction of that section is effectively to be construed as a class 'B' murder.

Sir, the judgement in *Reyes v The Queen* or the last judgement of the eminent Jurist, the former Chief Justice of Trinidad, Rudal v The State, in his last judgement he had to decide whether the mandatory nature of the death penalty, was unconstitutional in Trinidad. Sir, his judgement was that it was constitutional. It is a judgement worth reading by those students of the law and those who practice the law.

Indeed, he reflects on a trilogy of cases of *Reyes v The Queen*, *The Queen v Hughes & Berthill Fox*. Sir, he goes through a long analysis as to the clauses of the Constitution which deemed that where an Act is inconsistent with the Constitution, that the power resides within the court to modify that Act to the extent that it is consistent.

Mr. Speaker, in the Belizean case, through that similar type of clause dealing with inconsistency, they ruled that what the Belizean Parliament thought should be a class 'A' murder would in effect now be a class 'B' murder. Mr. Speaker, I am going to end the analysis by quoting from an assenting judgement of Lord Hoffman because it bears reference. It is so strong in its reason that it should be required reading for every Caribbean citizen and it is so important to where we find ourselves today that it should be a record of this Honourable Chamber.

Sir, Lord Hoffman started by saying that it is obvious to the members of the Board that they should discharge their duties without regard to whether they personally favoured the death penalty or not. He also says that the wider public may need to be reminded. He said that judges, of course, know that they cannot do that but I am only saying that for the purpose of reminding the wider public.

Sir, he goes on to reflect on the fact that all three issues decided in *Neville Lewis et al v The Attorney General*, 2000 volume 3, WLR, page 1785 the issue of Procedural Fairness on the exercise of the prerogative of mercy, the issue of the Inter-American Commission and having to wait on them to decide on a petition before signing a death warrant and the issue of prison conditions. He said that this Judicial Committee of the Privy Council would have considered and answered these issues in recent decision of the Board. In the first instance, the Procedural Fairness, begs the case of the Bahamian case of *Reckley No. 2*, in 1996. They cited the earlier decision, which many of us are familiar with from Trinidad, *Defreitas v Benny*. On the second issue of the Inter-American Commission, they cited *Fisher v Ministry of Public Safety and Immigration* in the year 2000.

Sir, months before they had ruled contrary in the same Privy Council in the case of *Fisher v The Queen*. They also

cited *Higgs v Minister of National Security*. Sir, in prison conditions, they cited the issue of *Thomas v Baptiste* and *Higgs v The Queen* in the year 2000, decisions.

Sir, the Judicial Committee of the Privy Council, within months earlier of deciding *Lewis v The Queen*, they had decided to the contrary of all three issues in respect of it. What does Lord Hoffman say? He said that when the Board decided *Reckley No. 2*, in 1996, they decided that there were still, in modern conditions, strong enough grounds for maintaining the old rule and that the Board in *Reckley No. 2*, put the same view of conditions in the Caribbean in 1996, and nothing has happened between *Defreitas v Benny* in 1976, and *Reckley No.2* in 1996 to cause them to change their minds.

Sir, on the second issue he said that in *Fisher No. 2* and *Higgs*, decided in the year 2000, the Judicial Committee does not explain how they have overturned themselves, that their arguments have been "brushed aside rather than confronted". He goes on and I quote:

"In particular, there is no explanation of how in the domestic law of Jamaica, the proceedings before the Commission constitute a legal process as opposed to the proceedings of any other non-governmental body which must be duly completed. Nor can there be any question of prisoners having a legitimate expectation and that term as understood in administrative law that the State would await a response to the petitions. All the petitions were presented after the Government had issued the instructions and a legitimate expectation can hardly arise in the face of a clear existing contrary statement of policy."

12.30 p.m.

Do you realise what he is saying, Mr. Speaker? That the Jamaica and Trinidad Governments issued clear guidelines to the contrary that there is no process in Jamaica's law, no law in Jamaica that says that they must wait on the Inter-American Commission but in spite of no law and in spite of an expressed intention to the contrary that we are not waiting on you, the Privy Council says that they must now wait.

In the prison conditions he deals with that, and shows the difference in how they reverse themselves from *Thomas* and *Baptiste* in the very same year. This is the important part, Mr. Speaker. He says:

"I think that this is a mistake. The fact that the Board has the power to depart from earlier decisions does not mean that there are no principles which should guide it in deciding whether to do so."

This is a member of the Judicial Committee of the Privy Council speaking. This is not anybody in the Caribbean reflecting on this. He then goes on to cite an American case, *Planned Parenthood of South Eastern Pennsylvania against KC* citing the Supreme Court of the United States of America and saying these words:

“No judicial system could do society’s work if it eyes each issue afresh in every case that raised it. Indeed, the very concept of the rule of law underlying our own constitution requires such continuity over time that a respect for precedent is by definition indispensable.”

That you have to respect that there has to be predictability. Lord Hailsham, the longest Lord Chancellor in the United Kingdom, speaks to the need for predictability if the rule of law is to be appropriately maintained. That is what he says. What does Lord Hoffman end his dissenting judgment by saying? Listen carefully, Mr. Speaker, I quote:

“Macaulay said of the Constitution of the United States that it was all sail and no anchor. I think that history has proved him wrong but the power of final interpretation of a constitution must be handled with care. If the Board feels able to depart from a previous decision simply because its members on a given occasion have a doctrinal disposition to come out differently the rule of law itself will be damaged and there will be no stability in the administration of justice in the Caribbean.”

Mr. Speaker, there can be no more powerful reason for the legislative being galvanised into action in this matter to ensure that there is stability in the administration of justice within the region to which we are accountable. I believe that is our duty and it is for this reason that these amendments are before this Chamber.

Mr. Speaker, the reality is that we have to be cognisant of all the issues. We are not here trying simply to reverse the Judicial Committee of the Privy Council because we do not like what they say. I have already shown that where we agree with them we are prepared to reflect that in the legislation and at Clause 4 of the Bill, but we have also to be true to ourselves because this Parliament is not accountable to the Judicial Committee. This Parliament is accountable to the people of Barbados and we have to ensure that that which emanates as an expression of the sovereign will of this Parliament is consistent with the mores of the society.

It is understood that the rule of law is only effective and enforceable so long as it has the consent of the governed, so long as those who live under that rule of law are prepared to consent to it. That is why the principles of reasonableness must always attach itself to the actions of government or to the actions of legislation and legislatures. I believe, Mr.

Speaker, that when you understand that you therefore appreciate why it is necessary for us to maintain certain aspects of our Constitution in the way that we do.

The Constitutional Review Commission chaired by the Honourable Member for Christ Church West did, in fact, reflect that there should be an abolition of the ‘savings’ clauses within the fundamental rights of freedom and to bring us more in line with international human rights norms. Mr. Speaker, I would agree that we should ensure that there is fairness and that we establish due process and we have always done so but I am not so sure that I can agree that there can be a simple equation of the mores of our society with the universal declaration of human rights.

Why do I say that? Different societies have different perspectives on various things and while there is a body of values that are universal to all societies there are some nuances which, in fact, have a greater pre-eminence in some societies over others. I will not bother to go into the debate and the speech that I gave under the Resolution on the Report of the Committee for National Reconciliation about how the world order has been preserved in the image of Europe. That is for another time and another day and the extent to which that may conflict with aspects of our own national development. Suffice it to say, Mr. Speaker, that we have to be able to recognise those things which we want to keep as part of our law and to ensure that the greatest accessibility to due process is afforded them.

What do I mean by that? Yes, we have the death penalty in Barbados but Barbados also has a publicly funded system of legal aid that affords every accused person charged with murder the opportunity to have access to the best lawyers that this country can provide, unlike a number of other countries both in the region and outside of the region. In Barbados, the Legal Aid system operates on the basis of choice. We do not simply allocate persons for accused persons so that when the Honourable Member for St. Joseph is chosen to represent a person in a murder case the public very often does not know that he is working on Legal Aid. When a number of our leading advocates are representing persons in murder cases invariably they are doing so because the State, the Government, is paying for them. Long may that system last!

12.40 p.m.

Mr. Speaker, I practised criminal law before I came into Government and every murder case I did was provided for me by the Legal Aid system. The current Chief Justice when he practised at the Bar, the same thing. The former Attorney General, the same thing. So that when Amnesty International and other bodies start to attack due process, and tell you that you do not get access to good lawyers...

Aside.

Hon. Miss M. A. MOTTLEY: It is not quite \$48 now they will get a little more than that.

When they start to attack people, let it be known that the record in Barbados is different and we afford the accused charged with murder, the right to the best lawyers in the country.

Mr. Speaker, before I stopped practising criminal law, I had the right in representing murder accused, to be present during their interrogation by the police. Do you understand what I am saying, Mr. Speaker, that while the police were interrogating the persons as to whether or not they committed the crime, they allowed the lawyer to be present. How many other jurisdictions in the world does that happen in? Most often, you cannot find the murder accused, far less be present during their interrogation.

Mr. Speaker, it does not end there. We have afforded people the opportunity to be able to benefit from funds being provided, when they go to the Judicial Committee of the Privy Council. The previous Attorney General established a system where people receive £1 000 towards their legal representation cost, plus the cost of an airline ticket and per diems for their lawyer to go up from here, plus the cost of the settlement of the Record of Appeals which in fact cost in excess of \$4 000 to \$5 000 because of the number of records that must be prepared and the manner in which they must be prepared.

Mr. Speaker, in addition, since I have been Attorney General, I have agreed that while the Community Legal Services Act does not provide funding for Attorneys-at-Law to make written representation to the local Privy Council on the Prerogative of Mercy, we are prepared to contribute BDS\$1 000 to the Attorney-at-Law who writes a letter on behalf of a convicted prisoner, who is seeking to have the Prerogative of Mercy exercised.

I must tell you, Mr. Speaker, that I have offered them BDS\$1 000 per person. It is true that the lawyers wrote back and told me that BDS\$1 000 is not enough and they want BDS\$7 500. Sir, the Government has maintained its right to contribute and we do so in the context of what is affordable. We do so, recognising that if they have a right, even though the end of the judicial process may have taken place, that they may still need outside help in putting their thoughts together and we are prepared to contribute to that.

Mr. Speaker, it does not end there. In 1994 the Evidence Act was passed by this Parliament and one of the sections that was not proclaimed related to the audio recording and video recording of statements in police custody. Since I have been Attorney General, we have prepared Oistins Police Station, St. George Police Station at Charles Rowe Bridge, and Hometown Police Station. We

have developed a Code of Practice for how these statements are to be recorded and maintained and we have made the determination that once the effective training can be completed, that that section of the Evidence Act which remained not in force since 1994 should now be proclaimed, so that in all serious offences and all statements given to the police must be audio recorded or video recorded in Barbados.

Mr. Speaker, this is a State that is going out of its way to ensure the fullest protection of the law for persons accused of any serious offences in this country. I therefore deprecate any assertion that because we simply retain the right to capital punishment that we are in fact violating the rights of that accused person. Sir, not only are we not violating them, but we give them every opportunity to ensure that they have total access to due process and their rights as guaranteed under section 11(3) of the Constitution, that they should benefit from the protection of the law, is available to them.

Mr. Speaker, I want simply to say that all of this has to be seen in its total context. It would be impossible for me to speak without drawing reference to the fact we have in the last month, in fact, on the 23rd July, we saw through Article 34 of the Agreement to establish the Caribbean Court of Justice that that Agreement has now become operational with the submission of instruments of ratification from St. Lucia, from Barbados and from Guyana. And, that we have, with the decision of the CARICOM Heads of Government at Georgetown in early July of this year, to provide the establishment of a Trust Fund of US\$100 million that we are in the process of putting in place all of the legal administrative and financial arrangements such that that court may be inaugurated by the middle of next year.

Mr. Speaker, it is essential that I seek to disabuse anybody of the thought that this Caribbean Court of Justice is only coming about because of Pratt and Morgan or to be a hanging court. Sir, that is a nonsense. It is simply put, a nonsense.

The Caribbean Bar Association commissioned many years ago, a Fraser Report which spoke to the desirability of the establishment of a final appellate court in the region. When we were a Federal State, between 1958 and 1962, we had a Federal Court of Appeal. In 1998 – I want you to get the chronology right, Mr. Speaker, because if you understand the chronology, you will understand why the assertion that the Caribbean Court of Justice is a hanging court, is a nonsense – in 1988, while meeting in Antigua, the CARICOM Heads of Government agreed to the establishment of a Caribbean Court of Justice as a final appellate court, as an assertion of the final act of judicial and political sovereignty. Mr. Speaker, that was in 1988. Pratt and Morgan was only decided in 1993 so five years, long before

the Caribbean was put in turmoil in respect of its application of the death penalty, CARICOM Heads were meeting in Antigua and agreeing that we needed a Caribbean Court of Justice to complete our judicial and political sovereignty.

In fact, Mr. Speaker, it even predated the conclusion by CARICOM Heads of Government that there should be a Caribbean Single Market and Economy which came in 1989, in the Grand Anse Declaration and of course, or as the lawyers will say, a fortiori, once you decide on a treaty that would establish a Caribbean Single Market and Economy, there needs to be an independent body to help interpret the Treaty and the application of that Treaty in its many formats. Sir, to that extent, the Caribbean Court of Justice has also been conceived as a court which will have original jurisdiction in terms of the interpretation of the revised Treaty of Chaguaramus. Mr. Speaker, simply put, it is a nonsense to suggest that the Caribbean Court of Justice which was agreed upon in principle in 1988, could be a hanging court, as a result of the case law flowing from 1993, five years before it was dealt with.

Sir, with respect of one other issue I would like to address quite quickly without going into the merits and demerits of the case, an assertion was made, Mr. Speaker, last month which I find extremely offensive and that reflected negatively on this country's Head of State. Sir, I feel duty bound to address the matter today. I did not address it at the time because I was not interested in getting into any political back and forth with persons who clearly had an audience to pander.

Some time last month, death warrants were signed by His Excellency...

Aside.

Hon. Miss M. A. MOTTLEY: I know, and I am not getting into the merits of the case but you cannot have lawyers getting in the public domain and accusing either, His Excellency or Members of the Privy Council or this Government of seeking to carry out an unlawful act and it remains unchallenged. I have treated this matter with the decorum which it merits by reserving my comment, being patient about this matter, until this matter came before the highest Chamber in this land. Mr. Speaker, that is the seriousness with which I view it.

Mr. Speaker, when the local Privy Council considered the matter of whether or not to exercise the Prerogative of Mercy, it was not acting whimsically, capriciously or arbitrarily and anyone who is seized in the knowledge of the law, even a basic law student in reading the decisions of the court, would have understood that the court in Pratt and Morgan, as far back as 1993, set out a procedure which requires, that once an appeal is dismissed by the local Court of Appeal, for the matter to be referred to the local Privy

Council. The local Privy Council, unless there are extenuating circumstances – and if you look at page 775, of the Judgment of Pratt and Morgan – reflecting on the procedures in Jamaica which virtually mirrors the procedure in Barbados.

In 1962 when Jamaica became independent, subsidiary legislation was also passed governing how appeals to the Privy Council should be dealt with. In 1967 Barbados also had subsidiary legislation passed. In both instances, in Jamaica in 1962 and in Barbados in 1967, those pieces of subsidiary legislation in fact co-edified what happened under the colonial secretariat and the colonial regime. However, in both Jamaica and Barbados, this legislation – and I want to make it, but it is already part of the law so it is a document of the House but Honourable Members need to be familiar with it.

Asides.

Hon. Miss M. A. MOTTLEY: Let me quote, Mr. Speaker, because I do not want my words to summarise what is the procedure. This is the Law of England law reports, Pratt and Morgan, 1993, Volume 4 at page 775.

In the ordinary course of events, Mr. Speaker, and I quote.

“And a General should refer a capital case to the Jamaica Privy Council immediately after the appeal is dismissed by the Court of Appeal, unless there exists some special services, such as a moratorium upon the execution of all death sentences or a decision is awaiting in another case of either the judicial committee of the Privy Council or a human right body that may be the view of the Jamaican Privy Council.

The instructions approved by the Governor-General, dated 14th August 1962 for dealing with application from or on behalf of prisoners, under sentence asking for special leave to appear to the Judicial Committee of the Privy Council, are written upon the premise that the date for the execution has already been set and will only be postponed if the prisoner adheres to the strict timetable contained in the instructions. It is implicit in these instructions that by the time the prisoner has taken advice as to whether or not he should petition the Judicial Committee of the Privy Council in England, a decision would already have been taken by the Jamaican Privy Council, whether or not he should be executed or reprieved.”

Mr. Speaker, this quotation clearly establishes that the procedure is that once the local Court of Appeal dismisses the matter that the local Privy Council and the Governor-General have a duty to consider the matter. They also

have a duty now to take written representation from the person for this matter not to be subjudicated to give the full facts, and that further, at that stage, then it goes out. It does not make sense to me, Mr. Speaker, but this is the law. 1.00 p.m.

Mr. Speaker, we have always understood that mercy begins where justice ends. The point is that contrary to another explicit procedure in law being stated, this is what the Governor-General and the local Privy Council must act under.

Mr. Speaker, it is the intention of this Parliament to ensure that those rules that were passed in 1967 are modernised. It is our intention that there be clearer rules governing the process by which any appellate process is carried out, which ultimately will lead to the exercise of the prerogative of mercy.

Sir, because we are committed to entering into a Caribbean Court of Justice as the final Court of Appeal, and because we anticipate this will happen within a year, because of necessity it will mean that this Parliament will have to pass legislation de-linking from the Judicial Committee of the Privy Council. We believe it is better to bring those rules which will govern the appellate process and the exercise on the prerogative of mercy in respect of that new institutional arrangement which would govern our system of the administration of criminal law during the year 2003.

Sir, in the interim, the rules that are set out in the case of *Pratt and Morgan v The Queen* should continue to be the procedure by which both the local Court of Appeal and the local Privy Council should adhere to with respect to the administration of matters. Sir, at page 776, the case of *Pratt and Morgan v The Queen* went on to say, and I quote:

“If the case had been considered by the Jamaican Privy Council and the execution date has been fixed by their lordships, then their lordships have little doubt that this would have galvanised the appellant and their legal advisors into pursuing their application for leave to appeal to the Judicial Committee of the Privy Council.”

This leaves the clear interpretation that there are interposing the local Privy Council there because this is one of the ways to galvanise the entire legal process to come to a swift end within the limited time limit.

Mr. Speaker, it is absolutely unfair for anyone to suggest that the State of Barbados, through its Head of State, through the local Privy Council or through the executives, in its broadest sense, sought to act extra-judicially, sought to impose unlawful killings, or sought to do any of the things that were the subject of salacious comments that were the

subject of the Press conferences held by those who felt they had a duty to spoil Barbados' good name in the international arena.

Mr. Speaker, I would only say that, as lawyers, they have duty to reflect the law and not to behave as though they were gallerian to a stage in an auditorium.

Mr. Speaker, this Government is committed towards dealing with the increase in lawlessness and the increase in crime. We have committed ourselves to participate in decisions that would see the establishment of a national commission on law and order and to establish national plans, based on our Green Paper on Crime Reduction that could constitute the basis of which this society is prepared to drive down criminal activity, crime and lawlessness.

We feel this must be the subject of most intense national discussion because, in many instances, what is required is not something that is a quick fix before a period in political terms but a systematic working on a number of areas, over at least ten years if we are to reverse what has, in fact, been thirty years of decline. That would come. This Debate, therefore, must not be seen in isolation from those other statement I have made in relation to Government's commitment to dealing with crime and lawlessness.

Mr. Speaker, in addition, I want to make the point that a time might soon come during those consultations when we too, would decide that it is necessary to move away from the Offences Against the Persons Act, as it constitutes and defines murder under the common law and to establish a new Homicide Act which would have different grades of murder, while recognising there are some that perhaps are more deserving of the death penalty being applied.

Sir, may I say for the record, because many people generalise and feel that every time some one kills another that constitutes murder, we already have a system which recognises a number of wide defenses to murder such that what remains is a very narrow category that constitutes murder.

We have a system which says that if it is an accident, it is not murder. If it is self-defense, it is not murder. If one is acting under some abnormality of mind which is known as diminished responsibility, it is not murder. If one is mad or insane, it is not murder. If one is provoked – and in recent years the court has deemed that spousal abuse or mental abuse, could constitute provocation.

Therefore, even if we move from the current system to the new system, it would only be because of the evidentiary ease where it is easier to prove by evidence that one of those

defenses is valid. We accept this is not a private matter for this Government and it, therefore, would be the subject of national consultation.

Mr. Speaker, at Clause 3, this Bill seeks to provide that the Prison Transfer Agreement which this Government has signed during the course of this year, would not in any way, be construed as conferring discriminatory treatment on either prisoners who do not benefit from the prison transfer agreement or those who do. Therefore, out of an abundance of caution, we are amending section 23 of the Constitution which deals with discrimination such that when the Prison Transfer legislation is brought to give effect to those agreements, there would be no opportunity for anyone to claim that there were discriminated against because of the difference in treatment, either by Barbados or the receiving State.

Mr. Speaker, I trust I have been able to represent this Government's commitments as stated in the Throne Speech of His Excellency the Governor-General, which was quoted in my address and to say that we want to ensure that the laws of Barbados, as they stand, as they have stood for generations, as they are supported by the people of this country who give their consent for them to remain valid, should constitute the basis on which this society is organised and that we seek simply to reverse those things which prevent us, legitimately, from applying the laws of the land.

I believe it was the Leader of the Opposition who, last month outside the jurisdiction of this country, said to do something about it. Mr. Speaker, we did not exactly do it on his request but the reality is that his request coincides with our action on this occasion.

Sir, I could only find it appropriate to end my contribution in the introduction of this Debate by reflecting on the same words of Lord Hailsham that, "law is only morality, decency, respect, humanity and justice for the individual translating into the enforceable, expressed in terms of the normative and limited by commonsense."

Sir, to lose sight of those things we are lost. This Government has no intention of allowing us to preside over the governance of a society in which the rule of law as being observed is breached and not applied to maintain the strong foundation that is needed for this society to be cohesive and harmonious.

I trust this Bill would meet the support of all Honourable Members in this Chamber and that we shall go forward united in giving expression to the will of the Barbadian people through the sovereign act of this Parliament. I thank you.

SUSPENSION

Mr. Speaker, I beg that this Sitting do now suspend until 2.15 p.m.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

The question that this Sitting be suspended until 2.15 p.m. today was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.
1.10 p.m.

RESUMPTION

Mr. SPEAKER: This Honourable House is resumed.

Mr. D. J. H. THOMPSON: Mr. Speaker, I do not propose to be very long in this debate because I believe that the views which I would express have already been stated by me on several occasions and I would not wish them to be subject to misinterpretation either by a restatement of them or by adding to them and perhaps subtracting from the clarity of what I have said.

As I understand it, the Laws of Barbados provide for the sentence of death in relation to certain offences the most noticeable and relevant of which, for the purposes of this debate, is the crime of murder.

Sir, in my 15 years in this House both as Opposition and a Member of the Government the issue of the death penalty has never come before this House for consideration either directly or indirectly. This is the first time it has come before the House and it is not even the question of the validity of the death penalty but an amendment that seeks to clarify what appears to be anomalies in the way the provisions of our legislation and, in essence, our Constitution are being interpreted. I believe that the persons who drafted the Constitution of Barbados were clear in their minds about the views of Barbadians.

I am not about to go into a big debate about the death penalty but I have great concerns about the death penalty and I have no apologies for making that statement. Sir, I tend not to look at crime from the punishment end but at issues relating to crime from the other end of the spectrum. I am always more interested in what causes a person to commit a crime, in what the State can do to find ways and means of reducing the need for conflict, in making a serious dent on the attitude of persons who are predisposed to committing crimes, in dealing with the many social problems that give rise to crime, in seeking to help people to communicate more effectively, in strengthening families and building communities and in expanding opportunities for our citizens. These are the things I am more interested in but when it comes to the other end of the spectrum that relates

to hanging, I always express concern. Sir, some people may call me a bleeding heart but so be it because I feel that no one is beyond some form of redemption.

At the same time, I feel that there are patterns of violent crimes in Barbados that have heightened the concern of the authorities and Barbadians in general about the direction in which our society is going. Although I am not one of the people who believe that the imposition of the death penalty is going to suddenly make any dramatic difference to the incidence of violent crimes or the number of murders that take place in Barbados, I am, nevertheless, not prepared to stand in the way of public opinion or launch a crusade to open a debate on the death penalty *per se*.

However, I resent the attacks launched on people who express concerns about the death penalty because at the end of the day, the death penalty is and remains the law of Barbados. No one in this House has attempted to change that law and, therefore, it worries me that persons who have contrary views are under attack simply because they have contrary views on an issue which, for them, relates to their moral position in life, some aspect of their Christian belief or personal experiences they had in life. They are entitled to hold the view that use of the death penalty is something about which they have strong opposition and express that concern.

Sir, there are people who practise every day in court, judges, magistrates as well as people on the prosecution side who express concerns about the system of justice and, when there is a situation of no turning back as with the death penalty, they are entitled to express their views.

In the United States of America they have uncovered a number of incidences where people's lives have been 'snuffed out' by the State by use of the death penalty only to subsequently discover that they were not the perpetrators of the crime.

In the United Kingdom there were a series of miscarriage of justice and although there was evidence to show that the accused should have been given the benefit of the doubt, very often the British courts used all kinds of technicalities to ensure that the cases would not be reopened until public opinion was brought to bear upon these matters and very often, new evidence and new techniques in gathering evidence overtook the situation to the extent that those persons had to be freed.

Sir, we have to have a sense of balance in the way we conduct ourselves as persons who speak for the State and persons who should be minded to guard citizens against any oppression by the State. At the same time we should be sufficiently accommodating to understand that in the context

of Barbados today there is a strong sentiment about the use of the death penalty.

In my view, this does not come because Barbadians are blood thirsty people. It comes because the procedural interventions and the delays in the systems that have given rise to decisions such as Pratt and Morgan have essentially frustrated the State from carrying out the death penalty in situations where the public feels very strongly that the perpetrators of those crimes should be put to death because it is part of the law.

There is some justification for that view point and in that context the Attorney General will find support from persons who genuinely feel there are circumstances in which the State has become almost powerless to enforce its premium penalty on citizens who have committed heinous crimes and that sense of powerlessness must never exist.

Sir, in a recent interview I asked why people always ask politicians what are their views on the death penalty. A lady on the call-in programme said she wants each politician to come out and say how they felt about the death penalty so that people will know how to vote in the next elections as if the only determinant as to whether someone gets hanged in Barbados or not is how the Leader of the Opposition or how the Honourable Member for St. Philip North, my Member of Parliament, feels whose view on the death penalty I do not happen to know.

2.25 p.m.

Asides.

Mr. D. J. H. THOMPSON: Sir, they are people who personalise the issue of the death penalty and undue pressure is brought to bear upon them and often if you are not careful you can end up finding yourself going overboard in seeking to appease those kinds of views.

Sir, obviously something has to be done in relation to the situation relating to violent crime in Barbados. The death penalty is still part of the law in this country and the people who oppose it have not done anything to have it removed from the statute books. Therefore, let us stop bellyaching about it and let those in the majority, who are most keen to have the death penalty implemented in this country, use the impact of that majority to have it removed.

Sir, I believe that the majority of Parliamentarians in here are in favour of the death penalty. Therefore, no Government should have an excuse or nobody should be pointing fingers at other individuals in Government to pressure them into having contrary views when it is the law of Barbados. I have never had the fortune or misfortune of determining whether any law in Barbados

is carried out or not. In the circumstances of this debate, I understand that the Government is seeking to make some amendments to the Constitution of Barbados to ensure that those anomalies that have arisen would be dealt with.

Mr. Speaker, the Honourable Member for St. Michael North East has again raised concerns about the position of the Privy Council. I would not get too hot under the collar in relation to that issue because I believe that it would be inconsistent with human nature. It would not make sense that a Privy Council constituted in the United Kingdom in which a different approach to the death penalty is being observed, is going to be comfortable in hearing appeals from the Caribbean which involve the use of the death penalty and would come out with a view that is 100 per cent in favour of the death penalty.

Sir, judges have to be accountable to the society in which they live. Some people in Britain read six or seven newspapers a day and people form opinions about judges and about the decisions that they make and there are also strong lobbying groups in the United Kingdom, like Amnesty International. We know of the Pinochet case and the problems with Lord Hoffman because his wife was very prominent in Amnesty International.

Sir, you cannot live in a house with a woman anywhere in the world, unless she is mute, without hearing her opinion at least on some subjects and if it is a subject with which she feels very strongly, you will have an opinion.

Asides.

Mr. D. J. H. THOMPSON: Sir, at the same time they are people who are going to question, probe and speculate and pressure is brought to bear on a person in those kinds of positions.

Even if you cannot question the judgement or integrity of the judges, once that pressure reaches a certain fever pitch, every likelihood is, if they have not had to face the strength of that public opinion, they would either break or respond publicly but something will happen. Therefore, in terms of public opinion in the United Kingdom, the judges of the Privy Council are going to be influenced by that so let us be realistic and understand it.

Sir, I am not sure if the current Attorney General uses this argument but I remember that the previous Attorney General used to talk about Eurocentric values being imposed on countries which were former colonies and which do not share the same culture. The point that is missed, even in the subtlety of that language, is that our former colonizer who is described throughout the length and breadth of our history as inhumane and perpetrators of slavery and all kinds of inhumanities against man, by that description is being

declared to the world as more humane and understanding of what is inhumane, justice and fairness than the persons whom he colonized.

Sir, in other words, the argument that would have to concern me and what I would find very difficult is that the Privy Council in the United Kingdom, which was the seat of oppression for colonies like Barbados, has a better understanding of what is humane and inhumane than we do when we say that these views about delays in relation to the execution of the death penalty and delays in the process are not humane.

Sir, that subtle impression is being given that we are more vicious and blood-thirsty than our former colonizers; we have to be very concerned about that even in the context of setting up the Caribbean Court of Appeal. It is the subtlety of that language and that perspective which will give much ammunition and fodder to those who are not looking at the history of the incidence of the death penalty in Barbados in recent times but who are looking more at the emotional aspects of the debate and on how they can influence outcomes in that regard.

We have to be careful because the former Attorney General made a speech which was eventually published in the *Caribbean Law Bulletin*. I do not remember which one but there was a reply to it by Mr. Douglas Mendes in Volume 3, Nos. 1 and 2 of the *Caribbean Law Bulletin*. This was a searing and almost bitter reply to the comments of the previous Attorney General and in it, Sir, if I can quote from it without making it a document of the House, at page 20, he said:

“Be that as it may, the Honourable Attorney General laments that the Caribbean ‘jurisprudence has been diluted by the deliberate superimposition of Eurocentric notions and values totally at variance with the emotions of the people’.”

This is the former Attorney General of Barbados now the current Chief Justice.

Mr. Mendez goes on to say at page 21:

“It is undoubtedly true that at this point in time the vast majority of Caribbean people support the retention of the death penalty as punishment for murder. Whether they would also be prepared to tolerate the psychological torture inherent in a long delayed execution is a moot point. The Attorney General of Trinidad & Tobago did not think that the citizens of Trinidad and Tobago were prepared to tolerate the death row phenomenon and he withdrew a Bill which would have reversed the effect of Pratt and Morgan.”

This is quoting the former Attorney General of Trinidad & Tobago.

“The public,” he reported, “indicated a desire to have judicial delays removed from the system and to have compliance with the guidelines set by the Judicial Committee of the Privy Council in the case of Pratt and Morgan.”

2.35 p.m.

This is an eminently reasonable position that Mendez is taking. Whereas the public is in favour of the death penalty, that does not mean that they are also in favour of a clogged up judicial system in which trials can take sometimes more than four or five years and these things can be going on for ten and twelve years. They also believe that every effort should be made to expedite the process. In essence, I believe that the public would be of the view and would have heard it often enough that justice delayed is justice denied.

My concern about this particular amendment, even though it seems to deal with an issue of the closing of the gap by the Privy Council, or a lessening of the time by the Privy Council is that it leaves it open-ended again that delays can no longer become an issue and that we, by this particular amendment, would simply be confirming the very problem and the one strong leg on which the Privy Council stands in relation to its decisions, that it often takes an interminable amount of time with somebody sitting on death row in the Caribbean for the matters to be dealt with.

So why in a modern age of the computer and all of the other technology available to us, the brightest and the best judges taken both from the public service even from active politics and from the Bar and put on the Bench at a young age, do we need an amendment that goes to the extent of saying that “any delay in executing a sentence of death imposed on a person in respect of a criminal offence under the law of Barbados of which he has been convicted” is not inconsistent with or in contravention of the section of our Constitution that deals with inhumane treatment. Are we saying that we accept delays? Are we saying that it is reasonable for somebody to be on death row for an interminable period?

Let us not believe that we are simply dealing with the problem that the Privy Council has raised. We are also saying to the world that a delay in the execution of a person is not cruel and inhuman punishment and I do not agree with that. Maybe I agree with the other parts and maybe I might be able to accept a lot of the other stuff that is in this Bill, but do not tell me that five or six white men living in England at age 80 and 70 have a better sense of what is cruel and inhuman than the products of slavery in the Caribbean.

Let us understand what that part of the Bill is doing. I am not talking about the rest. I want to make it abundantly clear. I have read it through and I understand it, but if you are telling me that delay is not cruel and inhuman and declaring that to the world I have a problem with that. If the death penalty is part of the law of Barbados let us so upgrade the court system in this country that trials can come off a hearing in an expeditious manner, the public can be satisfied that the system of justice is working, that justice will not be denied because of delays and let us work at that end of the equation. Let us not fall for a secondary position that holds us up to ridicule simply because we have opted to retain the Privy Council as a court of final appeal and the persons who constitute that Privy Council have a better notion of what is cruel and inhuman than people who walk around on the streets every day in this country with the same perpetrators of crimes. Something has to be wrong with that and I cannot tell you that I do not have difficulty with it.

As I said, I understand this to be basically an interim arrangement that will seek to deal with the impact of the Privy Council decisions in Pratt and Morgan and that kind of thing, but let me go on to read a little more about what Mr. Mendez said on page 21:

“It might be that Barbadians have a different sense of the matter ...”

[from Trinidad, is what he means]

“... but it would only be possible to assess Barbadian attitudes after a fair presentation of the issues and informed debate. I fear that the Honourable Attorney General’s address has hindered this process.

In any event, it is quite inaccurate to describe the ruling that a prolonged delay in the execution of the death sentence would amount to inhuman and degrading treatment as the product of Eurocentric notions and values.”

In other words, the idea that the Privy Council has worked out that a delay in the execution of the death sentence is cruel and inhuman cannot be attributed to their Eurocentric values. I assume that is human values, universal values that we all sensibly share so that we must not allow the single-issue people to jump on this bandwagon either. That is what I fear will happen in a situation where you seek to institutionalise delay by having an amendment of this type. I am worried about that aspect of it. I think I need for the record to note that.

In fact, Mendez goes on to make the point which I think I should quickly make.

"In the judgment of their Lordships in Pratt and Morgan, which the Honourable Attorney-General criticises, references were made to the jurisprudence of the Supreme Court of India which has frequently held that prolonged delay in the execution of a condemned person could lead to the vacation of the death sentence. Indeed, after a review of cases in the United States of America and India and judgments of the European Court of Human Rights, Lord Scarman in his dissenting judgment in Riley concluded that:

"It is no exaggeration to say that the jurisprudence of the civilised world, much of which is derived from common law principles and the prohibition against cruel and unusual punishments in the English Bill of Rights, has recognised and acknowledged that prolonged delay in executing a sentence of death can make the punishment when it comes inhuman and degrading."

2.45 p.m.

More significantly, just a few days before the appeal in Pratt and Morgan commenced, the Supreme Court of Zimbabwe, after an exhaustive review of the jurisprudence worldwide, concluded that the right of a person under section 15 of the Constitution of Zimbabwe not to be subjected to inhuman or degrading punishment or other treatment, would be violated by a long delay in carrying out the penalty of death. The so-called Eurocentric notions and values expressed in Pratt and Morgan, therefore, are shared by judges on the Asian, African and North American continents."

Mr. Speaker, that is a valid point. It is not a point I believe we should miss in this particular Debate. Let there be no doubt, this is not a Debate as to whether or not we should have the death penalty. This is a Debate about whether the delay is cruel and inhuman – and I believe that delay to be cruel and inhuman. I believe the Government should reflect on this particular aspect of the Bill. I have no problem with the imposition of a mandatory sentence of death. I have always understood it to be that, therefore, that is not an issue for me if it is to be later found that it is unconstitutional, then I would disagree with that because I have always understood that to be the law of Barbados.

I have no problem with the question of our rights to transfer prisoners. I think that in a small society like ours, there are obviously going to be situations in which we have to do it. Recently, St. Lucia has had to send prisoners to Grenada because they are now building a new prison. I believe there is nothing wrong with that, as long as it is not a burden or a danger to the taxpayers or the citizens of the country in which they are being held. Also, there is no need regarding the right of a person to submit written

representation to the Privy Council as distinct from having oral hearing. I do not think that any lawyer would argue, except to the extent that he would get a sense of what is happening in the room or unless the lawyer has any doubt as to whether or not persons at the Privy Council actually read the documents that are brought before them.

Sir, I have no problem with the general thrust of this Bill but I have great difficulty with an amendment of our Constitution which says that a delay in the execution of the sentencing of death is not cruel and inhuman – it is. One does not have to look at it from the point of view of the impact that it has on prisoners. If one is the kind of person who, every now and then, decides that you want to spank your child, unless that person forgets, as long as that threat is held over the child, then some sense of good behaviour is going to creep in between the time of the announcement of the sentence and the execution of that sentence.

Sir, let us transpose that into the situation of the death penalty. I do not think that the most blood-thirsty person or that person who is most detached from this Debate, would like to see every person on death row being hung. These people would like to see this hanging being done immediately and not sometime in the future. I am also assuming that those persons who are on death row would like to know their fate as quickly as possible. Sir, we need to move to that stage and not to allow people to pander to the view point that we are more cruel and inhuman than those persons who sit in the Privy Council thousands of miles away.

Sir, that is the basic position which I have in relation to this Bill. Those who are responsible for carrying out the law should do so because it does exist, then once persons have exhausted their appeals and expeditiously, the law should be carried out. There are those persons who might have reservations or concerns about the death penalty who should not be blamed, as they are now, because of the fact that the law is not being carried out. I have not met that many persons in the process who are supposed to be involved in carrying out the death penalty who share those reservations. Therefore, there should be no excuse other than perhaps the confines of the decision of the Privy Council which are binding on us, which should excuse the death penalty from not being carried out.

Sir, we must find a way to be more productive and efficient in getting these matters through the court system, having all appeals exhausted and all the processes put in place so that the law could be carried out. In the year 2002, we should not be finding ourselves in a position where we are introducing an amendment that declares to the world that we accept, as part of the Constitution of Barbados and as part of our Bill of Rights, that a delay in carrying out the death penalty is acceptable. It is not. It is cruel and inhuman, in my view. I thank you Mr. Speaker.

Hon. Sir Henry FORDE: Thank you, Mr. Speaker. I consider this amendment to the Constitution to be of such importance that I respected the whip of the Party and returned from what I believed to be a much needed holiday to participate in this Debate.

As the Honourable Member for St. John has said, the Debate is not directly one about the death penalty, although, of course, it is the death penalty and the application of the death penalty that is the substratum of this Bill.

Let me be frank and say that I do not believe that any of the leading political parties in Barbados today and very few of the politicians in Barbados today, are prepared to lead public opinion away from the death penalty. I believe both Parties, as well as all of us in public life have determined that the majority of the public of Barbados are in favour of the death penalty and are against its abolition.

Sir, I believe this will remain that way for a long time. It is not a question of fear so much in the minds of politicians but I think it is a judgement call which those of us in public life believe that the public, at the moment, are not prepared to be led away from a penalty which a small society believes must be kept there as a deterrent and sometimes, even more than a deterrent, as the real ultimate penalty to be applied.
2.55 p.m.

I do not anticipate within the Caribbean in the foreseeable future that you will witness Caribbean Parliaments moving away from the use of the death penalty for the heinous crimes of murder and treason. Sir, recently we passed the Bill on terrorism and we also extended the death penalty for acts of terrorism.

Sir, before September 11, in most of the European countries the trend has been to move away from what they consider to be some forms of punishment that are inhumane and cruel *et cetera* but one has to recognise that there are societal and attitudinal changes that occur. In Britain a few centuries ago it was not unusual to put a man in the stock, cut off a hand for larceny, shoot people in the market square or behead them and it is still the law in certain countries which, in my view, are not uncivilised because they have this form of punishment. They genuinely believe within their culture that this is a way of deterring criminals.

Sir, the United States of America which prides itself as being the most civilised of all countries and most righteous in their actions have maintained the death penalty in most of their States and certainly at the federal level even though recently one has seen a move away from that.

It concerns me that the United States of America has more convicts per 100 000 of their population than any of the

other so-called civilised or uncivilised countries. Mr. Speaker, in the Economist of August 10, 2002, at page 9 there is an article 'Too Many Convicts – American Tough Crime Policy is Having Unintended Consequences' which says:

"Today is a special today for 1 600 American men and women. They are being released from a state or federal prison. Tomorrow will be another special day for another 1 600 prisoners as well as the day after that. Some 600 000 inmates will leave prison this year, more than the population of Washington, D.C. After quadrupling its imprisonment rate in just 30 years, America now has 700 people in every 100 000 under lock and key, five times the proportionate in Britain, the toughest sentencer in western Europe. The world's most aggressive jailer must now confront the iron law of imprisonment, that those who go in almost always come out."

Mr. Speaker, what is bad about that situation is that it is among the people who are black that there is the highest incidence of imprisonment.

This article challenges our minds that societies have to go through changes and look at areas to determine whether they will always keep punishment.

Sir, the Honourable Member for St. John said he never heard a debate in this House about the death penalty but I have heard a debate before but the bulk of Parliament, in the 30 years I have been in this House, has always carried the view that the death penalty should be retained.

When I had the honour and responsibility to be the Attorney General, I always made the point that once you have taken that oath of office, whatever your personal feelings on the matter, you have the duty to enforce the law. I believe that successive Attorneys General, those before me and other Members of Parliament feel that we must enforce the law of Barbados as it is, until there are a sufficient number of people in Barbados with the conviction, feeling and enthusiasm to believe that this law ought to be changed. Mr. Speaker, as I have said before, I do not think it will be changed for a long time to time. I do not think that change will necessarily come from Parliament, I think it will come from among the people themselves.

Mr. Speaker, I have been very concerned about the manner in which the changes to the law have been affected by judicial action. I am sufficiently experienced in the law after 40 years of practice to realise that judges make law and it is a mistake for the public to believe that judges only interpret the law.

What has been happening in this area of the death penalty is that judges in the United Kingdom who constitute both the ultimate Court of Appeal for England, the House of Lords, are the same judges who constitute the ultimate Court of Appeal for a dwindling number of English-speaking countries outside of England. These judges sit in one day to interpret the law of Britain where the majority of the British House of Commons, Parliament and the people have moved away from the death penalty and enforce that law. These same judges then sit occasionally where a majority of the people of the Caribbean have decided they do not want to move away from the death penalty and these gentlemen who are well learned in law obviously have a difficulty.

They have interpreted the Caribbean law against that background and increasingly have been finding a way of abolishing the death penalty, particular the execution of the death penalty.

I have the same concerns that Lord Hoffman expressed that from time to time the ultimate court should not be so high-bound by precedent that it cannot correct inequities in the law.

I also have the concern that if the law has been rendered uncertain by the Privy Council in some of its recent pronouncement, then one does not know what the law is.

This Government feels very strongly that it has to reflect the views of the majority of Barbadians as a whole and has attempted through the legislation to restore the uncertainty created by the various judgements, particularly the last three judgements of the Privy Council.

Hence, what we are doing by Section 2 of the amending Bill is to say that a mandatory sentence of death is not inconsistent with Section 15 of the Constitution, that it does not constitute inhumane or cruel treatment.

I have always understood the Offences Against the Persons Act of Barbados and similar legislation in the Caribbean and England as well as the Common Law as making the penalty of death mandatory for treason and murder. Sir, it has always been a question that once the jury has found you guilty in Barbados or the Caribbean, the sentence of death is mandatory and it is announced by the judge but The Privy Council has found that very difficult to accept.

3.05 p.m.

Sir, putting forward the views which came out of Europe and elsewhere, they feel that if the Constitution, legislation or enactments are so worded, they can get around them by saying that these issues should be issues on which

convicted persons should be heard at a second tier, by a jury or mercy committee.

The new amended Section 3 (a) seeks to get around that difficulty and to restore the law as it relates to Barbados.

The new Section 3 (b) says:

“any delay in executing a sentence of death imposed on a person in respect of a criminal offence under the law of Barbados of which he has been convicted;”

Therefore, that should not be seen as contravening Section 15 of the Constitution.

Sir, delay in the administration of justice is always a great difficulty for those of us who believe that fair trials must come about not only by an impartial judiciary but also within a reasonable time. There is also a limitation period in civil law which can also work against you if you do not act upon a matter within a reasonable time.

Sir, I understand the concerns of the Honourable Member for St. John in this regard because I also have a difficulty with it. I am not sure how we can deal with this problem at the post conviction stage. This section does not effect delay at the pre conviction stage because Section 13 gives the protection to a person who has been arrested and charged. If the courts do not get on with the trial of the person charged, the accused can move under Section 13 of the Constitution to be released without prejudice of being tried again. That is my memory of Section 13 of the Constitution.

Sir, to some extent we have provided a quick trial of persons within the Constitution and we are not derogating from that provision. Unfortunately, in the Caribbean and elsewhere, quick trials have not been the order of the day. If you read the jurisprudence of the European Human Rights Commission, you will be surprised at how long it takes sometimes for a person to get to trial.

I believe that those of us who understand justice and want fair trials must emphasise that states, not only the State of Barbados, provide adequate facilities in order to ensure that people who are charged, are brought to trial quickly.

Mr. Speaker, the same principle should apply in a civil case. There is no reason why it should take thirteen years before a person can get to trial, especially in a criminal case where a person's freedom is at stake. Therefore, I join with those who urge Governments, including our own Government, to make more money and facilities available for the quick trial of cases.

Sir, we are moving towards a Hall of Justice. I believe that the physical improvement would help but I also believe that we need more judges. There is a view which came out of the Bar Association of Barbados that judges do nothing in the afternoon. Sir, that is a figment of our imagination. As a lawyer, I take home work every night in order to be prepared for the next day. I am a perpetual student or school boy and that is the nature of the profession that I follow and judges themselves have to take home work. Our judges do not have the kinds of facilities that are available in other jurisdictions, including the United Kingdom, but they ought to have them.

Asides.

Hon. Sir. Henry FORDE: Sir, the judges need the facilities. They need to have a good library, access to the internet and Lexis so that they can look up points quickly.

In the United Kingdom and other countries that have these resources, judges are specialists. A judge who works in a commercial court would also be doing bankruptcy law and other things.

Our judges have to move from one day doing all aspects of criminal law and the next day into commercial law, insolvency and international trade and it is very difficult. I do not know of anybody in law practice who has the capacity to do these things at the speed that is expected of the judges without outside assistance.

Sir, the State in making this change must also recognise that its obligation is to treat law as part of the country's development. This is a thesis that I argued when I was a Member of the Cabinet. It has taken many years for successive Governments to recognise that we cannot have economic development unless we have a position where our legal system is quick, safe, impartial and independent of the State.

Sir, I would have wished that we did not have to have a Section (b) of this Bill but I believe that the Honourable Member for St. John, like myself, could be assured that the Constitution is not being altered to prevent people from the right to an early trial.

The new Section 3(c) deals with prison conditions and I find it difficult that the Privy Council could say that if the prison conditions, under which a person is imprisoned, are not up to the standard that should constitute a reason for reversing a sentence of death.

Sir, I believe in penal reform. I believe in the reform of prisons but I do not believe that those conditions which are *ipso facto* the events should influence whether or not a person should suffer the penalty of death. To the extent that

(c) makes the changes, I have no difficulty with that, but I would use the occasion to say that we have made improvements in our prison but the public has to understand that when people are imprisoned they are not only there to be punished in the sense of an eye for an eye and a tooth for a tooth. They are there for those of us who have Christian principles to help to reform and to rehabilitate them.
3.15 p.m.

If you believe in Christianity you always believe that people can be made better and that people can be reformed. I would like to see more of our resources on rehabilitation. Very good things are being done at the Prison. There are people who have ability who can be changed in many respects. One of the things about the article I was reading from *The Economist* is that the United States spends very little on rehabilitation projects.

If we really believe that people can be saved in the Christian sense of the word then we should start with those who have gone off the straight and narrow path and spend some money on rehabilitating them, Sir. I have no difficulty with the amending Section 3. which amends Section 23(3) in order to make it beyond doubt that the bilateral agreements into which we are entering for the exchange of prisoners are not in any way unconstitutional and I believe that we should, wherever possible, enter into these agreements, facilitating the transfer of prisoners.

I think the Government is a little bit optimistic to believe that it would provide an ease in our prison conditions. Perhaps the Honourable Attorney General has figures that I have not had access to. It seems to me that there are a lot of Barbadians as well in jails in the United States and in Canada and the United Kingdom. If this is so, then we have to be very careful that the provision, the bilateral arrangements that we enter in with them, do not let us be flooded.

Sir, there is a fear in the Caribbean that some of the Barbadians who have gone abroad and the Jamaicans and elsewhere, particularly to the United States, have been returned to the jurisdictions having learnt their trade in a more cruel atmosphere of the United States and the United Kingdom. We need, not only a transfer of prisoners to serve sentences in prison, but the rehabilitative process must form part of any such treaty. I would expect that we would be very hesitant to agree willingly to the return of people willy-nilly.

The problems that have occurred recently in Guyana, some of the problems of Jamaica, I am not sure I have enough evidence to say even some of the problems of violent crime here have not been caused because we are seeing United States in particular deport people back to their countries of origin merely because they have been following a pattern of crime in the United States and elsewhere.

We have to be conscious of it, Sir. We have to monitor it, research the matter. We have probably to deepen the nature of cooperation to ensure that there are resources available to deal with these people to monitor them. There may be some restriction on liberty. I believe you can only sometimes preserve freedom by restricting some of the freedoms and I hope that we will follow that.

Sir, you have indicated that I have just two more minutes to speak and I will speak to Section 4 of the Bill which seeks to amend Section 78 of the Bill. I was very concerned about the Privy Council ruling in relation to the prerogative of mercy. There is a great danger that in the enthusiasm to abolish the death penalty and to deal with situations where the death penalty is on the Statute Book to modify the death penalty. As it is, the Privy Council is probably getting it a bit wrong in this respect.

The exercise of the prerogative of mercy is not finding a person guilty or innocent. It is looking at the process of what I call rehabilitating that person. It is looking at perhaps the nature of the crime and the antecedents to see what are the possibilities and should you exercise a discretion to commute the sentence, to pardon for instance. In this area, I think that if we make it too much of a legal exercise of a trial we would be in great danger.

The Honourable Member for St. John agrees with the Attorney General and I agree with them on this point that one has to keep the whole legal process out of this part of the criminal trial and experience. I would hate to think that the Mercy Committee or the Privy Council has to listen to the whole arguments over again and that there is another tier of appeal in the country.

Mr. Speaker, in supporting the legislation, I would ask that the Government bear very much in mind the necessity as well to make sure that our system of justice is quick, efficient, independent and impartial and that persons get a fair trial. Pratt and Morgan was no surprise to me in that ever since the 1940s there were decisions that said if you did not execute a sentence of death within a reasonable time it was cruel and unfair treatment so to that extent the Privy Council was restating part of the common law as was seen even in the Indian continent at that time in the State of India which was part of the Commonwealth in those days.

What is a surprise to me is the enthusiasm with which the members of Her Majesty's Judicial Committee of the Privy Council have proceeded to legislate by way of judicial pronouncement. I would not like to see that judges are curtailed in this respect but I do believe that there is a difficulty for us.

Finally, Mr. Speaker, the answer which probably will restore our confidence in ourselves lies in having our own

final court of appeal. I have always been a strong advocate of a Caribbean Court of Justice. That is not to say as some of those people who believe in the abolition of capital punishment and argue that our court is a court merely for hanging. The Federal Court was an excellent court and I believe that by and large in the Caribbean we have had some very outstanding jurists and judges and that the judiciary in the Caribbean has been among the highest in the standards of the world.

There have been very few cases of corruption among our people. They are not well paid as compared with some professions, insurance, banking, the law, doctors, but they have done an excellent job in maintaining high standards of justice. Therefore, I want to say one final word to the human rights bodies.

I would say to them that there is no part of the world, even in Europe, where human rights are more respected than they are here in the English-speaking Caribbean and, particularly in our Barbados and, therefore, to me, it is galling to listen to some of the programmes and some of the people who are abolitionists characterise Barbados or Jamaica or Trinidad and Tobago as being against upholding human rights because our country can set an example and has been able to set examples in the international sphere on how human rights should be respected. I have no doubt that the Government will follow that legacy and cherish the legacy which has been built up over the years.
3.25 p.m.

Hon. Dr. R. L. CHELTENHAM: May I begin, Mr. Speaker, by indicating that I do not accept the view of many of my colleagues that this is not a debate about hanging. I think that the heart of the debate is the question of hanging and there is also the additional question of whether the people of this country should properly insist that the laws of the land, as reflected on the Statute Book, be carried into effect, notwithstanding the attempt of any external body, such as the Judicial Committee of the Privy Council, to put obstacles in the way of the implementation of the death penalty in cases of murder.

We need to remind our listeners that the Offences of the Persons Act in Barbados provides at Section 3 that those who are found guilty of murder and have exhausted their processes of appeal, for them, the penalty is death. This debate and the amendments to the Bill arise because in the last nine years, since 1993, there have been much turmoil and confusion in the Caribbean, with respect to the imposition of the death penalty because of the rulings of the Privy Council, our final Court of Appeal, saying in effect that more than five years passed after the commission of the offence, and before execution, that that is a period of time that constitutes cruel and inhuman punishment.

Sir, that was the first obstacle that was put in the way. They were to say later that if the physical conditions in prison are below the standards in Europe to which they are accustomed, that that too constitutes cruel and inhuman punishment and is a further obstacle to be carried into the effect of the death penalty. They were to add to that most recently by saying that the Mercy Committee – we call it here, the Privy Council – should hear representation and that the decision of the Mercy Committee is justiciable. That is to say, if you do not agree with the reasons given – because the indication was that reasons had to be given – the whole process had to be rational and if you do not agree with the reasons, you could challenge them in court, leading to a further process.

Sir, that was to collide with a longstanding view which was given expression by Lord Diplock in a famous case, the Queen against Diplock, when he said that mercy begins where justice ends – the case of *De Freitas v Benny*, 1972, 27WIR, 15th May, 1975. The longstanding view was that the exercise of mercy was not a reviewable matter in our court. So that we have had a series of obstacles placed in the way by the Privy Council and the man in the street is disquieted. He is angry and he is confused. He wants to know how is it that it is the law of the land that those who have committed murder and have been found guilty and have exhausted their appeals, are not being hanged. How is it that you say that our Parliament is sovereign and that we can do anything and everything, besides making a man a woman and a woman a man, and we cannot ensure that our laws are carried into effect.

Sir, that is a valid question and if the whole system is not to attract cynicism and disrespect, we have a duty to act and that is precisely what the Government is doing by introducing the amendments to the Constitution so as to ensure that the law of Barbados is carried into effect, notwithstanding the rulings of the Privy Council, starting from Pratt and Morgan in 1993 and continuing to this day, which in effect, put obstacles in the way of the application of the law.

The question of hanging, whether a society hangs or executes, takes a life as the penalty for death or otherwise, is a longstanding issue and it is an issue that has divided many countries in the civilised world. Today, the United Kingdom that is such a forceful advocate of the abolition of the death penalty is taking a position which is contrary to the position that had characterised the United Kingdom's stance on this issue, up until about 20 years ago.

The United States of America (USA) is perhaps the foremost country in the civilised world where the majority of the States still believe and have on their Statute Books, the death penalty. Even in the USA, resulting from the discovery of DNA and the application of defense, it is being found –

and lawyers have been at the head of this justice project which was led by Barry Check, who came to the attention of many of us in the O. J. Simpson trial. As a result of over 100 persons who have been on death row, now found to have been innocent and to have committed the offences to which they were tried and convicted and their convictions affirmed on appeal, there is a big debate in the USA as to whether, in the USA there should be the death penalty or execution, whatever technique you apply, for death as the penalty for murder.

I just want to say one thing which I think is important, that distinguishes us in a small face to face society. A man dies in Chicago and even though the circumstances of the death are cruel, heinous, offensive and revolting, to the man who reads of that in the USA, it is only a statistic. He does not know the man, who is the victim. He does not know his brother or sister or his family, wife or children or cousins, but in a small face-to-face society, every death impacts acutely and devastatingly on a lot, sometimes most of us. Every violent death – that is what I am talking about – you know the man himself. You were at school with his brother, his sister is friendly with your sister, his grandfather is close to your own family. In one or more ways, you know the victim. You know of his family and you feel acutely his death.

3.35 p.m.

Mr. Speaker, in one or more ways, the victim or the family is known to you and you feel acutely his death. It goes further than that. One feels that if the justice system is to work effectively and efficiently, the person is to be given a speedy trial and that all the protections of due process are to be afforded him. He is to be allowed to appeal on both occasions. He is allowed to go to the international human rights bodies if he so wishes. If, at the end of the day, his conviction is affirmed, the appellant ought to suffer the penalty of death. That is a distinction between a small face-to-face society and a large impersonal society where violent and cruel deaths do not have that same impact like it does on the population of that small face-to-face society.

Mr. Speaker, that has informed my own position on the question of the death penalty. I believe in it in the appropriate case. It is still a fact that the last three persons who were hung in this country, on one of those dates I was acting Attorney General at the time and it was my responsibility, which I did not shirk, to make sure that it was carried out. There is a certain element in this society to which we are sending the wrong signal. That signal is that the law is not being carried into effect, that it has been a long time since anyone has been hung. In doing that, we are also dispiriting a lot of decent, law-abiding citizens who believe in the death penalty and for the same reason that I do. These persons feel that if the law is on the Statute Books and the

justice system has run its course, then the penalty of death should be applied.

Sir, having said that, I accept the view of the Privy Council, though not in the same way in which it has been stated by them. That is to say that we should have degrees of culpability in relation to murder. We know there are already well-known exceptions: If one kills in defense of one's life or limb with an honestly-held belief that one was threatened and was in danger, that is a complete defense to murder. We know that an accident is a defense. We know that diminished responsibility is a partial defense, such as provocation, where a person is convicted of manslaughter and not of murder. We know that insanity is also a defense, except that the person might be asked to remain incarcerated at Her Majesty's pleasure – and that might very well be forever.

Sir, in a new Homicide Bill, of which we have been promised by the learned Attorney-General, we need to put the circumstances in which a conviction for murder would not result in the death penalty. To that extent, I accept there ought not to be any automatic application of the death penalty following a conviction for murder because there may well be extenuating circumstances, notwithstanding the decision of the jury, which says in effect the penalty should be life and not death.

Sir, in most respects such as whether a five-year delay between the commission of the offence and the time of the execution, constitutes cruel and inhuman punishment, that I do not accept. It should be no bar, in my judgment, to the application of the death penalty.

Sir, quite unlike what was said by my friend, the Leader of the Opposition with respect to death penalty or the promise of a flogging hanging over one's head could cause anxiety and distress and could be deemed to be cruel and inhuman. Sir, it is a well known phenomenon that one could only live at a high point of tension and anxiety for so long and no longer. That is to say, a week to ten days after one is convicted and sentenced to death, one hears the movement of every prison officer, every hour of the night, every minute. One is at that level of tension and anxiety. After seven to ten days, that convicted person sleeps as soundly as the man who has never been charged.

Sir, we are quite mistaken in concluding that because the process has lasted for more than five years, that it is cruel and inhuman. Many of those convicted persons would wish for the process to last for at least twenty years because every additional day, the convicted person entertains new hope and remains alive. Therefore, that is the counter argument that we have to appreciate which is deeply rooted in human experience.

Sir, I want to deal with the notion that the application of the death penalty is somehow linked to the establishment of a Caribbean final Court of Justice. A few years ago when the cases of Pratt and Morgan v The Queen and the other cases that followed that tradition were determined, many spokesmen for the court appeared to have been making the point that we have to look to our own final court in order to ensure that our law on capital punishment are carried into effect. Sir, that was to mistake the purpose of the court and to overlook the fact that many of our judges in the Caribbean are supportive of the positions being held by the Privy Council, such as the question on mandatory sentence, which came out of the Eastern Caribbean court and which was upheld by the Court of Appeal.

We are very wrong to believe that many of our judges in the Caribbean are not supportive of the positions being taken by the Privy Council. We, therefore, have to make it clear to the people of this country about the real basis and rationale for a final court. Several attempts have been made in that direction, for one cannot claim to be truly independent and manage one's own affairs as far as the administration of justice is concerned. Therefore, our political independence is only partial when we have to rely on others who are thousands of miles away to determine our cases and to constitute our final court of appeal.

Sir, there is another rationale apart from the interpretation of the Treaty of Chaguaramas and a court to determine the disputes that would arise and certainly will arise, unavoidably so, with respect to the Single Market and Economy. There is another basis for the court which is often overlooked. If we in the Caribbean wish to enrich the common law jurisprudence of the Commonwealth, we could only do that through having a third court. It is for first-stage decisions of the Court of Appeal that serves to enrich the common law but for decisions of the third court ... and for now, our third court is the Privy Council.

Sir, if Caribbean jurists are to add to and enrich the jurisprudence of the common law system in the Commonwealth and, indeed, the world, it means that we have to have our own final court so that those decisions could be regarded as constituting the jurisprudence.
3.45 p.m.

This point is not often made but it is a very important point with respect to the necessity for a final court which is Caribbean populated.

The further point has to be made that there is a divide among educated people with respect to the death penalty whether it should be applied or not applied. There is also a divide among jurists in the region and elsewhere and we cannot be sure that even after we have passed these amendments in the law that they will not be struck down by

the Judicial Committee of the Privy Council which still has the responsibility to interpret our Constitution in circumstances where they have a doctrinal disposition to ensure that people escape the death penalty regardless of the circumstances in which they have committed murder.

Sir, we must not do anything to mislead the people and we need to let people know that we cannot be assured that even after delinking ourselves from the Privy Council that our own judges in the Caribbean who constitute the Caribbean Court of Appeal may show the same disposition to avoid the death penalty and frustrate the will of the people so that the death penalty as the punishment for murder is not applied.

Mr. Speaker, Barbados has a long and proud history of ensuring that there is fair play but there are instances of police excesses and we ought not to deny this. These instances are in the minority and when we bring into effect the section of the Evidence Act that allows confessionary statements to be taken in the presence of the camera and on tape we will be making a giant step forward to ensuring that there is no physical pressure, fear or torture applied to those charged with these serious offences.

Policemen everywhere would like a confession rather than go out and work hard to secure the evidence. Policemen have hurt the image of justice in the United Kingdom in the last 20 years and have been known to force accused persons to tell lies but the advantage in those large communities is that if the constabulary in Yorkshire and Kent are involved in this sort of rascality, they can bring in persons from Briton and Manchester to investigate their behaviour and expose the rascality but it is very difficult to do that here in relation to the Royal Barbados Police Force because we have to rely on them to investigate themselves.

We have to bear in mind that it is difficult for complaints here to be properly investigated, notwithstanding what is said, because there is a spirit among the police that does not allow them to investigate themselves so there is no check to ensure that wrongdoing is checked and exposed.

Sir, I want to make the point that in Barbados we make sure that accused persons are afforded representation funded by the State unlike many legal aid systems in many parts of the world where the most junior person at the Bar takes on the murder case.

Sir, I have never taken my name off the legal aid list of lawyers. I am still available and from time to time I do legal aid work especially with appeals. I also do my own legal aid because every year I do a large number of cases free of cost as well as keeping my name on the legal aid list. I have

quarreled with senior lawyers who do not keep their names on the legal aid list so I have insisted that my name should remain on the list.

Sir, it is a big distinction when you can draw from lawyers at the top because the accused person then has choice and he does not have to settle for the most junior lawyers just out of law school. Sir, we provide assistance all through the system through to the Privy Council but I am not sure that the assistance provided is necessarily adequate because it is not cheap to retain the services of English counsel. I am in touch daily with lawyers who are involved in the work of the Privy Council and it is very expensive because English lawyers charge a lot of money for their services.

Mr. Speaker, I now am close to the end of the time permitted to me under the rules and I wish to say that we owe it to the country and the justice system to ensure that the laws of the land are carried out in relation to this matter. We owe it to ourselves to ensure that certainty and predictability are restored to the law. Several decisions identified, starting with Pratt & Morgan, have thrown the administration of the criminal justice system into turmoil. By this step today, we have no guarantee that it will be a successful step but we have a duty to take it. Sir, by this step today we are attempting, within the limits of our competence, to ensure that the rule of law prevails, underpinned as it must be, by certainty and predictability and that the laws of the land are carried into effect.

3.55 p.m.

Sir, the Government has a duty to take this step and I join in applauding the Government for the step that has been taken and I give this Bill my full support.

Asides.

Hon. R. N. GREENIDGE: Mr. Speaker, I believe that as law makers we have a duty to regulate at a domestic level, especially in a situation where we have perceived that the Privy council is getting around everything that we have put in place. I believe that we have a duty to regulate our own affairs.

Mr. Speaker, the case of Pratt & Morgan has caused a lot of problems and uncertainty for the Caribbean. We in Barbados knew what the law was and then one morning we got a decision which said that is no longer the law. Sir, as students of the law, I think that is the term used by the Honourable Member for Christ Church West, we are still in a quandary. The question facing all of us in this region and more precisely facing us in Barbados, is whether the case of Pratt & Morgan and the list of cases, including Lewis v the Queen have ruled out the death penalty altogether.

Sir, the effect of Pratt & Morgan was that convicted murderers escaped the death penalty because of delay. Now the case of *Lewis v The Queen* seems to be putting the brakes on the death penalty altogether. When the case of Pratt & Morgan first surfaced, I heard a very sensible caller on the call-in programme, *'Tell it like it is'*, on the Voice of Barbados, ask this question. 'If the problem really concerns the length of time these people are kept on the death row, why is it that we do not put time-limits in place?' In other words, why do we not give the murderer a specific amount of time to go to the Court of Appeal, the International Human Rights bodies and the Privy Council? Sir, that was a very sensible suggestion by the caller.

Sir, what the caller was seeking to ask is, if we cannot get those murderers hung, because we have kept them too long, why do we not put things in place to speed up the process so that no one can later argue that it is because of the delays that the death penalty cannot be carried out?

Sir, I want to make the point that even where the time-limits are concerned we are not free from the tentacles of the Privy Council. Currently a convicted murderer has twenty-one days to appeal to our local Court of Appeal. However the Privy Council used the doctrine of 'Special Leave' which gives a convicted murderer an unlimited period of time in which to appeal to the Privy Council. Another aspect of this 'Special Leave' is, the convicted murderer does not have to give the Privy Council any cause why he is coming later than twenty-one days to them. The convicted murderer can go to the Privy Council at any time and it does not matter to them.

Mr. Speaker, it is clear that every law or process that we have in relation to the death penalty is being subverted by the Privy Council. It is clear to everyone with the slightest modicum of commonsense, who reads the Privy Council judgments, that we will see that they have an agenda to abolish the death penalty altogether. There can be no doubt when you read their judgments that you can see what they are about.

Another thing is, the Privy Council tends to bend over backwards to hear the cases of the convicted murderers. That is why no questions are being asked why these appealed cases are going to the Privy Council late. The Privy Council gives a lot of accommodation to the murderers and every opportunity to slip the hangman's noose.

Mr. Speaker, you would have realised this morning when the Honourable Attorney General was presenting this Bill, that the Privy Council is now finding it possible to roll off volumes of jurisprudence to show that the death penalty is unconstitutional. Sir, you can contrast that with the way that they treat our lawyers and their submissions. I have looked at some of the judgments which came from the Privy Council and I would describe those judgments as dismissive.

A lot of the judgments that come from Caribbean cases are just one-page judgments as if to say you all are not talking sense. Mr. Speaker, lawyers for the State have complained that you get more accommodation and more attention as a lawyer for the murderer than as a lawyer for the State.
4.05 p.m.

Therefore, this debate is not about the lack of will on the part of Government. This is about the Privy Council's feeling about the death penalty. It is about their bending the law, the way they want to have it. Personally, Mr. Speaker, I want to see a Barbadian case go to the Privy Council and let them tell Barbados that the death penalty is unconstitutional.

What we have now, Mr. Speaker, is the Jamaican case of Pratt and Morgan and the Lewis case in Jamaica as well besides the other line of cases that I was speaking about. They are speaking about being unconstitutional where the death penalty is concerned but those cases should be taken as highly persuasive at the very best. In Barbados, the penalty for murder is death and that is very clear. I would want them to tell us in their judgment where is the collision with our Constitution where the death penalty is concerned.

Mr. Speaker, this legislation is really an attempt to close a relatively small loophole and obviously it has some bearing on the whole question of the right of access to international bodies. I believe that if over the years we have been allowing people to gain access to international human rights organisations so that we can gain from their pronouncements and from their opinions and decisions that we cannot simply say to them now that that is the end of it and they cannot do it any longer. We would be estopped from taking that particular action. Sir, I see this amendment more in the line of an enabling legislation enabling us to carry out what the law really says.

Mr. Speaker, public sentiment in Barbados where the death penalty is concerned is crystal clear. If there is a penalty for murder then why is it not being used? This is the question that people are asking. They want to see enforcement of the law. If it is not being enforced, they are asking the question why not. I know that this is an age of ideologies, various points of view and unchangeable beliefs and I feel that we have to put certain checks and certain balances within our jury system so that justice can be carried out.

In quite a few jurisdictions around the world, whenever there is a murder case being done, one of the questions which every person on the jury is asked is, do you believe in the death penalty? I would not be surprised, Mr. Speaker, if that line of approach is taken in Barbados some time in the not too distant future where all members of the jury would be asked the same question. Every juror should

be asked his opinion on the death penalty, otherwise you are always going to have a situation where it is going to be very problematic to have a unanimous verdict because there are going to be some people, irrespective of how gruesome a murder really is, who are not going to agree to the death penalty and they are going to tell you point blank that they do not believe in the death penalty and, therefore, they are not going to give their vote to enable you to put the convict at the noose.

I have also realised that in recent times in Barbados there is a kind of outcry, disgust and dislike for certain lawyers in certain sections of the Barbadian public in particular for those lawyers who try to save convicted persons from the noose. The lawyers who would virtually apply to have the courts open at night so that they can facilitate an application for a stay of execution, those are the lawyers I am referring to. I have also heard people speak against the lawyers who represent people who are obviously murderers and they argue that they should not take the case and look how they are trying to bamboozle the witnesses, making the murderer seem to be good and the witnesses the bad. Put another way, Mr. Speaker, there are people out there who criticise these lawyers simply because they are trying to excel in their professions. People are arguing that in doing that they are helping the criminals and perpetuating crime.

As a lawyer myself, Mr. Speaker, I believe that lawyers should represent clients with all the vigour at their disposal and, more importantly, I believe that due process should be accorded to everybody. Even the most miserable and the most despicable among us should have due process as well. I believe that all of this is a matter which is bigger than the client. I think that we have to exhaust wherever necessary those avenues available to the convicted person. If we want to close certain doors which should be available to him, then by all means take the right procedure and close those doors. Sir, once the doors are left ajar, I think that the lawyers should be allowed to use them and should not be despised for doing their work.
4.15 p.m.

Mr. Speaker, our Constitution provides for a right of appeal to the Privy Council. If the law and the Constitution say that you have that right to appeal, it should be facilitated. We cannot appear to be vigilantes and running kangaroo courts in the region. We have to abide by what the law says.

Mr. Speaker, our Statute Book contains and speaks about the penalty of death for murder. This society, I am sure, Sir, feels that the death penalty should be used to deter crime. The ruling of the Privy Council has virtually handcuffed our judges. The judges are now saying, this is what the Privy Council says, I can do no more. I must abide with what the Privy Council says.

Mr. Speaker, the society believes that if murderers think that they can kill as they like and get off, they will do so and we believe that to protect our society is the bigger good. What is best for the society, I think must always be the overriding factor. The death penalty is the law which our society wants, and the law must always be a response to the needs of our society. We must not allow the Privy Council or any other council to emasculate the will of our people.

I believe, Sir, that the time has come for us to take our destiny in our hands. I think we have paid a lot of deserved – I must say that – respect to English law. I think that we have paid a lot of homage to English jurisprudence.

I finish, Mr. Speaker, by saying that when that jurisprudence has no bearing or no connection with the realities in our country, then that is time for change and that is time, Sir, for us to move on.

I am obliged to you.

SUSPENSION

Hon. R. N. GREENIDGE: Mr. Speaker, I beg to move that this Sitting be suspended until 4.35 p.m. today.

Hon. G. A. CLARKE: I beg to second that, Sir.

The question that the House be now suspended until 4.35 p.m. was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.
4.25 p.m.

RESUMPTION

Mr. SPEAKER: This Sitting is resumed.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I want to thank all Honourable Members who have taken the time to participate in this debate and to reflect on the amendments before this Honourable Chamber. I have listened and taken careful note as to their concerns, as well as to their points of support and their points of disagreement. I can safely give the House the assurance that this Government is mindful of the things which they have raised. We are mindful that Barbados has had a long and proud history and reputation, not just within the region but globally, for the manner in which it has dispensed justice and the manner in which it has sought to uphold the precepts of democracy and the precepts of good governance. Indeed, it may be instructive for me, Mr. Speaker, in the wrap up to share, very quickly, with this Honourable Chamber the record of detail of the local Privy Council, as it pertains to the matters coming before it in the exercise of the Prerogative of Mercy.

There is no doubt that following the Pratt and Morgan ruling, a number of sentences immediately stood to be reviewed. Indeed, there were nine people whose sentences were commuted as a result of the Pratt and Morgan ruling in 1993. Mr. Speaker, separate and apart from that, the local Privy Council of Barbados, without the prodding of international human rights bodies, without the prodding of the Judicial Committee of the Privy Council, exercising truly what has been conferred upon them in Section 78 of the Constitution, namely, the determination for the Prerogative of Mercy, saw to it that some 16 persons between 1984 and 1998, had their sentences commuted from death by hanging to life imprisonment.

Sir, these sentences were commuted based on a true consideration of the merits of the particular matter coming before the Privy Council. So that to suggest, in any way, that either the Government or any of the organs of the executive would wish to just see persons suffer death by hanging at any cost, would be the furthest thing from the truth, as it pertains to the records of events in Barbados over the last 20 years.

I want to say, Sir, that our difficulty truly comes in our determination that the law as it stands, must be applied. We can offer no guarantees as a parliament that the Judicial Committee may not seek to overturn that which we have passed today and before. As the Honourable Member for St. Joseph said, we can offer, equally, no similar guarantees that a Caribbean Court of Justice, once inaugurated may not do the same, but we simply assert the right of Parliament to reflect the will of the people in the passage of legislation, such that these are the things which we feel should be reflected in the laws of our land. We recognise that capital punishment, as it stands on the Statute Books of Barbados, is still something which the people of the Barbados and the Parliament of Barbados by reason of not reversing it, would wish to be maintained. In these circumstances, we simply seek to give effect to this matter.

I would want to liken what has happened to the Caribbean in the last nine years, since the Pratt and Morgan ruling, to the International Cricket Council which every time you master an element of the game, change the rules of the game on you. When we had a four-prong face attack, we saw the introduction of the two bouncers per over. Every time you master an aspect of the game, the rules of the game have changed on you. This cannot overwhelm the Administration of Justice and we believe that there must be a certain level of predictability. We believe there must be certainty in the Administration of Justice, without necessarily being cast in stone, such that the rule of law can be effectively maintained.

In respect of the comments on the delay on death row, may I say, Mr. Speaker, that this Government has already taken administrative decisions which have seen, in the last

few years, persons charged with murder, move from the point of charge to the completion of the local court of appeal process within an average of two, to two and one-half-years. 4.40 p.m.

Mr. Speaker, in respect of the comment on the delay on death row, may I say that this Government has already taken administrative decisions which, in the last few years, have seen persons who have been charged with murder moved from the point of charge to the completion of the local court of appeal process within an average of approximately 2½ years. Therefore, though we are amending the Constitution to say that a delay of justice should not constitute cruel and inhuman treatment, parallel to that, we have implemented administrative measures to ensure that justice is quick. We are firmly of the view that the greatest deterrent to crime is not necessarily hanging or any sentence of the court but, indeed, that persons should be dealt with quickly in whatever way and with whatever sentence by the systems of justice.

Mr. Speaker, as indicated, this is but one part of an overall set of reforms and measures which we hope to be able to deal with – the rising issue of lawlessness. We feel strongly that the most heinous crime a society could face is the rule of law being observed and being breached.

I want to give the Honourable House the assurance that we would continue with a range of measures that would speak to the issue of stemming the incidents of lawlessness in Barbados but that we recognise it did not happen overnight and, therefore, the reversal of it would not be overnight.

Sir, these measures would not now apply to any person who already has been convicted of murder. Therefore, those four persons for whom death warrants were signed last month and who have now appealed before the Judicial Committee of the Privy Council, would not be subject to the amendments as they pertain to cruel and inhuman treatment in the exceptions that have been created.

Equally, I should remind the public that even if their appeals are dismissed when they are heard later this year, those persons would still have a right to petition the human rights body and, therefore, there could be no reckless excitement of the public that someone would be hung tomorrow, next week or next month. We believe due process would take its place but in the same way that due process would take its place, there must be a commitment to allow the laws of Barbados to be implemented as they stand.

Mr. Speaker, I am, therefore, grateful to those Members who have spoken and to say that we would endeavour, as a Government, to uphold the very strong

tradition that Barbados has had in respect of the maintenance of the rule of law but equally that we would be faithful to those things which we believe to be in the best interest of the public and to be in the common good. To that extent, to maintain the rule of law and to see it applied as it stands. I am obliged to you, Mr. Speaker.

Mr. Speaker, I beg to move that this Bill be now read a second time.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

On the separate motions of Hon. Miss M. A. MOTTLEY, seconded by Hon. Miss B. A. MILLER, the Bill was read a second time.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg that Your Honour now leave the Chair and this House resolve itself into Committee.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

On the separate motions of Hon. Miss M. A. MOTTLEY, seconded by Hon. Miss B. A. MILLER, the House resolved itself into Committee, Mr. D. CARTER in the Chair.

COMMITTEE

Clause 1 was called and passed.

Hon. Miss M. A. MOTTLEY: Mr. Chairman, I beg in moving that Clause 2 stand part, to amend the first sentence so that where it reads, "subject to subsection 4", we delete the number 4 and insert the number 5. Therefore, it will now read, "subject to subsection 5". In the circumstances, I beg to move that Clause 2, as amended, stand part.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

Hon. Miss M. A. MOTTLEY: Mr. Chairman, in respect of Clause 2(3)(c), the words as mentioned in paragraph (a) be deleted.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

The question that Clause 2, as amended stand part was put and agreed to in the affirmative.

Clause 3 was called and passed.

Hon. Miss M. A. MOTTLEY: Mr. Chairman, in respect to Clause 4 at section 78 (5), in the first line where it reads, "a person has a right, to submit directly or through a legal representative,"

I beg to move that the comma after 'right' be deleted and the comma after 'representative' be deleted. Also, I beg to insert after section 78 (6), a new section 78(7) which reads as follows:

"Nothing contained in subsection (6) shall be construed as being inconsistent with the right referred to in paragraph (c) of Section 11."

I, therefore, beg to move that Clause 4, as amended, stand part.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

Hon. Miss M. A. MOTTLEY: Mr. Chairman, I beg to move that Clause 5 stand part.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

On the separate motions of the Hon. Miss M. A. MOTTLEY, seconded by Hon. Miss B. A. MILLER, Mr. Chairman reported the passing of one Bill, as amended, in Committee to His Honour the SPEAKER and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of the Hon. Miss M. A. MOTTLEY, seconded by the Hon. R. C. EASTMOND, the Bill was read a third time.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg that this Bill do now pass and be cited as the Constitution (Amendment) Bill, 2002.

Hon. R. C. EASTMOND: I beg to second that, Sir.

A division has been called for. The Bell was rung.

DIVISION

The Rt. Hon. O. S. ARTHUR, Hon. Miss B. A. MILLER, Hon. Miss M. A. MOTTLEY, His Honour J. M. EDGHILL, Hon. A. P. WOOD, Hon. R. C. EASTMOND, Hon. R. N. GREENIDGE, Hon. N. A. LYNCH, Mr. G. A. CLARKE, Hon. Miss H. E. THOMPSON, Hon. R. St. C. TOPPIN, Sir Harold St. JOHN, Dr. the Hon. R. L. CHELTENHAM, Mr. M. Z. WILLIAMS, Mr. D. T. GILL, Mr. G. W. PAYNE, Hon. Sir Henry FORDE, Rev. J. J. S. ATHERLEY, Mr. D. CARTER, Mr. D. J. H. THOMPSON, Mr. R. D. MARSHALL, Mr. T. A. PRESCOD, Hon. R. R. FARLEY, Hon. H. F. LASHLEY, Hon. Miss C. Y. FORDE.

AYES: 25
4.50 p.m.

NOES: 0

ORDER NO. 8 – CONSTITUTION (AMENDMENT)
(NO. 2) BILL, 2002

Hon. Miss M. A. MOTTLEY: Mr. Speaker, earlier this year this House dealt with a report, a draft Order and a draft Resolution which were accepted for the realignment of boundaries as a result of recommendations from the Electoral and Boundaries Commission.

One of the recommendations required that the Third Schedule to the Constitution be amended so as to remove what now exists as a 10 per cent variation on the average to be replaced with a 15 per cent variation. In other words, that all constituencies be within 15 per cent above or 15 per cent below the average when the number of constituencies are taken and when the total registered voters are divided by that number of constituencies.

It is hoped that this will bring a greater degree of certainty to constituencies and boundaries over a longer period of time because history has shown that with a 10 per cent variation, given the demographic changes in Barbados, we are in fact, reflecting changes in the boundaries as a matter of law every ten years.

We hope that this 15 per cent variation can give the constituency boundaries being affected a longer life time in respect of the rules of equity required by the Constitution.

With those few words, I beg to move that this Bill be read a second time.

Hon. R. C. EASTMOND: I beg to second that.

The question was put and resolved in the affirmative without division.

On the motion of Hon. Miss M. A. MOTTLEY the House resolved itself into Committee, Mr. D. CARTER in the Chair.

COMMITTEE

Mr. CHAIRMAN: The House is now in Committee.

Clauses 1-3 were called and passed.

On the motion of Hon. Miss M. A. MOTTLEY, seconded by Hon. R. C. EASTMOND, Mr. Chairman reported to His Honour the SPEAKER, the passing of one Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. Miss M. A. MOTTLEY, seconded by Hon. R. C. EASTMOND the Bill was read a third time and passed and cited as the Constitution (Amendment) (No. 2) Bill, 2002.

A division has been called for. The Bell was rung.

DIVISION

Ayes: Rt. Hon. O. S. ARTHUR, Hon. Miss B. A. MILLER, Hon. Miss M. A. MOTTLEY, His Honour J. M. EDGHILL, Hon. A. P. WOOD, Hon. R. C. EASTMOND, Hon. R. N. GREENIDGE, Hon. N. A. LYNCH, Hon. G. A. CLARKE, Hon. Miss H. E. THOMPSON, Hon. R. St. C. TOPPIN, Sir Harold St. JOHN, Dr. the Hon. R. L. CHELTENHAM. Mr. M. Z. WILLIAMS, Mr. D. T. GILL, Mr. G. W. PAYNE, Hon. Sir Henry FORDE, Rev. J. J. S. ATHERLEY, Mr. D. CARTER, Hon. R. D. MARSHALL, Mr. T. A. PRESCOD, Hon. R. R. FARLEY, Hon. H. F. LASHLEY, Hon. Miss C. Y. FORDE – 24.

Noes: Mr. D. J. H. THOMPSON - 1.

Mr. SPEAKER: The results of the division are: twenty-four Honourable Members voted aye and one Honourable Member voted no.

This Bill is therefore passed and so cited.

ADJOURNMENT

Hon. Miss M. A. MOTTLEY: Mr. Speaker, Sir, this brings us to the end of Government Business for today.

In moving the adjournment I wish to alert all Honourable Members that when the House resumes next week, it will be the last Sitting before we take summer recess. We will be breaking for four weeks and returning on September 17, 2002. Honourable Members may wish to be aware of this fact in order to plan their own affairs.

Next week Tuesday we anticipate that we will clean up some remaining business on the Order Paper as well as have a major Ministerial Statement from the Minister of Social Transformation in respect of the White Paper on Disabilities.

I want to thank all Honourable Members who afforded us their presence of being here today especially those Honourable Members who had to come back to this jurisdiction to be present here today. I also want to thank all Honourable Members for their commitment to this Parliament.

I beg to move that this House be adjourned until Tuesday, August 20, 2002, at 11.00 a.m.

Hon. R. C. EASTMOND: I beg to second that.

The question that the House be adjourned until Tuesday, August 20, 2002, at 11.00 a.m. was put and resolved in the affirmative without division and Mr. Speaker adjourned the Sitting accordingly.
5.00 p.m.

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SPEAKERS IN THIS ISSUE

CHELTENHAM, Hon. Dr. R. L. (St. Joseph)
FORDE, Hon. Sir Henry (Christ Church West)
GREENIDGE, Hon. R. N. (St. Philip North)
MOTTLEY, Hon. Miss M. A. (St. Michael North East)
THOMPSON, Mr. D. J. H. (St. John)