
THE House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 2003 - 2008

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FIRST SESSION 2003 - 2008
HOUSE OF ASSEMBLY

Tuesday, February 8, 2005

Pursuant to the adjournment, the House of Assembly met
at 10:00 a.m. on Tuesday, February 8, 2005.

PRESENT

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

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

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

Hon. Miss M. A. MOTTLEY, Q.C., LL.B. (Deputy Prime
Minister, Attorney-General and Minister of Home Affairs)
(Leader of the House);

Mr. D. J. H. THOMPSON, LL.B.(Hons.);

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

Hon. Dame B. A. MILLER, D.A. B.C.H., (Senior
Minister, Minister of Foreign Affairs and Foreign Trade);

Hon. G. W. PAYNE, LL.B.;

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

Hon. G. A. CLARKE, B.Sc., Dip. Ed.,J.P. (Minister of
Public Works);

Mr. R. D. MARSHALL (Chairman of Committees);

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

Hon. R. St. C. TOPPIN, LL.B.(Hons.);

Mr. D. St. E. KELLMAN;;

Hon. Miss H. E. THOMPSON, LL.B. (Minister of
Housing, Lands and the Environment);

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

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);

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

Hon. A. P. WOOD, J.P. B.Sc., M.Sc., M.Phil. (Minister
of Energy and Public Utilities);

Hon. R. R. FARLEY, B.Sc., J.P.(Minister of Education,
Youth Affairs and Sports);

Mr. C. A. MASCOLL, BSc. (Econ.) (Hons.), M.A.
(Public Finance) (Leader of the Opposition);

Dr. W. F. DUGUID, B.D.S. (Comm.), F.D.S., FDRCS.,
J.P.;

Hon. Dr. J. X. WALCOTT, M.B., B.S., F.R.C.S.(Edin.),
J.P. (Minister of Health);

Hon. K. D. SYMMONDS, B.A., LL.B.(Minister of State,
Ministry of Foreign Affairs and Foreign Trade);

Hon. D. D. MARSHALL, LL.B., (Hons.),
L.E.C.,(Minister of Industry and International Business);

Mr. R. D. JONES, B.A. (Hons.), M.A. (Ed.) J.P.;

Mr. M. A. LASHLEY, (LL.B.)(Hons.);

Dr. D. C. ESTWICK, B.Sc., B.M., B.S.;

Mr. R. L. SEALY, B.Sc., M.B.A.;

Prayers were taken by Pastor Dale Brathwaite.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, February 1, 2005.

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, February 1, 2005, which Minutes have been circulated, be taken as read.

Hon. R.R. FARLEY: I beg to second that, Sir. Mr. SPEAKER If there are no corrections or observations, then let these Minutes stand confirmed.

Prayers were taken by Pastor Dale Brathwaite.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, February 1, 2005.

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, February 1, 2005, which Minutes have been circulated, be taken as read.

Hon. R. C. EASTMOND: I beg to second that, Sir. Mr. SPEAKER If there are no corrections or observations, then let these Minutes stand confirmed.

PAPERS

Rt. Hon. O.S. ARTHUR: I am commanded to lay the following documents

1. The half-yearly report on the Revenue Collecting Departments of the Ministry of Finance for the period April 1, 2003 to September 30, 2003.

2. The half-yearly report on the Revenue Collecting Departments of the Ministry of Finance for the period October 1, 2003 to March 31, 2004.

FIRST READING OF BILLS

On the motion of Hon. Miss M.A. MOTTLEY, seconded by Hon. Dame Billie MILLER, the following Bill was read a first time:

1. Shipping (Incentives) (Amendment) Bill, 2005.

H54: 10.20 a.m

Sequence 1

Tuesday, February 08, 2005

House 54, sequence 2, 10:20 a.m.

SUSPENSION OF STANDING ORDERS

Hon. Miss M.A. MOTTLEY: Mr. Speaker, I beg to move that the suspension of Standing Orders 6, 16, 18, 20, 42(5), 43 and 44.

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

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

Mr. SPEAKER: Government Business is now the order of the day. Order No. 5.

ORDER NO. 5 - THE FORENSIC PROCEDURES AND DNA IDENTIFICATION BILL, 2005

Mr. M.A. LASHLEY: Mr. Speaker, I rise to make my contribution to the Bill that makes provision for the procedures required for the carrying out of forensic services, including DNA and also, the use of DNA identification services and the administration of the DNA...

Mr. SPEAKER: Sir, sorry to interrupt you, but just for the benefit of the Chair. Are you the leader of the motion for the Opposition?

Mr. M.A. LASHLEY: I am, Sir.

Mr. SPEAKER: Thank you.

Mr. M.A. LASHLEY: ...in particular, Mr. Speaker, section C, which states; "the altering of section 13 of the Constitution..."

First, I want to speak in relation to the regime that we have at present for the gathering of evidence. I want to say that, yes, we welcome the provisions for DNA in our legislation. I also want to say that we have known full well that this process of DNA has helped persons. In fact, when we really and truly do any analysis and we look throughout

other jurisdictions that provide for DNA legislation, persons are actually convicted and later when the DNA is provided, sometimes they are proven innocent.

Mr. Speaker, in relation to this legislation we are submitting, respectfully, that this legislation is not balanced. It gives some powers to the police that we obviously would want to question as outlined in this legislation. I also want to say that it touches and concerns the administration of justice in this country, and it touches and concerns the criminal justice system.

Mr. Speaker, in my experience at the Bar over time, in relation to the criminal law, I have found that prosecutions, most of the time, rely on a confession. What normally happens is that as defence attorneys - I believe this was outlined by my learned friend last week - we have in our power to make objections to the confessional statement, and to ask for what we call a voir dire.

I believe that those attorneys who were exposed to the criminal law and the law courts, in making application for voir dire, more than 75 per cent of the time, the statement is allowed in. I have been exposed to the criminal law and I believe that during my practice, only about five times that a confessional statement has been knocked out, Sir, and the jury is left to deal with a confessional statement only.

I am saying, Sir, that the provision for DNA will assist the prosecution, and the jury. It will also assist defence attorneys in obviously trying to break the prosecution's case that they are trying to lead against that particular person. We submit that no system is perfect. In some jurisdictions as I have outlined before, some people are wrongfully convicted and later on once that DNA evidence is provided, then they are completely acquitted.

In fact, I want to say that in a leading case before the courts in this land, a particular person was convicted and the Court of Appeal overturned the conviction, as a result of DNA evidence being provided, and that person spent more than 10 years on probation. I think they spent some time in prison during the process of the trial. Sir, that DNA evidence case, I think is a leading case now in Barbados and that really revolutionised the system.

I want to say, respectfully, Sir, that based on that, there could be more at Glendairy Prison in a similar position to what that particular person experienced. This is only one case, but there could be other matters. I mean that with the advent of this legislation and the provision of the DNA, we could have persons that their convictions probably could be overturned, or would be overturned.

I want to say respectfully that we must look at the administration of justice. Indeed, the administration of justice is the bedrock of any nation. We must do what is necessary to ensure that justice is done and justice is seen to be done.

Sir, my experience is that defence attorneys challenge confessions. Indeed, in some matters there is a lack of scientific evidence and we have to challenge the confession. I want to say respectfully that this said Government had provisions in the Evidence Act, in which provisions were made for video taping of confessions.

Hon. Miss M.A. MOTTLEY: Mr. Speaker, on a point of order. The Honourable Member is misleading the House. It is not this Government that introduced the Evidence Act. In the circumstances, Sir, I wish the Honourable Member would rephrase what he said.

In addition to which, Mr. Speaker, on a point of elucidation now, in the speech which I gave, the Honourable Member has already been told in this House in this debate that the Government intends to proclaim that section of the Evidence Act by April 1, this year. We have trained more than 700 police officers to ensure that they can do the audio-visual recordings of statements of serious offences. Sir, you cannot proclaim a section unless the people can use the equipment which they have to use and unless, Mr. Speaker, there are protocols governing the conduct of those interviews.

Mr. M.A. LASHLEY: Mr. Speaker, with your permission, I refer to the 1999 Manifesto of the Barbados Labour Party, in which a promise was made. Sir, the language used was that we would therefore address as a matter of urgency, those disabilities under which the Royal Barbados Police Force now labours, particularly as they relate to the garnering of evidence, and that the Barbados Labour Party would proclaim the provision of the Evidence Act that permit the electronic recording of confessions and in that way, make evidence less susceptible to impeachment.

Sir, that was in 1999 and they used the language that with a matter of urgency. This is all I have to say. Mr. Speaker, this is just like the famous 1994 Manifesto, in which they made certain promises, but I will move on.

House 54, sequence 2, 10:3014

Tuesday, February 08, 2005

Continuation of Mr. M. A. LASHLEY:

Sir, in the Bill, mention is made of video recording and audio taping in relation to the procedure of DNA, but I will get to that. This promise was made in 1999, but we do not know when they will complete this promise. I will move further because we have to deal with some important matters.

Hon. Miss M. A. MOTTLEY: On a point of order. The Honourable Member cannot say to the House that he does not know when we will implement this promise when in this

debate, not in any other debate, I have told the House that that section of the Evidence Act would be proclaimed on April 01, 2005. He therefore cannot play that he has not heard the undertakings given by the Crown in good faith in this House. This is not a political speech in Church Village.

Mr. M. A. LASHLEY: Mr. Speaker, all I did was to refer to their manifesto and to the promise made in that manifesto of 1999 and the language used that they would treat it as a matter of urgency. I will move on.

Sir, this Bill touches and concerns the constitutional rights of the citizens of this land. I have to deal with that at length. We have heard philosophers say that every society is based on the rule of the law, therefore in order for a society to flourish, the rule of law must be obtained.

Sir, I respectfully say that every suspect that comes before the court deserves fair treatment and a fair trial. Sir, we have to examine the process of gathering evidence. This Bill sets out the procedures for the gathering of certain evidence and the gathering of certain information to assist the prosecution.

Sir, the Constitution is the supreme law of the land, therefore the constitutional rights of every citizen must be protected. I turn to the constitutional aspects of the Bill. The Bill speaks about the altering of section 13 of our Constitution.

Sir, we wanted to hear at length during this debate how the constitutional rights of our citizens would be protected and how suspects in custody...

The Bill speaks about incapable persons being in custody, about suspects in custody and minors. What are the ramifications in relation to the constitutional rights of the Bill? Sir, we must not and should not tamper with the fundamental rights of our citizens. Indeed, the constitutional rights are fundamental and are enshrined in the Constitution by highly entrenched clauses. Sir, there is a moral reason why the fundamental rights of our citizens should not be affected by the State.

Sir, when we examine what exists today, this piece of legislation is frightening from the point of view of how it impacts on the constitutional rights of our citizens. Sir, nowhere in this Bill is there provision for the right of recourse to the court.

Sir, when the Tenancies Freehold Purchase Act was debated, because it touched and concerned section 16 of our Constitution, a right to property, citizens were given a right of appeal and a right of recourse to the court. That is critical when we come to any amendment to the Constitution or to any Bill that touches and concerns the fundamental rights of citizens.

Sir, from my perusal of this Bill there is nothing in it

that we can safely say can protect that person that is in custody. I am submitting that in the Tenancies Freehold Purchase Act legislation that impacted on the fundamental rights of citizens as it relates to the right of property that there was a right of appeal and a right to recourse to the court but that is not so in this Bill, and that is where we have our concern. That is why I said that the Constitution is the supreme law of the land and that citizens rights must be protected. That is why we also say that this Bill is a frightening piece of legislation.

Sir, I will go through this Bill in relation to the clauses with which we have some fundamental problems.

Section 19 of this Bill states:

(2) "A suspect may be represented by an attorney-at-law and in the case where a suspect is an incapable person, the suspect shall be represented by an adult of his choice and may also be represented by an attorney-at-law.

(3) The suspect referred to in subsection (2) or a representative of the suspect may, with leave of the magistrate, call or cross-examine witnesses.

(4) Leave referred to in subsection (3) may be granted only where the magistrate is of the opinion that there are substantial reasons why, in the interest of justice, the witness should be called or cross-examined."

Sir, we have particular problems with section 19 of this legislation. The definition section in the Bill defines an incapable person as:

"An adult who by reason of a mental disorder is incapable of

(i) understanding the general nature and effect of and purposes of carrying out a forensic procedure; or

(ii) indicating whether he consents or does not consent to a forensic procedure being carried out."

So section 19 prevents that suspect in relation to an application for an order and prevents him from cross-examining witnesses. In fact, he has to get leave to cross-examine.

Sir, this section impacts on the golden precepts of natural justice that a person must have the opportunity to present his case through the cross-examination of a witness. We have particular problems with this section and that is why we cannot support this Bill. A witness of the State cannot be cross-examined only with leave of a suspect and if that person is an incapable person incapable of...

House 54 Sequence 3

11:40 a.m.

Tuesday, February 08, 2005

Hon. Miss M. A. MOTTLEY: On a point of order. Mr. Speaker, I have listened long enough to hear the Honourable Member distort the legislation that is before the Honourable House. If one would read section 19(4) of the Bill, it reads

"Leave referred to in subsection (3) may be granted only where the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined."

Mr. Speaker, in other words, it relates to the point of a witness being called, and cross-examination is collateral upon being called. The Honourable Member should know that a witness is not cross-examined before evidence-in-chief is given.

Asides.

Hon. Miss M. A. MOTTLEY: Therefore, this is an attempt to distort public record and the Honourable Member, as an officer, not only of this Parliament but of the Supreme Courts of Barbados, should know better and should know that any person who, as a witness lead evidence-in-chief before the courts of this country, has a right to cross-examine that witness. Therefore, for the Honourable Member to get in this Honourable House and to suggest otherwise is now beyond the pale in relation to partisan politics but in fact, an attack and an impugning of the system of law, of which the Honourable Member is part in this country. Sir, shame on him.

Mr. M. A. LASHLEY: Mr. Speaker, why is it that a suspect in custody must ask for leave to cross-examine a witness, both on intimate and non-intimate searches?

Asides.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, the Honourable Member is misleading the Honourable House. The Honourable Member knows that the leave relates...

Asides.

MR. SPEAKER: Honourable Members, please.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, it is okay. I understand that the Honourable Member would be agitated because of things that happened up by him this morning but that is his problem. We will deal with that later.

Asides.

Hon. Miss M. A. MOTTLEY: There is bountiful trouble.

Asides.

MR. SPEAKER: Order, please.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I am very much above board.

MR. SPEAKER: Honourable Members, it is a bit too early in the day for this. I am suggesting to all of you that today, all Honourable Members will listen to the Chair, will recognise the Chair, and will heed when the Chair gives a decision.

I am not supposed to hear asides but I heard that there will be a fight in here today. I am just asking you Honourable Members to let us conduct the business of this Honourable House orderly. I do not like how Honourable Members have started. Honourable Member, please proceed with your point of order.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, section 19(4) clearly relates to leave to call a witness. Implicit in the right to call a witness, is the right to lead evidence-in-chief and the right to cross-examine.

There is, therefore, no requirement under this legislation that leave be sought, specifically to cross-examine any witness. The leave is in relation to calling the witness but not to cross-examine a witness. Therefore, to suggest that a person may be robbed of the right to cross-examine a witness, in this system of law, is an unfortunate slur on the administration of justice, of which the Honourable Member is a part in this country.

Mr. M. A. LASHLEY: Mr. Speaker, I have a particular problem with the clause because when we speak of suspects, we also speak of incapable persons, as I have before outlined. Sir, an incapable person means

(a) "An adult who by reason of a mental disorder, is incapable of

(i) understanding the general nature and effect of and purposes of carrying out a forensic procedure;

(ii) indicating whether he consents or does not consent to a forensic procedure being carried out; or

(iii) a child;

Mr. Speaker, when we look at this clause, we have a problem with it. Sir, section 19(2) states:

"A suspect may be represented by an attorney-at-law

and in the case where a suspect is an incapable persons, the suspect shall be represented by an adult person of his choice and may also be represented by an attorney-at-law".

Asides.

Mr. M. A. LASHLEY: Yes, we know that is discretionary. In fact, I want to submit that there are other jurisdictions, for example, in Britain, where there is a duty lawyer who is provided by the State and I hope that we would come to the day when the State would provide that duty lawyer so that any person who would be in custody, who cannot afford legal representation, would have access to that system.

Mr. Speaker, we are still submitting that this section is contrary to the principles of natural justice; that an accused person must be able to present his case; that an accused person must be given the opportunity to cross-examine witness; and that one must hear the other side, *audi alteram partem*.

Mr. Speaker, we say that there must be certainty in the law with regards to any criminal justice system so that a citizen must have confidence in any legal regime passed by Parliament, and that they could conduct the affairs with some degree of certainty. Certainly, this section presents a cloud of uncertainty.

Mr. Speaker, we have problems with how this Bill touches and impacts on the constitutional rights of citizens. I want to submit that section 16 of the Constitution deals with the protection from the deprivation of one's property.

Mr. Speaker, in order to further protect the rights of citizen, it is in that legislation that a phrase states:

"The Act shall receive such where large and liberal construction and interpretation as will best ensure the attainment of its purposes".

Mr. Speaker, I wish to submit that section 3 of the Tenantry Freehold Purchase Act, which touches and concerns section 16 of the Constitution, is extremely protective and that if that clause is placed in this Bill, we would feel somewhat better and would have some confidence with the Bill.

Sir, we are dealing with a Bill that touches and concerns the constitutional rights of persons. There were previous legislation that included a broad clause which gave the courts of this land a broad and liberal interpretation on how to construct legislation. It states:

"The Act shall receive such fair, liberal construction and interpretation as will best ensure the attainment of its purposes."

Mr. Speaker, we respectfully submit that nowhere in this Bill do we have such a clause. Therefore, we are respectfully submitting that a phrase or a clause like that should be in the legislation to attain the purposes of the legislation. As I said, there must be certainty in the criminal

justice system.

H:No.54(4)1050 a.m.

Tuesday, February 8, 2005

Continuation of Mr. M.A. LASHLEY:

Sir, I want to go to Section 5 of this Bill. This Bill provides for intimate, non-intimate samples and also the non-intimate forensic procedure. It was outlined by the learned Attorney-General in her presentation what is contained in intimate and non-intimate forensic procedure as outlined in the Bill before us. It speaks about the taking of a sample of blood, pubic hair and dental impressions in relation to intimate forensic procedure. It also speaks to a taking of a sample of hair other than pubic hair or a sample from a nail or under a nail in relation to the non-intimate forensic procedure.

Sir, we are saying respectfully, that this Bill is not balanced, that it gives extreme power to the police officer who is responsible for the gathering of evidence for the prosecution. Indeed, Section 5, Subsection 2 of the Bill gives the officer extreme powers. It says that the police officer shall allow the suspect to communicate with his lawyer in private. We do not have a problem with that unless the officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by the forensic processes. Sir, as I said before, this gives extreme power to the police officer and that the suspect is in battle against a person of extreme power, a person in authority.

Mr. Speaker, the Bill speaks further about recording in writing, video taping or video recording. Section 78 of the Bill really speaks to the recording or video taping of the procedure. When suspects are in custody and are being interviewed by police officers, we welcome the day that we will have the service of video taping through electronic and audio taping means. Given the history of this current administration to their promise in their Manifesto of video taping and audio taping, we still have fundamental problems with this and we would hope that this matter would be dealt with urgently.

Sir, we mentioned earlier that this Bill deals with intimate and non-intimate searches. The Constitution of our land provides that a person must have the opportunity to advise and instruct an Attorney of his choice once the person is detained but what about the unrepresented suspect in custody because, Sir, this Bill gives so much power to police officers to carry out procedures.

Hon. Miss M.A. MOTTLEY: Mr. Speaker, on a point of order. The Honourable Member is misleading the House. The Barbados Government has a framework that must be seen in terms of this legislation. The Honourable Member, more than other any other non-lawyer in this

Chamber knows of the framework for legal aid in this country that allows people to have access to counsel if they want. This Bill goes further and says that in addition to a lawyer, that you can have a doctor present, if it is a medical procedure, or a dentist present, if it is a dental procedure, but the Honourable Member asserts that this Bill strips away the rights of the accused in comparison to a police officer who is now given all this power. Sir, I do know what additional powers the police officer now gets that he did not have before. Sir, he is misleading the House.

Mr. Speaker, I really do believe that the Honourable Member knows better and I would understand if there were constructive criticism but he misleads the Chamber knowing full well what additional measures of protection are available both within the legislation and in other pieces of legislation. He knows full well that any Order made by a magistrate or judge is capable of appeal under the law. This causes me to feel that he is not aware of the companion pieces of legislation that already exist on the statute books.

Mr. M.A. LASHLEY: Sir, I want to submit that the Community Legal Services Act provides a schedule of offences where you get the services of an Attorney-at-Law. If we are bringing new legislation, there is no provision in the Community Legal Aid Act that states that a person in custody who wants legal advice can make an application through legal aid to get legal advice while in custody. I am submitting that in other jurisdictions this gives the police powers in interviewing suspects like the Police and Criminal Evidence Act in Britain. Sir, this Bill is seeking to alter constitutional rights under Section 13 of the Constitution.

Hon. Miss M.A. MOTTLEY: Mr. Speaker, on a point of order. The Honourable Member is misleading the House. The Bill is not seeking to alter constitutional rights but is seeking to ensure that if a judicial officer makes an Order, that by ensuring that this Bill is consistent with the constitutional rights that no legal action will then proceed against that judge or magistrate for doing what he or she is legally empowered to do. Perhaps I can forgive the Honourable Member for his naivety and ignorance on the process of this matter.

It is the same thing that was done with the Moneylaundering, Prevention and Control legislation and a whole raft of legislation pursued by both administrations in this country that where there are matters that would leave people exposed and where there may be an issue ultimately that you ensure it is passed with Section 49 of the Constitution with a two-thirds majority because it is being done as part of the law of the land to maintain the rule of law.

H54/11:00

Sequence 5

Tuesday, February 8,

2005 Continuation of ... Hon. Miss M.A. MOTTLEY:

Mr. M.A. ASHLEY: Sir, as I said, Britain introduced legislation that regulated police officers when they are dealing with suspects in custody, even unrepresented accused. Even in that legislation they made provision for free legal advice for unrepresented accused. Mr. Speaker, I am saying that is extremely important in relation to this Bill that concerns Section 13 of the Constitution, fundamental rights. That is the point that I am making.

Sir, we heard talk about expanding human rights. Imagine an unrepresented person being held in custody and who is asked to consent to the procedure and is interrogated by officers and who, for the first time, might be in the custody of the police. We are not casting any aspersions on the Royal Barbados Police Force but we want to ensure that there appears to be some fairness. That would be an extremely important step forward in relation to the suspect. That is an issue that we have to look at and that is why the Opposition has some problems with this Bill. This is why the Opposition had to make a careful analysis of this Bill.

Sir, when we go further into this Bill at Section 21, I said that this is a frightening piece of legislation because it states:

21.(1) "Where a magistrate orders the carrying out of a forensic procedure on a suspect, the suspect may be detained in custody for as long as is reasonably necessary to carry out the procedure.

(2) The police officer who has custody of a suspect for the purposes of ensuring his attendance at a hearing referred to in section (18) 1, shall return the suspect to the place of the original custody referred to ..."

Mr. Speaker, this, again, places extreme power on police officers. I am saying that for as long as is reasonably necessary for a person detained in custody. That is why I ask what would happen to unrepresented accused in a situation like this. Although the Bill makes provisions for an adult person, that adult person might not have the training or experience as the police officer who has him in custody. That person might be incapable of putting his case as to why he should be kept in custody and for how long a period of time he should be kept in custody.

We have problems with this section and it is questionable. In fact, as a result of this section of the Bill, I can see a number of constitutional actions being filed and a number of matters being taken to court. It is highly possible that this could be challenged.

Sir, we also speak about fundamental rights, judicial and legislative reform but we are respectfully saying that there should be additional checks and balances in this Bill that would offset the power of the police officer against the

freedom of the person that is in custody. We respectfully state that the Constitution of this land is a sacred document and the fundamental rights of the citizens of this country must be fully protected and should not be undermined. We, the Opposition, want to say to this Honourable House that in any matter that concerns the constitutional rights of citizens, our voices would be heard and we would make strong opposition to it.

Mr. Speaker, I said from the outset that there is a need for DNA, even in relation to paternity application. In a number of matters at the magistrate courts ordinary blood tests are applied for. We also know that ordinary blood test is not conclusive evidence. There have been matters where a person who has the ability to have DNA testing done was able to do so in order to prove that he is the father or not the father of the child.

Sir, what about a situation where a person cannot afford the cost of DNA testing? We know that the cost of an application for DNA testing is extremely expensive. I believe that the cost of DNA testing is in excess of \$1 500. In order to ensure that justice is done, if a person wants to make his case through DNA testing that some time in the future the state would subsidise the cost of DNA for those persons who are incapable of paying for such tests and who would need that evidence to assist them.

We believe that the introduction of DNA is revolutionary but we have problems with the constitutional aspect of the Bill. There have been cases where accused persons were brought to court and sometimes, only after the prosecution provides a document with scientific evidence...

H54: 11.10 a.m.

Sequence 6

Tuesday, February 08, 2005

House 54, sequence 07, 11:10 a.m.

Continuation of Mr. M.A. LASHLEY:

I can recall a matter, Sir, in which the accused person was charged with murder. At the end of the day, the scientific evidence assisted that person because there was a problem with the bullet that was retrieved, matching the gun that was retrieved, by the police officers.

Sir, I believe in a case where we can further look at expanding the process of gathering ballistic evidence, and training police officers fully in that area, so that a situation like that will not present itself again.

There have been quarrels over time, in relation to DNA database. People have problems with the fact that sometimes, a database contains many people who are not guilty of crime. In fact, the legislation speaks about the

retention. Sir, there have been problems in relation to DNA database. In fact, some commentators have said that, it impacts on the privacy of the individual, there could be a possibility of persons getting into the database and getting information and disclosing it about persons, it contains many persons who have been acquitted, sometimes months and years after. It includes many people who are not guilty of crime.

Sir, the problem we have with the database is that it works on a premise that the suspect population, even if innocent, is likely to offend in the future. There is the possibility of misuse, as I touch on the issue of privacy.

Sir, the possibility exists that these samples could get in the hands of the wrong person and this is another concern we have with the database.

I want to say, Sir, that we have gone through the Bill. Again, we have tremendous problems with this Bill because the fundamental rights of citizens, as outlined in the supreme law of the land, must not be infringed and that the sacred document, the Constitution, respectfully, must not be tampered with, Sir.

In closing, Sir, I want to say that we are not against any Bill that would assist with the gathering of evidence but when the procedure impacts on touching the concerns of the Constitutional right, we have a problem with that, and we also have tremendous difficulties about intimate searches.

Finally, I want to say that we cannot support this Bill. Sir, one writer said that we want this Bill to be canvassed with the public, so that there can be some public education and input in this matter, because there are fundamental changes that would be made.

We, on This Side, respectfully, Mr. Speaker, do not support this Bill.

Thank you, Sir.

Mr. SPEAKER: The Honourable Member for St. James Central.

Hon. K.D. SYMMONDS: Mr. Speaker, it is perhaps useful to begin by making some brief remarks, in response to what one could distill as substantive criticism coming from the Honourable Member who just took his seat. One wishes to be as generous as possible to the Opposition, Mr. Speaker, but it is hard to overlook the fact that we paused this process for a two-week period and during that time, one would have had an abundance of opportunity to at least do some minimal amount of research and preparation.

Sir, for a lead speaker on behalf of the Opposition on a matter which, really and truly should be his bread and butter, to come to the Chamber and make the sort of assertions that were made - and I would respond to them

seriatim - is exceptionally disappointing. I studied with him and I know that he is capable of better.

Mr. Speaker, I began with section 21, and Your Honour would remember that section 21 speaks to the situation of a magistrate ordering a forensic procedure on a suspect. Sir, much hullabaloo was made by the last speaker about the question of what is the reasonable period of time, during which the suspect might be detained in custody.

Mr. Speaker, this is nothing new to the criminal law and the process which is being contemplated. All of us who have earned our keep before the Bar, begin with an understanding that the police are going to be given, whether you like it or not, at least a period of 48 to 72-hours. This is built into the common law. It is accepted, not only in England, Scotland and Wales, but in Barbados and across the Commonwealth, and we go further.

Sir, if the Honourable Member had a client who was charged with manslaughter, the Honourable Member would not be so absurd as to go before a member of the judiciary of Barbados - I would not say anywhere else because he has not practised anywhere else - with that kind of enfeeble argument, because the Honourable Member knows full well that if the client charged with manslaughter had to be carried to the Psychiatric Hospital for an assessment to be done, then the issue of a reasonable time has been construed repeatedly by the courts.

Sir, there is no court now that is going to be spellbound by an argument of what is a reasonable time. You look at the totality of the circumstances. What does it take to get a man from the police station to the doctor? What does it take to ensure that the doctor is available?

Mr. Speaker, that is all it takes and, this has been settled and resettled, tried, tested and proven time again in the law. How dare he then come to this Chamber, Sir, and try to...I do not think that bamboozle is a word but mesmerise sounds like something spectacular so I would say, 'bamboozle' because he is really trying to play games of sleight of hand with the public's mind.

Mr. Speaker, there is no issue whatsoever, on this matter. If he thinks it is an issue, I would take my seat now.

Asides.

House 54, sequence 07, 11:2014

Tuesday, February 08, 2005

Continuation of Hon. K. D. SYMMONDS:

I am hearing a shopkeeper, I am hearing an engineer, but I am not hearing the lawyer because he knows that there is no issue.

I will go further, Sir. I think that he outstripped himself in being ridiculous when he went to section 19. Section 19 of this Bill states that:

"(1) The hearing of an application for an order under this Part shall be conducted in the presence of the suspect concerned."

The Honourable Member raises the issue of what is to happen if the person is incapacitated. Mr. Speaker, I had two weeks to read the Bill. Assuming that he follows the same route that most of us do, you begin reading a document from the beginning. At page 12 is the definition of an incapable person. An incapable person is defined by this draft legislation as:

(a) an adult who by reason of a mental disorder is incapable of

(i) understanding the general nature and effect of and purposes of carrying out a forensic procedure; or

(ii) indicating whether he consents or does not consent to a forensic procedure being carried out; or

(b) a child."

Sir, for a hullabaloo to be made about this is to pay scant respect to the enshrined and accepted practices in the common law. It is foolishness to believe that because you bring a piece of legislation to a Parliament for the first time that the legislation must embody every single procedural decision that has been made that would touch and concern it because then you would not have enough pages to print it. Sir, the issue as to whether or not a person is incapable is defined by the Act. That person then is understood to be either a child or labours under some mental disorder.

Mr. Speaker, in law that is known as diminished capacity. There is an overwhelming preponderance of cases which any self-respected criminal lawyer would have of necessity to be aware of it, not only abroad. Sir, I led the gentleman who just took his seat in court when we represented a man with diminished capacity. The process was that you first of all had to establish that he was in fact diminished. The only way to do that was by putting him before a judge and a jury so that there can be a test as to whether he understands the nature of the charge and understands if he is able to communicate with his counsel and make sense in the communication. There is a built-in process which is followed on a daily basis by all the courts. Mr. Speaker, even if the Honourable Member did not understand that...

Certain remarks made by the Honourable Member for St. James Central were ordered expunged from the records by Mr. Speaker.

Hon. K. D. SYMMONDS: Sir, even that aside, he

must at least be prepared to read the legislation before he stands up and lead off for the Opposition.

Under Part IV and section 15 (1) of the same Act to which he speaks it states that:

(1) A magistrate may, upon application made in accordance with section 16 or 23, order the carrying out of a forensic procedure..."

It goes through the process of how one deals with the situation where the suspect is an incapable person.

Mr. Speaker, there is at common law and there is within the legislation, provisions for dealing with this same issue that he would have raised in this Honourable Chamber as a red herring to drive a state of fear into the minds of a nation, an unsuspecting public, who, if they were not alerted, would be left to believe, by a Press that will carry this event word for word, that there is something nefarious being done by the Government of Barbados and the Attorney-General. That is where we have a difficulty. These people who behave this way and who would call for all this protection of rights and so on and so forth have to be tested.

Mr. Speaker, he also made reference to the question of the absence of appeal. I have sat here and gone through my mind and I cannot think of very many pieces of legislation which are going to have built into them what you do with the appeal because the appeal is an automatic process. I am surprised to hear the Opposition talking about the appeal. There is nobody in Barbados who do not know that if you want to appeal an issue that you can actually go into the Court of Appeal and do so. Do you have to put that in the legislation? The Honourable Member and I did a rape trial where 11 men were charged and an injunction was brought in the middle of the case to stop it on a dispute of the evidence and the appropriateness of the evidence. I carried it to the Court of Appeal. The case cannot start back yet because the Court of Appeal cannot rule.

Mr. Speaker, injunctive relief has always been a remedy at common law. The Honourable Member must know better. He disgraces the Opposition by coming to the Parliament and trying to...

Certain remarks made by the Honourable Member for St. James Central were ordered expunged from the records by Mr. Speaker.

Hon. K. D. SYMMONDS: Your Honour must forgive me, Sir, because I feel very strongly when the basics of the law are being so callously misrepresented. Mr. Speaker, there are issues that could be discussed here that are of significant moment. I know of no Member of this Parliament who is perhaps as open to constructive criticism as the Attorney-General. If it were that the Honourable Member wanted to advance constructive criticism then he

could do so in the full and certain knowledge that a person of her intellect would willingly embrace the critique.

Mr. Speaker, he speaks of the English legislation. This matter is not being raised for the first time in Barbados or in the world. This is a model of the English law. He sits and grins at me. He knows it to be true. Mr. Speaker, the Chamber needs to be aware of the facts. When we get into the question of intimate sampling, we are talking about two issues, genetic privacy and the holding of genetic material. Civil rights around the world were broadened with the introduction of DNA analysis. The taking of an intimate sample from a person understandably raises fundamentals about the civil liberties of the people involved.

There is no gainsaying, Mr. Speaker, that there must be a concern about safeguarding privacy and the rights of an individual at the same time as trying to ensure that you do not compromise the technology and the new advances which come about with the use of the DNA. Key concerns would obviously touch people's health and what you come to discover about the conditions of people's health and family relationships.

The Honourable Member would know that in Europe, particularly in England, that issues of ethnicity became an issue where the court was frequently challenged on issues of ethnicity. I suspect that given the nature of some of the xenophobia we see in Barbados - you could see ethnicity issues coming about between Guyanese Indians and the average Barbadian person - I have no doubt that could happen.

Mr. Speaker, if one wishes to be constructively critical, then one could look at the totality of this Act and the protections which are built in and be mindful of, I think it is, the 1998 case of the Queen and Weir.

House 54 Sequence 8

11:30 a.m.
2005

Tuesday, February 08,

Continuation of Hon. K. D. SYMMONDS: Mr. Speaker, I would hope that the Honourable Member would be familiar with the case of the Queen vs Weir, where a man came into an elderly man's house in the course of a burglary, where that man was killed in circumstances where the court described it to be a scene of the bloody devastation. The DNA sample was collected from the scene and it was held.

Sir, the United Kingdom Police and Criminal Evidence Act makes it very clear that DNA samples have to be held but that once a man has been acquitted, as Weir was, then those DNA samples would have to be destroyed within a year's time, neither can the same DNA samples be used in subsequent matters.

Mr. Speaker, if there is a concern that a serious-minded Opposition would want to bring, it would be the capacity constraints of the Government of Barbados. Sir, at section 60 of our Act, we have a difficulty. Perhaps it is too much for the Honourable Member to get up and to defend herself on that point but I have a difficulty when one is heard to condemn the Attorney-General and the process, when this legislation goes out of its way to ensure that at Section 60 it says:

"Where a police officer obtains an order under Part V1 for the carrying out of a forensic procedure on a serious offender whose conviction was quashed after the making of the order, the Commissioner shall

(a) inform the Director of the quashed conviction; and

(b) ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed by the Director as soon as practicable after the conviction is quashed".

Section 61:

"Where a proceeding officer for an offence to which the forensic material relates has not been instituted within one year after the material was taken or the proceeding has been discontinued, the material shall be destroyed by the Director as soon as it is practicable to do so unless

(a) a warrant for the apprehension of the suspect has been issued; or

(b) the Court otherwise directs under subsection (4)".

Mr. Speaker, that is something that almost crippled the English judicial system. We have gone out of our way to make sure that such an eventuality should not befall our legislation. Sir, one does not hear an Opposition speaking to the built-in safeguards, neither does one hear an Opposition commending the Government for protecting the fundamental rights of the people.

Certain remarks made by the Honourable Member for St. James Central were ordered to be expunged from the records by MR. SPEAKER.

MR. SPEAKER: Honourable Member, please control yourself.

Hon. K. D. SYMMONDS: I am so guided. Mr. Speaker, you would almost hear something that is incomprehensible, something that does not collide with what is intelligent when criticisms are made about human rights violations and they cannot be substantiated or do not even fall in the same basket as that which takes place on a day-to-day basis in the same vein, in the courts of Barbados.

Mr. Speaker, we have a situation where at sections 60 and 61, the Government has gone out of its way in the drafting of the legislation, to ensure that there is provision made for the destruction of material, once the DNA sample has been taken and there has been an acquittal on the charge.

Mr. Speaker, a serious Opposition may ask the questions: Do we have the capacity?, Do we have the power to have a follow-up that we know that as soon as the acquittal has been given by the court, that this is communicated to the Government Forensic Laboratory, and that the Government Forensic Laboratory would move with dispatch to do the necessary destruction?

Mr. Speaker, this is a country where a road traffic offender would be ordered by the court to pay a fine within two months, which the offender would not pay, where there would be a breakdown in communication between the court and the Road Traffic Department. Therefore, one realises that there is, in fact, a capacity problem in Barbados. I would have hoped that this debate may have spoken to issues such as that. I would have hoped that forthcoming from the Opposition may have been a suggestion where the Crown should allocate staff to ensure compliance, so that we do not have a situation which took place, as in the Queen v Weir case, where a man who was established to be a murderer, was allowed to go free because the DNA destruction was not complied with. That is not forthcoming but what has come to pass is a debate which turns largely on whether or not an injunctive relief is available to the citizen or if the citizen could go to a court of appeal, when everybody knows, lawyer or non-lawyer, that those are basics in the laws of Barbados.

Mr. Speaker, we have long had a roughly huge justice system in this country where evidence is taken by long hand; judicial officers do their own research, some work from 10:00 a.m. to 300 p.m, go home, allegedly to do research. Sir, administratively it can be described as under-productivity. Sir, added to that, there is another issue, an operational difficulty, which exacerbates the administrative difficulty. The learned Attorney-General of Barbados would have come through the court system where, for example, there was one pathologist, a distinguished gentleman by the name of Doctor Sree Ramalu, practising his craft across the Eastern Caribbean but because there was such a heavy demand on his single hand, many times a murder case was delayed and could not have gotten off the ground. One could not get the evidence into court because the physical presence of the pathologist was not there.

Sir, I want to congratulate the Attorney-General for ushering in a breath of fresh air so that not only can we have but one, but we can have a complex where we can have ongoing training and development of our body of forensic practitioners. Sir, even though the Opposition's spokesman has been a practitioner at the Criminal Bar, he has not been

generous enough to speak to these issues. Sir, we also have to congratulate the Attorney-General on another issue, that is the creation of a macro framework which will ensure that there is a governing process for providing DNA services. Sir, again it falls hard on the ears when there is a deafening silence about critical issues such as the service which is being offered to the Barbadian public, and potentially to the public, not only in the Caribbean but in the hemisphere.

The Attorney-General would have made the point that there are but two countries in this hemisphere which have the capacity to offer the kind of service that we are now offering. Therefore, once we can achieve market international accreditation for this service, one can imagine the level of progress which would be made for Barbadians who would wish to become toxicologists, ballistic experts, chemical analysts, pathologists, biochemical analysts, et cetera. Sir, that kind of expertise in rare services is now given an opportunity to flourish across this region and to be provided by Barbadians who can be trained here at home, yet an Opposition is not heard to speak to these things.

Mr. Speaker, far from talking about international accreditation, the Opposition does not seem to understand that is precisely the kind of market access opportunity that we must build up in Barbados, so that this country can continue to be the single-leading service provider within this hemisphere. Again one would not hear that coming from the Opposition.

Mr. Speaker, I wish not only to congratulate the Attorney-General in that regard but would wish to point out something else. Sir, we can go back in this process for many years. As I have already said, forensics in Barbados is nothing new. What is new is the scale at which we are going to be able to do it, the extent to which we will be able to train people, the range of services we will be able to offer and the range of expertise and the capacity that we will be able to build. Therefore, there has to be a forward vision.

Mr. Speaker, I suspect that what comes out of this macro framework will be a vision where Barbados can serve as a jurisprudential model for the entire Caribbean. There is no country in the Caribbean which would not likely be looking to Barbados, not only as the example of that which can be offered in this realm but for the services that can be provided to their own economies, to their own efforts at drug control and its eradication, and to their own efforts at crime prevention.

H:No.54(9)1140 a.m.

Tuesday, February 8, 2005

Continuation of Hon. K.D. SYMMONDS:

This is what makes this piece of legislation so importance. This is the context in which it has to be placed. Sir, the context is being misplaced under a false allegation

about people's fundamental rights not being adequately protected because at no time in the law of Barbados was an option available for a suspect to call on his doctor or dentist as a right as he can do under this legislation.

Sir, I know what it is to fight shoulder to shoulder with the Honourable Member for St. Philip North, in an effort to ensure that the basic provision of access for counsel was ensured. This legislation is saying that it is not only a question of counsel but also a question of medical availability, yet we hear that people's rights are being taken lightly by the Government when they should be shouting hooray from the roof top of Parliament because the time has come for people to be liberated. Mr. Speaker, if you look at the legislation, it is not only about the disabled but about children. This legislation is giving as a right the choice to bring an adult of your choice and if you are disabled, you have the same opportunity of choice.

Sir, we heard that there is no natural justice being applied. Mr. Speaker, the principle of natural justice says that a man must be heard in his own case. If I am disabled but I am given the opportunity to say that I want my big brother or Uncle John present and that I do not want a lawyer, that too is a right that I must have. I heard the comment that someone in England was granted access to counsel but that is all which exists in England. There is nothing to allow a disabled person to say that he does not want a lawyer because he does not trust lawyers. Sir, we are allowing for the disabled to have a choice. Moreover, the police is mandated to inform individuals of their rights in respect of the matter. Sir, if the Opposition wants to be constructive, it should admit that there is a notice board in the police station with a notice of the rights of the accused which the accused might not notice and no one might draw it to the attention of the accused. Sir, a constructive Opposition might want it reduced into writing that you have a right to privacy and that the analyst must ensure that your information is not improperly disclosed or it may be built into the rights that you should receive a copy of the protected information and an opportunity to revisit the information to correct it. For example, it may be stated that a person used marijuana even though that person never used any drug. The accused should therefore, be able to correct that part of the statement. Sir, that is what a constructive Opposition should be saying in furtherance of the advancement of the rights of the people of Barbados. If they had said that, I would agree that it is a weakness in the legislation which we could look at because we have a broad-minded, Attorney-General who is not intellectually afraid to look at these things. Sir, I could relate to this but do not tell me that there is no opportunity for appeal and that the basic Common Law rights in equity that a man can stop a case by way of injunction does not apply.

Mr. Speaker, there is no excuse for the two-week break during which no intellectual labour was applied to a matter of fundamental nature in the Constitution and people come the Parliament demonstrating intellectual

lethargy, sloth and disinterest in the business of the people, yet they ask for votes. This is why the backwash of politics can be now be heard to say that they are ahead in the polls because among the blind, the one-eye man is king. Mr. Speaker, I grow weary of them.

Mr. SPEAKER: Honourable Member, you have less than one minute to conclude.

Hon. K.D. SYMMONDS: Sir, I will trouble you no further. I thank you for your indulgence.

Mr. SPEAKER: The Honourable Member Christ Church West.

DR. W.F. DUGID: Mr. Speaker, I rise to support this Bill. I came to the House today to deliver an educational speech to help the people of Barbados to understand the Bill in particular about DNA identification and the like but, unfortunately, I had to change a little when I hear the Honourable Member for St. Philip North gave his diatribe and speak as if he were somewhat confused in his role here today.

Mr. Speaker, he did not speak as the representative for St. Philip North, the person in Parliament to represent the 7 000 people in that constituency. Sir, he spoke as a defence attorney. He spoke as though his only reason for coming here today was to amend this Bill in some way to make his job as a defence attorney easier. He spoke so that he would be able to get off the criminals of this country by technicality. He spoke today, not as if this Bill was brought to protect our women and children in our society but that people could call into question the role and actions of the Royal Barbados Police Force. He is speaking with a cloud of confusion above his head, nothing more than that.

Sir, I was in awe and I was surprised because I know the Honourable Member for St. Philip North can do better than that because he has in his heart the representation of the people St. Philip North. We are not in this Parliament to make our jobs as defence attorneys easier, we are not here to protect the criminals but to protect the women, children and citizens of this country.

Mr. Speaker, I appreciate that DNA can be used to convict the person who is guilty but it can also be used to exonerate the person who is innocent. The Honourable Member for St. Philip North did not make any mention of this except to say that he knew of a few cases where people were convicted and then found innocent. Sir, even more, you get to the stage of conviction, DNA evidence can be used to prove that you were never at the scene and a good defence attorney can use that to the advantage of his client.

H54/11:50

Sequence 10

Tuesday, February 8, 2005

Continuation of Dr. W.F. Duguid: I was surprised at the Honourable Member for St. Philip North and would expect that next time he would remember why he is here. He is here to represent the men, women and children of St. Philip North without fear or favour. That is the important reason why we are here today, Sir.

Mr. Speaker, the Honourable Member said something that stuck with me. He said that the Bill was frightening. Let me say to whom it is frightening. The Bill is frightening to the criminal element of this country, few are bountiful in St. Philip North and they are the ones who should be frightened about this Bill. If they are going to commit crimes in this country, they must be aware that any evidence that they leave behind can be used against them to convict them. Let us use the opportunity to protect the women, children and those who cannot fend for themselves in this country. That is the mark of an excellent and worthwhile society.

Mr. Speaker, I support the Bill. I think that it is a timely piece of legislation. It shows a modern era, in a modern country with modern technology. It is only a matter of course before we see this Bill being used as it is so determined.

Sir, trace element forensic is also important to me. As you are aware it involves an aspect of dentistry and dental models to determine the race, age of a person or whether the person was alive or dead. Such things can be ascertained from the teeth but you can also use it to ascertain bite marks and whether a person has bitten a particular victim.

Sir, the only forensic orthodontologist I know is, Dr. David Whittaker, my tutor, who deals with forensic aspect of dentistry. Dr. Whittaker worked on a particular case between two police teams that were playing rugby. I found this interesting because two police teams were playing rugby and a policeman's ear was bitten off. The defence of the person who was alleged to have bitten off the ear that he could not bite off a person's ear was while he had a mouth guard on while playing rugby.

Sir, Dr. Whittaker, being the astute scientist that he is, proved that a human ear could be bitten off while using a mouth guard by biting ears of pigs and piglets. He had the students at the time wear mouth guards to determine if they could bite a human ear using a mouth guards.

Mr. Speaker, we went through an interesting experiment by biting the ears of pigs to determine that we could bite through an ear of a pig using a mouth guard. This is the kind of thing that forensic orthodontology brings. I am happy to see that this would now be added to the arm of the police force, judiciary and the defence. Sir, the same way that the prosecution can make use of this, it is obvious that the defense would also be able to make use of this

legislation.

DNA investigations also go into the aspect of paternity. What is DNA testing? DNA in parental testing is the most reliable and powerful method of proving or disproving parentage. It is used for legal, personal or medical reasons. It conclusively answers difficult questions, resolves disputes, helps streamline court proceedings and facilitate pre-trial settlements. This is the kind of technology that we are bringing to this country and I am proud to be a part of a Barbados Labour Party administration and a democratic country that can bring this just and great legislation to this country.

What are some of the benefits of testing? Benefits of obtaining DNA parentage testing results, relieve emotional stress from doubts as well as saving legal and judicial expenses. Both parents can also share the responsibilities of rearing the children. The children may be able to establish a relationship with both parents, help to create a stronger sense of identity and can be alerted to inheritable diseases. This is the strength of the legislation.

Mr. Speaker, DNA testing and parentage testing can be done even if the alleged father or mother is deceased. It is so powerful that the genetic patterns of a deceased father can be reconstructed from grandparents, siblings and other children to determine paternity. It can also provide answers when the mother is absent. This is the strength of the technology that we are instituting here today and I would strongly support this legislation. It not only enhances the arm of the prosecution but also the defence.

Mr. Speaker, I respect when I hear my colleague from St. Philip North say that justice must not only be done but it should be seen to be done. I think that DNA evidence will help justice to be seen to be done. The amount and that ratio in which you can give a certainty of somebody being a parent or evidence of someone being at the scene of a crime is phenomenal. Sometimes you can give evidence of the likelihood that it is a million or two million to one, or seven hundred thousand to one likelihood that person's DNA is the one in question. Those kinds of odds not only allow justice to be done but in the words of my friend, the Honourable Member for St. Philip North, also allows justice to be seen to be done.

Sir, not only does this legislation bring in the concept of DNA testing, it also brings in the trace element analysis, hairs, fibers, paint and explosive residue. When a person shoots a gun there is a gun powder residue that remains on his hand and his hand can be tested to see if he have fired a weapon in the last 2 to 3 days.

Sir, I agree with the Attorney-General that this legislation brings certain measures and aspects to the defence attorneys which they can continue to use to help their clients. I appreciate it.

Mr. Speaker, there are also other things such as dust, glass and dirt. We already know about firearms and the use of ballistics in determining whether a particular gun was used in a particular incident but fluids and blood can be used in the analysis in finding who the guilty person is.

Sir, none of us would want an innocent person to go to jail. It must be one of the greatest travesties for an innocent person to go to jail but, absolutely, when that guilty person is found, he should feel the full weight of the law and never be allowed to walk free on a technicality. This is why it is so important that we enact this legislation. This is key to our society being able to progress. This is key to our society finding those guilty people and rooting them out, not allowing those guilty criminals to walk free so that you can fill your pockets. Let us protect our women and children from those guilty criminals that would perpetrate rape and murder against them. That is what this Bill is about and I am happy to support the Barbados Labour Party administration for bringing this legislation.

Mr. Speaker, my friend, the Honourable Member for St. Philip North, also spoke about the Evidence Act and the concept of introducing video recording.

H54: 12.00 p.m.

Sequence 11

Tuesday, February 08, 2005

House 54, sequence 12, 12:00 p.m.

Continuation of Dr. W.F. DUGUID:

He tried to make it seem as though this Government brought in the Evidence Act. I am told that the Evidence Act was proclaimed in 1993, without the necessary training of the Police Force to be able to use the equipment, the cameras, tape recorders and so on to be able to fulfill the Evidence Act.

I am proud to say that under this administration, we have trained and we continue to train members of the Royal Barbados Police Force so that they can be able to use the equipment adequately and be able to record evidence in camera or in tape. Sir, I support it.

Sir, we have all heard the stories of confessions that may be suspect. It hurts my heart to think that somebody would be forced into giving a suspect confession. I look forward, like you, Mr. Speaker, and the Honourable Member for St. Philip North, to the day when those confessions would be done in camera and recorded. I think it would be a good thing for the country and I think there will be no divide on that matter. Sir, for him to suggest that it was inept on behalf of this administration is definitely incorrect. Certainly, the administration is doing its utmost to be able to improve the judicial system in this country.

Mr. Speaker, I support the legislation. I think it would go far to improve the society and I really will have no qualms about being there to support it whenever it is enacted.

I thank you, Sir.

Mr. SPEAKER: The Honourable Member for St. Lucy.

Mr. D. St.E. KELLMAN: Mr. Speaker, I rise to speak on this Bill and to say, Sir, unlike the last speaker, that it is my opinion any DNA testing should be to make sure that people who are innocent are not prosecuted wrongly.

The impressing being given this morning, Sir, is that this Bill has been brought to prosecute people. I would hate to believe that this is true. What worries me, Sir, is the possibility that there might be innocent people sitting in Glendairy today. I would like to believe that after the passing of this particular Bill, we can make sure that there are no innocent persons sitting in Glendairy. Sir, if there is a possibility that persons have been charged for crimes that they did not commit, then we would be able to satisfy that particular want.

I am saying that if the reverse is true, then it means that we have no reason to be in here discussing this particular Bill. I am also saying, Sir, that I support the Honourable Member for St. Philip North, when he expresses concern about the amount of power that this administration wants to give to the police, that they do not want.

Already, this administration has taken away power from the customs officers and given to the police. The police believe that this power should remain with the custom officers. Now, today, we are in here saying that we are giving more power and more work to the police and we are not giving them the adequate compensation, even though we say that we are giving them the additional training.

I am saying, Sir, that when you are dealing with accounts, there is something called assets and there is something called liabilities and the assets must equal the liabilities. We cannot continue to put work on the police unless we compensate them. If you are telling me that they are better trained, they have to be better paid as well.

Sir, I have no problem with you trying to enhance the liberties of persons, but when it comes to a situation where you are questioning the fundamental rights of persons, I have a problem. If they are saying that what the lead spokesman is saying is wrong, they need to prove that case because at this particular time, we cannot talk about a change in the style of Government. There is enough

evidence to show that if we do things wrongly, we might create a police state and we have to be very careful.

Mr. Speaker, this is one Bill that the Prime Minister has to come and speak on because the charges that have been laid, do not support the case that the Prime Minister wants to bring about a change of Government. Whereas, the Prime Minister is making one statement on the television, some of his Ministers are now bringing Bills to confuse the minds of the public of Barbados.

Mr. SPEAKER: Please, please, let us proceed, please.

Mr. D. St.E. KELLMAN: I am still speaking about this DNA Bill and free liberty, Sir.

Sir, the Prime Minister of Barbados must make sure that there are not persons bringing Bills at the wrong time to interfere with the minds of persons in Barbados.

It is clear that once we have a clear debate on this particular Bill, once we go back to the changing of the powers from the customs officers to the police, it would frighten the citizens of Barbados and they would believe, justifiably so, that we are trying to create a police state and we do not want that at this stage.

Sir, we are saying that you cannot have Government Ministers bringing legislation that is in conflict with the expression of total leadership. I have seen a conflict because here it is, you are bringing one system of Government, asking people to support it and then legislation is coming to give the public the impression that there is something wrong with the way it is being implemented and that the public is not being involved.

Sir, with a fundamental change like DNA, you must involve the public of Barbados. Whenever you are interfering - and I am not using my words but I am going on what was said in this Parliament when the Civil Established Act was amended to make sure that the Civil Servants' wages and salaries could not be cut - the Barbados Labour Party said they would never interfere with the rights of the citizens in this country, they will not cut their wages again and they will protect them. I am saying that if we are saying we are protecting rights, then we cannot come with this particular Bill, without first explaining it to the people of Barbados.

Asides.

Mr. D. St.E. KELLMAN: Mr. Speaker, it is amazing that when This Side interrupts somebody on the Other Side, the Honourable Lady is always calling for better manners.

Mr. SPEAKER: The Honourable Member, please continue with your debate.

Mr. D. St.E. KELLMAN: Sir, it is in conflict of what

the Barbados Labour Party was on television trying to practise Saturday night, involvement of the people. I am saying that you cannot have the Prime Minister involving the people, and his Ministers are not involving the people.

I am saying that the change in the Constitution is serious. I am hearing, Mr. Speaker, through you that there is no change in the Constitution. It means that when this Bill is passed, there is no need for a two-thirds majority. I would expect all the other Government Ministers to walk out, leave 10 over there and seven over here and see if we could make the change that we want to make.

Asides.

Mr. D. St.E. KELLMAN: Sir, Honourable Members on the frontbench tell me that there is no constitutional change that will occur. If that is so, Sir, there is no need to have a full House. Sir, put it to the vote and see if you can achieve what you want because if we are not discussing constitutional changes, then there is no need for this big debate. Let us put it to the vote as it stands now. Sir, I challenge the Government side to put it to the vote. I will sit and let them put it to the vote.

I know, Sir, that the Honourable Member for St. Michael North East would not put it to the vote because she understands the impact of constitutional change and she understands what has to occur in this House. If other lawyers do not understand that, they cannot blame me.

Sir, we have to understand when we are making changes and dealing with particular matters that we cannot believe that because politicians might understand what is occurring, that it necessarily means that the public understands what would happen.

House 54, sequence 07, 12:1012

Tuesday, February 08, 2005

Continuation of Mr. D. St.E. KELLMAN:

We have to educate the public of the changes. Sir, I am saying that this particular change should be canvassed across Barbados, I do not care how it is done, so that when this Bill is passed people would know exactly what to expect from these changes. An educational process should have been gone through, but it was not done.

Sir, too often we are behaving in here as if we are a law unto ourselves and that we can bring anything in here and not involve the public of Barbados. The Honourable Member for St. James North would understand that he needs to educate his constituents on this particular matter. Sir, the same way he knows that, other Honourable Members would know it too and of course the Opposition would know.

Asides.

Mr. D. St.E. KELLMAN: Sir, these are serious changes. Since the Government of the day saw an 8 per cent cut in salary as important, they should also see that everything that affects the population of Barbados, once it is a constitutional change, as important and that the people should be involved.

The last Honourable Member who spoke said that it was the Democratic Labour Party that brought the Evidence Act in 1993. If that is true; guilty. It means that we had one year to implement it. If the Opposition was calling for it and they said that it was important, they had 12 years to implement it, so if we are guilty, I wonder what you would say about them, Sir.

Sir, when one wants to argue, one has to be very careful. There is a history to changes in this Parliament where when you are in Opposition you argue one thing and then when you get in Government you do something quite different. That is not known for the Democratic Labour Party, that is known for the Barbados Labour Party, because as you are aware, Sir, in the 1974 constitutional amendment, the Barbados Labour Party said one thing and then they became the Government and they forgot everything that happened.

Sir, I will support the amendment to the Forensic Procedures and DNA Identification Bill if it is going to make sure that innocent persons who have been placed elsewhere who should not have been placed where they are placed are set free and if it will stop other people from being prosecuted for crimes that they have not done.

Sir, we have to make sure that this Bill is implemented right and that it is not used as a political weapon or anything like that. People must not see that we are passing legislation in this Parliament as if we are operating a banana republic where we are prepared to push things down the throats of the public of Barbados. We must make sure that there is dialogue between us and the public of Barbados.

Sir, sometimes you can have the best piece of legislation in the world, but if that legislation is not marketed right it can turn out to be the worst piece of legislation because you would not have involved the people and they would not be able to appreciate what you are offering. It has to do with marketability, and that is not what is happening. Sir, you cannot believe that because legislation is brought to Parliament that everything is well with it. If that is so there would be no need to debate it.

Sir, I am happy that the Honourable Member who introduced the Bill is not complaining because there is criticism of the Bill because the only way you can get perfect legislation is when you get dialogue. However, the other Honourable Members on the other side believe that once something is placed in this Parliament there should not

be dialogue. Sir, I am saying there must be dialogue on something as important as this DNA Bill. This is new ground and once you are breaking new ground you must discuss it to make sure that it is perfect. Sir, even when you are finished discussing it, you are not sure that you will get all the kinks out of it. I am saying that the Government must understand that when they bring Bills in here they must be prepared to discuss them. Sir, no asides will stop anybody from discussing the people's work in this Parliament.

Sir, people must not be afraid that when they are called upon to do a DNA test that it is not slanted in their direction. The benefit of the doubt must go in favour of the accused and not otherwise. Based on what I am hearing from the lead spokesman on this Bill, I am convinced that the Honourable Member is right, and I am supporting him based on his arguments for the simple reason that it is the suspect that must be given the benefit of the doubt. At the same time we will not come in here and support a Bill that supports the interest of the suspect only, there must be fairness. We must make sure that innocent persons are protected, we will not protect the suspect only. There must be fairness. If this Bill bring fairness and it can be proven, I will support it but as far as I can see right now I am not seeing the fairness and I do not see the balance.

Sir, I am saying that any person introducing a Bill must make sure that there is fairness and if there is criticism to show that there is no fairness, they must be big enough to make that correction. I know what is being said in Barbados.

Sir, it is not in the interest of this Parliament to bring a Bill like this without discussing it with the public because I know the backlash. I also know what would be added onto this and what would occur later when other things are brought because this Bill, if it is badly introduced and if it is passed will be used as an example why certain things should not happen in Barbados. I know that if faults are to be found in this Bill it will be used to discuss other important matters, so we have to be very careful what we are doing in this Parliament and the way we approach it. That is why it is in our interest as from today, even though we should have done it before, to make sure that we involve the people in everything we are doing to make sure that they are on board.

I am saying to you, Mr. Speaker, that after this Bill is passed I expect the Honourable Member for St. James North to tell me that there will be DNA tests on those doubtful cases or any doubtful cases of persons at Glendairy Prison and that they will be corrected. The impression given in a speech earlier is that now you have DNA testing you would know every guilty person, but that is not true.

Hon. K. D. SYMMONDS: On a point of order. The Honourable Member said distinctly that there are doubtful cases at Glendairy Prison, which must be a most improper

degree of impugning of the integrity of the judicial process of Barbados.

Mr. D. St.E. KELLMAN: Mr. Speaker, am I to believe that what we listen to on the world news is any different in Barbados?

Mr. SPEAKER: Proceed please.

Mr. D. St.E. KELLMAN: I am saying, Sir, that there is no system that is perfect. You know it and I know it, Sir, and all those who do not know it, I am very sorry for them.

Sir, we on this side support the Police, what we do not support is any system that allows the public to be anti-police and to create an impression that you are giving the police the power they do not want to make them unfriendly with the public of Barbados.

I will finish there, Sir. Thank you.

Hon. R. C. EASTMOND: Mr. Speaker, I am more of a person of letters than of science, but I recognise the merit in bringing this piece of legislation for reasons that will become obvious.

I have no particular judge or magistrate and indeed I have no particular jurisdiction in mind as I make the comments to follow, but it certainly must be a judicial officer's nightmare to know the law and when sitting to resolve a given case, is so unimpressed by the evidence as a whole, as to doubt himself or herself when about to prepare the judgment. The reason why I mention this, Mr. Speaker, is that very often both in the civil law and the criminal law the general evidence shown up is so subjectively delivered whether the witnesses are mistaken, are exaggerating, are untruthful or whether the witnesses cower under cross-examination, that when evidence has to be accessed it must be fairly difficult in many a case for a judicial officer, both at the lower level and the higher level to decide.

House 54 Sequence 13

12:20 p.m.

Tuesday, February 08, 2005

Continuation of Hon. R. C. EASTMOND: Mr. Speaker, in fact, there have been times in my experience when a case turns usually at Court of Appeal, House of Lords or the Judicial Committee of the Privy Council, purely on matters of law, that sometimes it is easier for them at that level than for those who have to assessed the evidence.

Mr. Speaker, the beauty in what we are here today doing is that DNA-determined evidence can, in most cases, be objectively verifiable. Therefore, if it can be taken that DNA provides truth, then any law court, anywhere, would

be better placed to deal with truthfully-decided evidence than when the evidence is doubtful, tainted or exaggerated. This type of testing leads to the truth and if the truth is to be the whole truth and nothing but the truth, then the job of any court anywhere is made easier.

Mr. Speaker, I now go to matters of concern in this, our sovereign Barbados. There are attorneys-at-law and parties who would tell you that prior to DNA testings, when issues of paternity came up before a magistrate's court and a blood test has been agreed to between the parties, the blood test may tell you who is not the father but will not tell you who is the father. And this has troubled many a person in this jurisdiction.

Mr. Speaker, so troubling are paternity matters in the magistrate's courts that it has not been unknown that a paternity matter comes up to determine the paternity of a child and then that DNA test is reintroduced into the court in the future, to be used for other cases of paternity. Honourable Members on both sides of this Honourable House must have known that paternity matters affecting child A have been known to come back before the court time and time again. Sir, with that type of uncertainty in a judicial system, one wonders whether justice can be objectively determined.

Sir, the second issue with paternity relates to that case where a father dies. After his death, an application is made to the court to determine the status of a child who would have come forward to say that the dead man was that child's father, for purposes of inheritance. In recent months, in this Barbados, a whole plethora of applications under Cap. 220 have been made that dead daddy D is father to living child C, who was born out of wedlock.

Mr. Speaker, the reason for that is that if the male of the species does not go to the Registration Department and sign as being the father of that child, then only the mother's name would be recorded on the birth certificate. If the man does not go to the Registry, the mother of that child cannot name the father on the birth certificate. Therefore, when men die and are suspected to be fathers of children, after their death applications are made to set the tone for parenthood. Therefore, one wonders whether that is best practice. Clearly there would have been cases when the ultimate decision of the court would have been accurate but in situations where the law should be objectively verifiable and where legal result should be based on justice, clearly we always have to initiate measures that would lead to truth and ultimately to justice.

Mr. Speaker, I am not permitted to go into jurisprudential about truth, law and justice but perhaps if a man call Ishmael has died and a little girl called Linda, age 17, were to come forward and say that Ishmael had three children in wedlock and Linda out of wedlock, then Ishmael's estate is fixed with a court decision that it should go to both those born in and out of wedlock. If it can be

proven objectively afterwards that Ishmael was not Linda's dad, then that estate would have been unfairly distributed. Therefore, on exiting criteria, we get inaccuracies, which we would want to avoid by introducing scientific mechanisms which can establish truth and veracity.

Mr. Speaker, this legislation sets the tone for better evidence. There are those of us who know of the traditional best evidence rule at common law and we saw weaknesses even when people used to speak about the best evidence rule. I did a case for an accused person who was alleged to have stolen carrots. The carrots were to be kept as evidence for five years, to be presented by the time the case would have been heard. Of course, five years after there were no carrots, so clearly my client would have started at an advantage. If, at that time, there was a system by which the carrots could have been photographed and weighed and the picture produced, which, under the best evidence rule, would have been called heresay, then better justice could have been served.

Mr. Speaker, I conclude by urging Honourable Members to be detached and dispassionate about this. Sir, clearly none of us is happy when we see people's privacy being breached and when people's pubic parts are being subjected to search. We do not want an invasion of people's pubic parts. The purpose of the amendment to the constitution is to permit this Bill to be able to stand as a valid Bill but at the same time I must say that Honourable Members would be well urged to know that there are in-built safeguards in the Bill, and that in addition, there are safeguards external to the Bill which will, as the Honourable Member for St. James Central said, will definitely enure to the benefit of a person or persons who would be at risk of losing his, her or their privacy.

Mr. Speaker, as I conclude, I want to urge that Honourable Members on both sides can feel assured that the traditional, non-written, uncodified safeguards that have existed at the common law will apply and in any event within this particular Bill there are safeguards designed to ensure that the dignity of the human being is not compromised.

With these remarks, Mr. Speaker, I am obliged to you.

Hon. Miss M. A. MOTTLEY: Mr. SPEAKER, I beg to move that this sitting be suspended until 130 p.m.

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

The question that the sitting be suspended until 1:30 p.m. was put and resolved in the affirmative without division and MR. SPEAKER suspended the sitting accordingly.

H:No.54(14)1230 p.m.

Tuesday, February 8, 2005

RESUMPTION

Mr. DEPUTY SPEAKER: This Honourable House is resumed. The Honourable Member for St. Philip West.

Dr.D.C. ESTWICK: Mr. Deputy Speaker, I rise to make my contribution to this particular debate largely because this particular Bill under consideration requires the fullest and deepest analysis that could be brought by members of this House. Given that it requires a two-third majority so as to become the law of this land, it indicates without a doubt that it is importance and, therefore, Sir, I take this debate seriously.

My first statement would necessarily be that I am somewhat disappointed, if it is the responsibility of Parliament to look out for and protect and safeguard the interest of the people of this country, I thought that any amendment to legislation that requires such a profound use of the majority rule of Parliament, that there would have been further dialogue with respect to this particular Bill.

I do not believe that the dialogue should only be with the members of Parliament but I strongly believe that on pursuing this particular document that there are elements where the rights of an individual are going to be changed and, as a result, the wider public should have been canvassed because it impacts on them.

I am not going to accept the thesis that once you have been elected to Parliament and have a mandate that everything you do is necessarily right and in the interest of the people of this country. I am somewhat perturbed when Honourable Members on the other side seem to believe that as long as they bring a particular Bill to Parliament that it is necessarily right and well-structured, that it has gone through all of the various elements of analyses, that there are no problems with it, that the Bill should not be questioned and that it should simply be passed and accepted. Sir, the Opposition would not be getting involved in that type of politics.

My first major concern is about the concept of science. There is this view echoing from the other side that seems to place science on a pinnacle. They believe that because something is scientific that it is accurate or because a piece of data has been arrived at by scientific methodology that it is accurate.

Sir, that is far from the truth because science as a methodology is simply as accurate as the individual who is executing the methodology and the design structure within which you are testing a particular hypothesis and the theoretical explanation that is accepted at this particular time with respect to what you want to explain. Sir, it is variable in itself because it is dynamic and changes over time.

Mr. Deputy Speaker, individuals come in here today and want the member of the Opposition to say that because a machine on which a DNA test is carried out spews out a particular ratio, that it must necessarily be correct. I want to dispel some of those myths.

I have had the opportunity to review several areas of publications on this area of DNA and many of the other pieces of literature related to it and what I have found surprises me because I understand scientific methodology fairly well. Sir, one of the things that is most important at this time which should suggest to our legislators that we have to move cautiously with respect to the type of structures that we implement, is that at this present time DNA testing is an emerging science, one where the standards are not strict but moving. For example, in England, there have been having significant problems utilising a six-locus DNA methodology. It has also created many problems in the United States of America and they have had to move from six, to eight, to ten and are now utilising a thirteen-locus standard to determine accuracy. The point I am making is that it is a new and emerging science, that we should not put all our hopes on a particular result and simply forget all the elements relating to the law in Barbados.

Sir, I always believe in supporting what I say with empirical information. Recently in England, an elderly man with severe stage three Parkinson's disease and who was involved in a domestic dispute at home, he bit a member of the family and was arrested. DNA testing was done and the information was put in a database of 700 000 in England. Sir, a crime was committed about 300 miles away from the home of the individual, a man with Parkinson's disease who could not walk, dress himself or drive but when the DNA was analyse, a match occurred with respect to its frequency of match to the DNA in the database. Sir, as a result the individual was arrested and the police officers based the entire case not on the additional circumstantial evidence and what would have been sensible with respect to the other elements of application of circumstantial data...

H54/13:40

Sequence 15

Tuesday, February 8, 2005
Continuation of Dr. D.C. ESTWICK: I want Barbadians to understand that not only is the DNA sample or database size important but the accuracy is based on the number of loci being used. In fact, if one were to ask a police officer today, a defence attorney or a prosecuting attorney, or a judge when it is said that in thirty-seven million people and you execute a frequency analysis and there happens to be one match, what does that mean, they would probably say that it means that in thirty-seven million people you would find one DNA match that represents that DNA that is being

tested, but that is not necessarily true. Many geneticists have shown that has been incorrect and, in fact, you can find six or seven matches within that thirty-seven million grouping. If Honourable Members in this Honourable Chamber want to find the references, I will give them the references where this information is.

Sir, I want to get over to the public that because you have a match based on what is involved in a database does not necessarily mean that it is accurate. As a result I want to suggest to members of the law enforcement agencies in Barbados that a DNA match is probable. This means that you must now continue to utilise all of the other investigative mechanisms and methodologies to ensure that individuals are given the full use of the law as is their fundamental right and not depend on the thinking that because you have a positive test that is correct.

Sir, let me give you an example. There are Honourable Members who do not understand what we are talking about. We have a situation in this Bill where we look at non-intimate sample testing. We also have a situation where an individual who is mentally competent decides that they would not give a sample. We now have a situation where a police officer can decide that he is going to take the sample anyway. All over the world there is emerging evidence that you have to set extremely exquisite quality controls with respect to not only the training of the individuals as to how that sample is taken or stored because samples have been switched and contaminated.

Sir, it bothers me that we are sitting here in this Honourable House executing a piece of legislation and Honourable Members on the other side have the concept that if you get a match that it automatically means that everything is over and that you go to jail. That seems to be what is coming from the other side, that is my inference.

Mr. Deputy Speaker, with respect to DNA testing, it is important that you know how to interpret the results. You must understand how to interpret that result and how to infer a result from the information before you. It cannot be a substitute for good policing and you must utilise all of the associated and corroborated evidence in order to support that particular piece of data. It is simply physical evidence and physical evidence can come under many elements that can alter that physical evidence. Sir, I am stating facts and if Honourable Members on the other side do not want to accept them that is their business.

Mr. Deputy Speaker, this type of legislation introduces what is considered a 'blame the victim mindset' and we have to be very careful about what we are doing. Currently in Barbados information is shared among the Caribbean territories with respect to law matters. Sir, without DNA testing our police force shares information with the police forces in Trinidad, Jamaica, Guyana, Interpol, FBI and the CIA. I looked into this Bill and it tells me only certain individuals have access to this data. I am not concerned

about who has access to the data. I am more concerned about how the data will be used. If I am to accept that we now share that information with the FBI, CIA, Interpol and the Regional Security System, am I to accept that when we get a DNA database on criminals that we are not going to share the information with those people as well? What are the parameters and structures that have been put in the Bill? If you go back on the premise of accuracy and reproducibility, then I have some concerns.

Sir, it goes even further. This information is now utilised for medical diagnostics and paternity elements and so on. I want to know if insurance companies can have access to this data. It is a simply yes or no. If it is no, then you have to tell the people of Barbados what technology you have in place that your database cannot be broken into. That is the point that I am making. If they can hack into the Pentagon, then tell the people of Barbados what mechanisms you have put in place to ensure that they cannot hack into your DNA data that can be utilised by the insurance companies, employer and other entities. Mr. Deputy Speaker, that is why I say that this is not as straightforward as some Honourable Members on the other side may want to think. Sir, it is multifaceted from the fact that once you start to adjust and remove the veil of an individual's rights and privacy and you create the condition where that can be assessed it will be assessed.

Sir, I lived in America for twelve years, where all the great computer experts and technicians and people hack into computers. Do not let anybody tell you that it cannot happen here in Barbados because it is nonsense.

Sir, an unsuspecting public should not sit down and accept that because an administration says that there are going to be protected mechanisms, I want to see them. Tell the public what there are, what standards they adhere to and who have accredited these standards. In respect to the accreditation, I also want to know about the training. I am well aware that unless you have your defence attorneys, prosecuting attorneys, judges and law enforcement elements who are highly skilled with respect to these matters you are going to have some problems.

Sir, those entities that have more money to spend than we have are already having problems. If we want to sit down in Barbados and fold our arms and think that with our meager budget that we can do as good a job as those people who are having difficulties, well go ahead. I am not going to bury my head in the sand on those matters.

H54:13.50 p.m.

Sequence 16

Tuesday, February 08, 2005

House 54, sequence 17, 1:50 p.m.

Continuation of Dr. D.C. ESTWICK:

I want to find out whether a suspect's DNA should be in a database. I want to find out whether an individual who has been acquitted should be in a database which may very well in parallel have criminals in it. I want to also find out what is the position with respect to retesting. Can the attorney ask for retesting?

Hon. Miss M.A. MOTTLEY: Mr. Deputy Speaker, on a point of order. I want to explain to the nation the right of the persons to have their records removed from the database upon acquittal. Therefore, no database will contain the records of any person who has been acquitted of any crime. In other words, found not guilty, found innocent.

You can only be a suspect, if the case has not been finished. If the case has been finished, then you become acquitted or you are found guilty. Once a person is suspect, there is no determination of innocence or guilt and until such time, the records remain in custody, until the determination of innocence or guilt. If they are found guilty, then the database will continue to hold their records.

Dr. D.C. ESTWICK: Mr. Deputy Speaker, that is the most woeful explanation I have heard of any question asked in this House. It does not explain anything. Sir, my point is that a suspect who has done nothing under the law, is innocent until proven guilty, and should not be in a database of criminals. As long as that exists, there is the potential for misuse or abuse.

Mr. Deputy Speaker, this is a serious matter and I do not have time to waste. I will speak in the interest of those whom, I feel, that this legislation is not in their favour. I am saying that this is not in the favour of those who are suspected of a crime in Barbados. You are innocent until proven guilty and you should not be put in a database of criminals.

Mr. Deputy Speaker, why I raise these concerns with some degree of aggression, is because we are a society that is culturally penetrated and what happens in America, sooner or later happens in Barbados and all of the loopholes that have been used to corrupt that process will also happen in Barbados. If you all want to bury your heads in the sand, do that. If you all want to believe not, that is your business.

I want to revisit one fundamental point for people to understand that they are not dealing with accuracy of a result. I mentioned the fact before, Mr. Deputy Speaker, that the accuracy of any DNA test result has a number of factors associated with it, and I would not get into the random error elements of that, but I will now speak specifically to the design.

Hon. Miss M.A. MOTTLEY: Mr. Deputy Speaker, on a point of elucidation. The Honourable Member clearly has not read the Bill before the Parliament. Therefore, had he

read it, he would not be asking questions about what happens to suspects and being mixed with criminals in the indices.

Mr. Deputy Speaker, I have gone to the specific clause of the Bill for his immediate edification and education. At Clause 64 in the definition of DNA database system, there are identified, a number of different indices. One for crime scene DNA index. One for a missing persons index. One for an unknown deceased person index. One for a serious offenders index. One for a volunteers (unlimited purposes) index. One for a volunteers (limited purposes) index. One for a suspects index.

Mr. Deputy Speaker, this clearly shows that there are seven different indices, all of which are kept separately. Therefore, the ability for contamination is not there as the Honourable Member would wish to, once again, allude to and as I said, Sir, it is 'par for the course'. He has not read the Bill but wants to speak wildly both in terms of volume as well as content.

Dr. D.C. ESTWICK: Mr. Deputy Speaker, I have those areas, Sir, analysed.

Mr. DEPUTY SPEAKER: Honourable Member could you withdraw that statement? The Honourable Member got up on a point of elucidation. It is not an aside.

Dr. D.C. ESTWICK: Well, the Honourable Member did not elucidate anything to me, Sir.

I have evaluated those aspects and that does not change my position.

Mr. Deputy Speaker, I want to go back to what I was saying. I made the point earlier, Sir, that in the United States over the last five years, the FBI had to change the number of loci utilised in trying to determine the most accurate result of their DNA tests. About seven to eight years ago, and also in England, the six-loci test was the standard test. They have been having so many problems with it, from the point of view that they were getting several different individuals within the prescribed DNA database population that they were abandoned. The FBI is now using the 13-loci DNA test and I guarantee you that in the next five years they are going to be using the 15 and then the 20.

Sir, the point is that you should not put in Barbadians heads at this stage that this thing is inaccurate and infallible. This is what is coming out from the Honourable Members on That Side and I want to dispel it this evening.

The reason why I am making this point is because if in the test where an individual is competent and you are utilising an intimate situation, an individual says that I am not going to subscribe to this test, you then allow a police officer to force that individual into a test, that is what is in here. Therefore, if I were to extrapolate from the capacity

to do that, then I must know that the test is accurate and that is the reason why I am going to speak.

Asides.

Dr. D.C. ESTWICK: Mr. Deputy Speaker, in America, there have been evidence of people who have been discriminated against at work, with the use of DNA tests. There are also unsafe and encrypted databases.

House 54, sequence 17, 14:0014

Tuesday, February 08, 2005

Continuation of Dr. D. C. ESTWICK:

They are not only discriminated at work, but medical insurance is being used against them. There are many such examples, with all of the state-of-the-art multimillion dollar technology equipping this and that in fancy terms.

Mr. Deputy Speaker, I have no 'outside children', so I do not need any paternity test. If some of the Honourable Members on the other side want to do it, that is their business. I am not concerned about trying to find out whether my child has cystic fibrosis or some other disease that an insurance company may not want to give them insurance. I am not concerned about that, I leave those things to the Lord. I do not want to utilise science to attempt to predict the future course of mankind in a way like that. That is what I am trying to say because the next thing they will try to determine is who has homosexual tendencies or who has other tendencies by a test. I am not getting caught up in that sort of science, Mr. Deputy Speaker.

Mr. Deputy Speaker, what I am trying to say here is that there is a significant potential of abuse and it can be used for discriminatory purposes. There is evidence that such testings have been utilised in ways that innocent persons have been locked up. All I am trying to say to the Honourable Members on the other side is not to pretend that when such is introduced that it represents the be-all and end-all. I heard the inaccuracy that once you go and get a DNA test and you prove that you are the man, you are a father, carte blanche, which tells me that there is this feeling that once you do a DNA test and that test results come back and say that you have a likely probability of a match of a number of persons in a database that you are the father. I have been hearing that the whole morning. I am saying that is not true. I am not the father of the Honourable Member for St. Thomas because I am not Methuselah.

Mr. Deputy Speaker, I want to make one last point. What I want to get over to the Honourable Member is that a DNA match...

Hon. Miss M. A. MOTTLEY: On a point of elucidation. I fear that much of what has been put forward will go forward as facts, but I am verily instructed by the

scientist in charge of the Forensic Centre that the database that would be used by the Forensic Centre will not reveal any information as it relates to diseases that would be of interest to any insurance company in Barbados. Therefore, the Honourable Member need not fear yet again about the extent to which insurance companies may seek to affect the integrity of these databases.

Dr. D. C. ESTWICK: You can charge an individual with a key, but there are people who are going to get through that lock with science and technology that their themselves may not even know, that is the point.

Hon. Miss M. A. MOTTLEY: On a point of elucidation. I am not referring to the hacking of any database, I am referring to the fact, and I am very clear with it, the database does not reveal any information as it relates to diseases. Therefore, there would be no need for insurance companies to be interested in any information in the database.

Dr. D. C. ESTWICK: Mr. Deputy Speaker, anybody who has any knowledge about the human genome, reduce that, Mr. Deputy Speaker, down to a situation where you have a DNA on an individual stored in whatever mechanism you have it stored in, you cannot determine how that information can be used by any other group that have the technological capacity to access it, that is the fact. I do not mind that sort of talk, it does not make sense. As long as an individual has access to your genetic information, they have access to your potential to have disease X, disease Y, disease Q and disease R, and Barbadians need to understand that. I am saying that we must therefore force the system to make sure that when the structures are put in place that this sort of thing is not going to happen or it is going to happen probably one in every five billion times, that is the point.

Mr. Deputy Speaker, I will reiterate my position. A DNA match is nothing more than probable cause. It now forces the individual officers to look at the individual whose DNA has been matched to a sample stored in a database more closely. It must not be the definite or final position. I know exactly what I am saying. I say probable cause and I mean it. Sir, I am going to quote now from the FBI Web page. The United States of America Attorney-General...

Asides.

Dr. D. C. ESTWICK: Mr. Deputy Speaker, what is important is that our police officers must use all of the other investigative mechanisms to go out there and put the circumstantial information along with that DNA information to come to a definite position. If we do not put that in place now we are going to have to put it in place 10 years from now, that is my caution to the Honourable Members on the other side.

I only want to say to Honourable Members on that side that when I get up to speak they can put earplugs in their

ears because I will speak as I see fit in the interest of the people of Barbados whether hard or soft. If they do not like it, that is their business.

Thank you, Mr. Deputy Speaker.

Hon. D. D. MARSHALL: Mr. Deputy Speaker, I rise to speak in support of this legislation, but I must admit to being somewhat alarmed at the way in which the Members of the Opposition have tried to drag red herrings across the trail during the course of this debate. They have spoken very glibly about amending the Constitution and things of that sort, and I would first like to get that particular aspect of their argument out of the way.

My understanding of section 49 of the Constitution is that where a piece of legislation that is proposed to be brought that may in some way through the operation of the legislation itself seek to infringe any of the fundamental rights, it has to be passed in this Honourable House by a vote of not less than two-thirds. In this particular climate it is a very convenient thing for the Members of the Opposition to be screaming and shouting that we are changing the Constitution and we are fiddling with this and with that. Mr. Deputy Speaker, that is really a method of setting up a straw man then to knock it down.

Mr. Deputy Speaker, I believe that it is clear that this Forensic Procedures and DNA Identification Bill, because of the fact that it provides the Crown through its agent with certain powers, may infringe the fundamental rights of the citizens and to that extent, as a matter or perhaps you can say, *ex abundancia cautela*, out of an abundance of caution, it is important that the legislation be passed with the requisite majority.

Mr. Deputy Speaker, I think it is important to recognise that the law of this land has always recognise that no citizen is obligated to incriminate himself or herself. We, in our fundamental rights provisions have provided for freedom from invasion of privacy and a whole raft of provisions set out between section 11 and section 25 of the Constitution, all of which have been designed to guarantee fundamental rights and freedoms to all people in Barbados.

House 54 Sequence 18

2:10 p.m.

Tuesday, February 08, 2005

Continuation of Hon. D. D. MARSHALL: Mr. Deputy Speaker, the fact is that our society must keep pace with scientific advantages. Sir, I speak on this legislation bearing firmly in my mind an incident which occurred in my constituency recently, where a nine-year-old girl was raped and bugged. Sir, I visited with the parents of this nine-year-old girl and their biggest heartache was the fact that, notwithstanding that their daughter was asked and had

volunteered to give intimate samples, that we did not have the legislative framework in Barbados such that a more comprehensive and immediate investigation could have been conducted to have aided the Police Force in capturing the perpetrator. In fact, my own discussion with the Police Force was that the practice was that the evidence had to be sent abroad to a laboratory in England and by the time the results came back, would have taken many months.

Mr. Deputy Speaker, this young couple had to undergo the agony of seeing, insofar as it related to their own personal circumstances, the Police Force being unable to respond with the alacrity that was needed, in assuring these individuals that justice was going to be done.

Sir, I believe that this particular piece of legislation now provides the legislative framework so as to allow the authorities to more thoroughly investigate crime and crime scenes, so that the perpetrator is more easily apprehended and hopefully more easily convicted.

Sir, I agree with the Honourable Members of the Opposition that a DNA data is only evidence but from my sitting in this Honourable Chamber, both this morning and in the previous debate two weeks ago, I have never heard anyone on this side positing that as long as there is a DNA match that would have been the end of the matter. In fact, as an attorney-at-law, I know only too well that the standard of proof in a criminal matter is beyond reasonable doubt.

Mr. Deputy Speaker, if the DNA results help to establish that standard of proof, then the individual would be rightly convicted. The results of a DNA test, certainly in my eyes and in the eyes of Honourable Members on this side, constitute nothing more than additional evidence which may be used, either to convict or to exculpate an individual who has been charged.

Mr. Deputy Speaker, I am more confident in our legal system, and I believe the Honourable Member for St. Philip North, as a practising attorney-at-law, is much more confident in the system because the Honourable Member now has available in his defence arsenal, the capacity to cause DNA samples to be taken and hopefully exculpate his many clients.

Sir, I believe that is the signal matter which we need to confront today. Are we moving away from a system where the Police Force and our courts have traditionally relied on confessions, in a situation where, across the world, the law enforcement agencies have the capacity to do DNA testing? Are we moving away from that old system? Are we grasping the technology that is within our reach?

Mr. Deputy Speaker, this Government is firm in its commitment to do so and we are today inviting the Honourable Members of Her Majesty's Opposition to join us but to join us in all sincerity. Sir, the fact is that the legislation attempts to bring into reality a Forensic Centre

that this Government has put into place at a cost, I believe to be in excess of \$20 million. The Government Forensic Centre is being held up as a model to be followed by others across the region and across the hemisphere. Therefore, this legislation provides the legislative framework for its proper functioning.

Mr. Deputy Speaker, never having practised too much at the Criminal Bar, I am of the view that the best protection that a person who is charged could have, would be the opportunity to scientifically disprove the evidence or what is purported to be the evidence against him. Therefore, I believe that this legislation must be supported by all right-thinking Honourable Members of Her Majesty's Opposition, and certainly all right-thinking members of the Barbadian society.

Mr. Deputy Speaker, we have too often heard of situations where there is discomfort at the result of a court case or in a deliberation such as that and while it is not absolute proof, it certainly will take this country much further along the road of being able to establish guilt beyond a reasonable doubt. Therefore, this DNA facility will bring that into reach.

Mr. Deputy Speaker, having perused the legislation, I am satisfied that a significant amount of effort has been put into place to protect the average citizen but it suits the Opposition to suggest that the average Barbadian would be ride roughshod over by some burly policeman, who would try to subject them to having a non-intimate sample but nowhere have they pointed out or have sought to indicate to the members of the public, who are hearing this debate, what constitutes an intimate or a non-intimate sample.

Mr. D. St. E. KELLMAN: On a point of order. Mr. Deputy Speaker, the Honourable Member is misleading this Honourable House by saying that the Opposition is accusing the Police Force of abusing the public, and no one on this side has said that, Sir.

MR. DEPUTY SPEAKER: No point of order. Proceed Honourable Member.

Asides.

Hon. D. D. MARSHALL: Mr. Deputy Speaker, non-intimate forensic procedures constitute

(a) an examination of a part of the body, other than the areas referred to in paragraph (a) of the definition "intimate forensic procedure";

(b) the taking of a sample of hair, other than pubic hair;

(c) the taking of a sample from a nail or under a nail;

(d) the taking of a sample of saliva or a sample by buccal swab;

(e) the taking of a sample by swab or washing from any external part of the body other than the areas of the body referred to in paragraph (a);

(f) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body, other than the area of the body referred to in paragraph (a);

(g) the taking of a handprint, fingerprint, toe print or footprint;

(h) the taking of a photograph of, or an impression or cast of a wound from a part of the body other than the areas of the body referred to in paragraph (a)

Sir, this is all done by the Police Force, everyday in the gathering of evidence. Everyday when an individual is charged with an offence, his or her fingerprints are taken, and this is a non-intimate sample.

Mr. Deputy Speaker, this legislation is clear in its efforts to categorise the nature of the examination that is to be conducted and thereafter, putting in place the appropriate mechanisms which include the protection of that individual. Sir, where it is an intimate sample and the individual does not consent, the Police will then have to go to the magistrate.

Sir, this is a time-honoured method that is being used in Barbados, whether it is used by the Immigration Department or any other law enforcement agency. It covers a whole raft of situations where, if an individual does not consent, the enforcement agencies can go to the law court. When it goes to the magistrate, this law does not require the magistrate to order that the sample be taken. This Bill requires the magistrate to make a determination as to whether or not a sample would be taken.

Sir, we have, therefore, tried to provide safeguards at every step of the way, to ensure that the rights of the citizens are being protected.

Mr. Deputy Speaker, we, in the Caribbean and in Barbados, have often been accused of not staying on the cutting edge of technology and often those criticisms are accurate. It is sometimes because we do not have the resource base and sometimes because our culture does not support a trend in that direction.

H:No.54(19)220 p.m.

Tuesday, February 8, 2005

Continuation of Hon. D.D. MARSHALL:

This is an area where Barbados is establishing itself in a leadership role in the region and it is a capacity that we need to exploit as well.

I was especially heartened when the Leader of Government Business in introducing this piece of legislation spoke about that fact that we were being asked to be the testing centre for Cricket World Cup 2007. Sir, that is a signal honour for Barbados. Everyday Barbadians triumph over the greatest odd and the most severe adversity and this is yet another case where the world is recognising that Barbados has cutting-edge services to offer. Our big challenge might be in the way of capacity and if we can fulfill the demand that is required. Mr. Deputy Speaker, we must never let it be said that we have not tried to satisfy the demand.

I believe we have watch enough episodes of CSI on television to have a keen understanding of the type of forensic skills that are being required today. I am very happy to know of a few Barbadians who are currently studying in the United States of America to develop forensic skills so that we can take the concept of police detective work far beyond the level it is at today. Our police have worked assiduously over the years with little equipment and without the benefit of the finest of technology. Sir, we recognise the need to modernise our criminal justice system and it is vital that we proceed in this direction.

I look forward to the day when Barbadians may be acquitted of charges or offences because forensic testing such as this establishes beyond reasonable doubt that they were not guilty. I equally look forward to the day when individuals who have committed a criminal offence are not able to escape the long arm of the law simply because they might be a critical piece of evidence that were it not for forensic capacity we were not able to employ.

Much mention has been made of the run-of-the-mill matters of paternity testing and so. I am aware that lawyers for many years have used laboratories outside of Barbados and I am happy to see that this type of capacity has come to Barbados not just for Barbadians but equally for services across the Caribbean.

Mr. Deputy Speaker, I believe there is often a reluctance on our part to grasp technology and modernisation of systems but the truth is that by forcing ourselves to remain static, we are depriving our citizens of the kind of opportunities that technological developments have brought within our reach. Sir, on behalf of all the individuals who have been charged but convicted only on confession, on behalf of all those Barbadians who might more readily have been acquitted, on behalf of Barbadians who have gone through trauma of seeing family members convicted of offences but always there was nagging doubt, I am happy to say that the time will now be here when we are able to use the finest of technology.

The Honourable Member who spoke immediately preceding me, spoke about a three-point test, a six-point test and a thirteen-point test but the fact of the matter is that this Bill has been crafted in such a way as to facilitate the adoption of standards as they become more precise and as they move. If the Honourable Member were to refer to the Clause 67 in the legislation, it says that the matching of DNA profile in an index of the DNA data base system with a DNA profile in another index of the system shall be carried out in accordance with international standard in relation thereto.

Clause 72 says that the director, after taking into consideration such advice as the director receives shall maintain and revise the standards for testing the proficiency of conducting DNA forensic analysis and the standards for the protection of tissue sample, bodily substance and DNA data.

The point is that this legislation contemplates an environment where the tests themselves are constantly undergoing refinement. Notwithstanding that there may be a test used today that may become outmoded in the future, we are not legislatively bound to remain static because testing is seen as a moving target.

Sir, I believe that Barbados should seek to set itself at the highest level. If the highest level is a thirteen-point comparison or whatever precise language there is, I hope sincerely that we would start out at the top of that field and not apply a lower standard.

I have not had the benefit of discussing with the department which standard is to be applied but knowing the culture and psyche of Barbados, I believe that the department will try to move to the highest measure of comparison available so that Barbadians will have the level of precision we require.

Mr. Deputy Speaker, I support this legislation. I welcome it as a move towards better equipping our law enforcement officers with the kinds of modern tools being used elsewhere. I am not of the view that this Bill would provide opportunities for riding roughshod over the citizens of Barbados.

There are numerous provisions established in here so as to protect the citizens. Those who are suffering from some incapacity are protected. There is a mechanism for volunteers so that if you are being investigated you are able to give a sample to expiate yourself and there are others who would be compelled to give a sample. The truth of the matter is that we have no law today which says that on arresting an individual, the member of Her Majesty's police force can take a finger print. It is seen as being an important element in the investigation of crime so much so that the taking of a finger print is not considered to infringe the constitutional rights of an accused or suspect.

Sir, every person who is charged with a criminal offence has been fingerprinted today in the absence of the legislative framework and it is not seen as an infringement. What we are providing today is the legislative framework not only to deal with fingerprinting but with the whole raft of forensic analysis available.

I support this legislation and commend it to this Honourable House. I am satisfied that our Constitution is met fully and the citizens of Barbados rather than going to bed terrified as the member of Her Majesty's Opposition would want them to be, I hope they are satisfied and confidence in the ability of our forces to adequately investigate criminal activity.

Mr. Deputy Speaker, with those few words, I am obliged to you.

MR. DEPUTY SPEAKER: The Honourable Member for St. George South.

Mr. L. R. TULL: Mr. Deputy Speaker, I will essay a few comments from this Bill. It is expected that I do so having spent a long part of my professional career involved in the practice of criminal law. There should be no dispute about what is written in the Bill. The Government of Barbados is bringing this Bill, keeping in step with modern developments with respect of the use of scientific evidence in this case DNA for the assistance of the police and investigators in the investigation of crime.

H54/14:30

Sequence 20

Tuesday, February 8, 2005
Continuation of.... Mr. L.R. TULL: Sir, from that point of view I do not think that anybody could seriously question the reasonableness in bringing legislation to that end. I have no quarrel with that and I commend the Government for anything in taking this important step in modernising the whole question of police investigation and the use of scientific evidence to assist them.

Sir, As I listened to part of the debate, I heard my friend, the Honourable Member for St. Lucy, ask about carrying it to the people. He said that it is a constitutional amendment and, therefore, you should carry it to the people. We must now go out into the byways and highways and discuss whether DNA legislation should be introduced in Barbados. I have a difficulty with that. I believe that I came here, not as a messenger but as a person representing the people. If I were a messenger, every time that a piece of legislation comes I would have to go to a mass meeting on Ellerton pasture and ask my constituents to turn up and listen to them so that they can give me a message to bring here deliver to this Honourable House. That is not why I am here. If the Honourable Member for St. Lucy feels that is his

role then, many men, many minds.

Sir, I believe that I have to use my own judgement and experience in dealing with matters that come before Parliament. There is nothing wrong in reporting to my constituency but we have to make some decisions in matters such as this. Sir, if for everything that comes up, we have to hear what the people have to say, in view of what has been happening in the last two or three weeks, is a kind of referendum giddiness. Let us move beyond that.

Sir, getting back to the substance of this matter, I have no great problem with the bulk of this legislation. Most of it is already enshrined in the laws of Barbados. The question of how long you can hold a suspect; whether you can have a friend, relative or lawyer present when questioning a suspect or whether you have to court order for certain things; all of these things are already embedded in the laws of Barbados. Therefore, we should not be distracted by that kind of comment.

Sir, there are two things that I particularly want to focus on. One is the question of service to the suspect, the defence side of any police case. I also want to focus on the whole question of abridging the fundamental rights of a citizen of this country.

In respect of the forensic services, this debate has been had already. One thing that I have learnt from being in this Honourable House a long time; we say the same thing over and over again. There was a debate, not very long ago, on forensic sciences when the lab was set up and certain legislation was brought here. A lot of what was said then is being said today. I was not here the first day the debate was engaged but I guess the repetition has some value.

Sir, I remember when I was a boy there was an advertisement for Thermagene and it went something like this: "Rub-a-dub-dub three men in a tub." You heard it on the radio over and over, day after day and night after night. Sometimes you would be in school doing a Greek prose and all you would be hearing in your head was, rub-a-dub-dub. I guess repetition has its value. Everybody bought Thermagene because of the rub-a-dub-dub but the repetition can be a little ineffective.

Sir, one of the things that was mentioned earlier in relation to the DNA lab relates to the question are their services available for the defence? We heard a lot of talk about what DNA developments have unearthed for people who were on death row, where people have been sent to prison, sentenced to death and after many years of the development of DNA and application of the test, it is found that these people are innocent. That is entirely possible in Barbados.

Asides

Mr. L.C. TULL: I speak with some experience in these

matters. I know people who are charged with murder and rape. Let me say that DNA has no relevance to the vast majority of crimes committed in the country. We talk as though every criminal matter involves a DNA test. If you go into a store in town and carry away something and you are held with it in the bus terminal, I do not know what DNA testing has to do with that. DNA testing applies more important in cases of homicide and sexual offences. Those are the chief areas.

I want to say that over years, I have dealt with matters where people were charged with homicide and rape. When I am first contacted by the suspect, who subsequently became the accused, and I get instruction from him, I do not know whether the man is guilty or not guilty from what he told me. I go through a preliminary hearing before a magistrate where I hear all the evidence and I cross-examine witnesses, at the end of day I am not sure whether the person is guilty or not guilty. I can go before a judge and jury and talk, sweat and argue and at the end of the case the jury says not guilty. I said that because when I represent them for murder, the jury usually says not guilty. At the end of that I am not sure whether the person I am representing is guilty or not guilty.

Sir, anything that aids me, the people of Barbados and the jurors in a case being not-totally sure, because we could never get there - more sure than we can be now, is useful. Therefore, I am supportive of this new initiative.

Sir, talking about it in defence, if the Forensic Centre is set up for the Government, the police and Public Prosecution Office, are part of Government and everything is done just for the Government and the prosecution, as distinct from the definition of the Government as the people, then I have a problem with it. I heard the Honourable Member for St. Philip North on the radio speaking about it but he did not put it with as much clarity as I would like. You should not have to pay for DNA testing if a defence lawyer says that he believes that a DNA test or any kind of forensic test can help his client to exculpate himself, then he should get it free. He should not be put at an expense to show that he is not involved in something. This is why I am saying that I am all for this thing but let it be available equally and without cost to the defence.

H54: 14.40 p.m.

Sequence 21

Tuesday, February 08, 2005

House 54, sequence 22, 2:40 p.m.

Continuation of Mr. L.R. TULL:

Sir, we live in a society that is very much after people's blood, we hear, hang them, lock them up. Mr. Deputy Speaker, you are laughing because you know in

which category you fall, but the thing now in Barbados is that we want to get at them. Every single person who is charged with a criminal offence in Barbados for the average Barbadian, whether he is schooled or unschooled, is guilty. This is my experience. If the police hold you, you have to be guilty. I know that is not true, not only from experience, but from commonsense that cannot be true. We have a society where we like capital punishment and to hang people. I hear that all the time. Mr. Deputy Speaker, I have done large numbers of murder cases and I have never yet met the relative, good friend or buddy of a person charged for murder, who is in favour of capital punishment. It is always to hang the other fellow but when it comes to me and my family and my close people, it is no, no, no. There is a kind of double standard operating, Sir, but then, I am digressing.

Sir, I want to just wrap up the point about making these services available to the accused. When these orders are made for forensic procedures to be carried out that they are made immediately available to defence counsel, the accused, the suspect whomever he is, and let the results be available immediately, and put in the hands of the defence.

Sir, I am not asking for anything revolutionary. It is the requirement that all evidence in the hands of the prosecution must be put in the hands of the defence, if we are to do a proper case and give the man a fair share.

Asides.

Mr. L.R. TULL: Sir, I would like to know that in this Bill before the House that the provision is made for the results of these tests for the people who are accused.

The other point I was making, Sir, relates to the question of what is considered the abridgement of fundamental rights. Nothing is absolute. I am a great believer of protecting people's rights, more so than most people I know. I do not believe that the Government, the State, the Executive or whomever, should be constantly trampling the rights of citizens, and inhibiting them in any reasonable extent. This is my philosophical and fundamental position that nothing will move me from, Sir.

It is the kind of thing I wrote about as a law student many years ago. Unlike some of the things I have said, those things I wrote, having read them after an expansive time, I am still very proud of them. This is because these are things that I believe in so deeply that they are not subject to the whims and fancies of the fads that come and go.

Therefore we have to watch these fundamental rights very carefully when we have to deal with them. As I said, nothing is absolute. There is nothing stated or God-given that this must be it forever. We have to balance people's rights with what are the interests of the community at large, if not, we might as well go back to the jungle. What you do,

must be done in such a way as not to fundamentally affect the rights of those around you, so there has to be a bridge at some point.

We in Barbados, Mr. Deputy Speaker, are concerned about the increase in crime and the effect it can have on our societies. This is not an Opposition or a Government thing, a DLP or BLP thing. A person who is going to go into my house, is going to go into the house of the Leader of the Opposition. A person who is going to go into the house of the Honourable Member for St. Lucy, is going to go into the house of the Honourable Member for St. Andrew.

Therefore, it is not a question now of partisanship over matters relating of crime. We have a problem of crime and we have to come up with solutions, in a creative way and on a regular basis to handle the difficulties and challenges that confront us. We have to think more and we have to try new things. If we think that we are going to sit back and say that what was good 30, 40 or 50 years ago, is good now, is to misunderstand that those who are involved in criminal activity are not rooted in a decade or two or three ago. They are modern and going ahead all the time and they are sometimes even ahead of the society that seeks to contain them. Therefore, on this business of touching their fundamental rights, the litmus test really is, is it reasonable in the circumstances.

Sir, before I got up, I said to myself, this legislation is asking that you do some serious things, such as intimate and non-intimate samples and that kind of thing. This is not easy and that is why I looked at it very carefully. This business of a police officer cajoling somebody who does not know better. Sir, those of us who think that the police station is an easy place, had better start thinking again.

Sir, big, tough hard-talking people, like the Honourable Member for St. Philip West - I am not saying that the Honourable Member for St. Philip West is like that, I am only saying like him - quail and tremble inside a police station. When you see them in a police station, they are weak, pathetic and sniffing and you wonder why.

Therefore, to tell me that a person who goes in a police station and consents to a police officer carrying out these intimate procedures, searches or whatever, consents, raises my eyebrows. Sir, I would have been happier to hear that anytime they are to carry out these intimate searches, that there must be a consent that is given after consultation with a lawyer.

Sir, lawyers have to go into police stations all the time and the first thing you say when you get in and you see the persons who sent for you or their family, you ask them, if they told you tell them anything. They talk so much, and you tell them that they do not have to say anything. Sir, in dealing with these fundamental rights, the law says that the person has a right to remain silent. You are not only supposed to be told that in police station during the

investigation, you are told that in the court.

House 54, sequence 22, 14:5014

Tuesday, February 08, 2005

Continuation of Mr. L. R. TULL:

When you are before a judge or a magistrate for a criminal offence, you have to be told that you do not have to say anything. That is enshrined as one of our fundamental rights.

The man does not have to say anything, if he does, he incriminates himself. Even in a trial and a person seeks to make a statement that is incriminating, it is the duty of the presiding officer, the judge or the magistrate to stop that person from saying something to incriminate themselves. We have a society where you do not incriminate yourself, you have a right to remain silent and not say a word. We have this legislation which cause me some unease because you could tell the police officer and the magistrate, you have nothing to say.

Under our laws that statement comes from your mouth so they cannot touch you, but they could say that your mouth says that you have nothing to say but they will let your body speak, so they are going to search you all over your body or any part of it. The legislation talks about intrusive, so they can do anything to find evidence against you, so you do not have to say anything according to the law and the Constitution, but they can hold you and without your consent get this kind of evidence from you.

Sir, I do not know everything and in that sense I am an unusual politician. Maybe I am wrong, maybe I am seeing a large problem where none exist, but I would like it to go in the record because in the fullness of time what we do and what we say in important pieces of social legislation either come back to haunt us or to define our character. I have some grandchildren, Mr. Deputy Speaker, who someday might do some research, I do not know what they may do and they may say I cannot understand and my grandfather let this thing pass and did not say a word about this or that or the other, that is why I want to make those points.

As I said I am supportive of the Government initiative in using new developments in science to assist in the work they are doing. I heard one of the Opposition members say that they cannot support this legislation, but I do not think they mean that, I think they mean that there are some aspects of this legislation they are uncomfortable with and they are not wiping out the whole Bill, I would hate to think so because if they say that, whoever said it and they mean it, they will hear from me in their constituency about it because all we are doing is trying to make Barbados safe and to protect Barbados from a lot of criminal activities.

Sir, I like the Honourable Member for St. Lucy. The

Honourable Member for St. Lucy said in here this morning that when you are in Government you say one thing and when you are in Opposition you say something else or something like that. He was referring to this side. When I heard him said that I was lying in my bed listening to the radio, not that I am disrespectful and do not come to Parliament on time but I had to collect my grandchildren from nursery school before I came here, they come first. I wonder why the Honourable Member at his side did not take one position in respect of saying that the Constitution amendments in 1974...

Mr. D. St.E. KELLMAN: On a point of order. The Honourable Member is misleading the House by giving the impression that I did not make reference to the constitutional amendments of 1974 because after making that particular point, I made reference to the constitutional amendments of 1974, where that side criticised them and yet up to today they have made no change.

I also said that the Evidence Act was passed by us and they accused us of not doing something about it in a year's time, but yet they had 12 years to do it and they did not do it even though they criticise us for it. So I am glad that the Honourable Member reminded the House of that very important point that was made by me.

Mr. L. R. TULL: Mr. Deputy Speaker, you are very generous. I make the point; Why did not the other side, in the 1974 amendments to the Constitution, made far-reaching changes? Why did they not, according to the Honourable Member for St. Lucy, go to the people as he is advocating today?

Sir, I do not agree with him because I said I am a legislator not a messenger, but he wants to be a messenger so why did he not go and get a message in 1974. Sir, with the Public Order Act, when there was the limiting of fundamental rights, why did they not go to the people and get a message and bring back as he is advocating. So when they say that you do one thing in Government, as you were then, and you take another position in Opposition... That is exactly what has flowed out of the mouth of the Honourable Member.

Mr. D. St.E. KELLMAN: On a point of order. The Honourable Member is misleading the House by giving the impression that the promises made in 1974 were made by the Government. Those promises were made by the Opposition at the time who went to the people and promised the people that they would have amended the Constitution to revert to the original amendment.

Mr. Speaker, that was in 1974, we are now in the year 2005 and the Opposition of that time is now the Government and no amendment has been changed up to now, even though they have power, but they are now seeking to do a different amendment to the Constitution that they were against.

Mr. L. R. TULL: Mr. Deputy Speaker, I see that you are being generous, but usually when I am speaking, I really do not like to be interrupted unless there is a genuine point of order.

Asides.

Mr. L. R. TULL: I want to make a speech. This frivolous thing is for other people. Let me talk when I want to talk.

Asides.

Mr. L. R. TULL: I make my serious point, Mr. Deputy Speaker, in fact, I do not think what I am saying is worthy of further comment.

Asides.

Mr. DEPUTY SPEAKER: Proceed.

Mr. L. R. TULL: Mr. Deputy Speaker, I am going to wind up because as I said I have no quarrel with the legislation. I believe that the Honourable Members on the other side when they look at the totality of Bill, would not have anything against the concept, but like me they have a little doubt about one or two sections. I do not know how I can influence it, but I really think that we should take a look at those sections again. We may not change it but it would not be a bad idea to look at those sections of the Bill that are causing some uneasiness to see if we can get over that uneasiness, rather than saying we have the numbers, we vote for it and do not bother about the Opposition. In view of the two points on which I am particularly focused, I would like us to really take another look at this matter.

I am grateful to you, Sir.

House 54 Sequence 23

3:00 p.m.

Tuesday, February 08, 2005

Hon. Miss C. Y. FORDE: Mr. Deputy Speaker, I wish to support this Bill that is before the Honourable House and even though I may not be well-versed in the sciences, I believe that I have a responsibility to speak to some of the issues that are raised in the Bill and to associate them with the everyday life and experience of which I know. I also wish to say how happy I am to welcome this kind of legislation that will help to make more Barbadians aware of the facilities that are available to them, to help them particularly in their time of need.

Mr. Deputy Speaker, I heard the Honourable Member for St. Philip West talking about doubts with regards to the confidentiality of these DNA results and about hacking into

computer databases, et cetera. Since the Honourable Member said that he has to be aggressive in the things that he does, I wish that he were as aggressive when people go to the Embassy of the United States of America for visas, where they have to be fingerprinted. I have not heard the Honourable Member say anything about that.

Mr. Deputy Speaker, I support every possible effort that would bring us on stream with the international world. Sir, if we are talking about globalisation, the Caribbean Single Market and Economy and all the other things in which we must become involved, if we are to go forward, then the legislation that is here before us should be welcomed and all those officers in the Attorney-General's office, including the Honourable Member, should be well lauded for having done so much hard work in putting this legislation together.

Asides.

Hon. Miss C. Y. FORDE: Mr. Deputy Speaker, I have a responsibility to raise issues that are pertinent to the lives and existence of Barbadians. I want to speak for the people of St. Thomas who have experienced much trauma. Sir, we know that when contraceptives were first introduced into Barbados that there were not 100 per cent foolproof and, therefore, we need to give this DNA introduction a chance to be able to do what has to be done. Sir, Honourable Members on the Other Side know that when it comes to legislation and changes in the world, that we have to make amendments so that if there are shortcomings in this legislation, the necessary amendments would be made over time to ensure that it meets the needs of all.

Mr. Deputy Speaker, I have confidence in the database connected with the HIV/AIDS Commission. We do not hear people all over Barbados pointing their fingers at others or talking about hacking into the system. People's lives continue on the trend on which they are because other persons cannot tell they are HIV-infected simply by looking at them and so people continue to enjoy themselves and their freedom.

Mr. Deputy Speaker, I too support the respect that should be offered to the fundamental rights and freedom of every individual in this country. Sir, the establishment of the Forensic Procedures and DNA Identification Bill, 2005 and the Government Forensic Laboratory, are important steps in using the technology to ensure evidence-gathering and to ensure that those individuals who will be tested will get the opportunity to prove their innocence or their guilt, and that samples would be extracted to so determine.

Mr. Deputy Speaker, I have looked at section 31 of the Bill:

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

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

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

Mr. Deputy Speaker, I know that as we speak, there are so many unsolved murders in Barbados at this time and that a lot of this comes as a result of the Police Force not having enough equipment and facilities to adequately carry out their duties. In addition, a lot of the evidence that is lost, is lost as a result of people having heard that a body has been found, going on the scene and trampling the evidence. Therefore, I believe that the introduction of DNA and the protection of such sites, whenever it is identified that a body is found, should be so well-protected that the police officers, doctors and individuals associated with the collection of information and evidence, should be given the opportunity to be the only ones there to do the necessary work, in order to have the Police Force and the legal system carry out their duties effectively.

Mr. Deputy Speaker, I sometimes watch "Court TV". I think it is an excellent forum that can give us a lot of information for scientific procedures. Therefore, when I look at section 35 which deals with the carrying out of certain forensic procedures after conviction of serious offenders, it says:

35. "In this Part,

(a) "intimate forensic procedure" applies only to an intimate forensic procedure that consists of the taking of a sample of blood; and

(b) "non-intimate forensic procedure" applies only to the following non-intimate forensic procedures:

(i) samples of hair other than pubic hair;

(ii) a buccal swab; and

(iii) fingerprints.

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

(d) "serious offender" means a person who has been convicted of a serious offence.

Mr. Deputy Speaker, I referred to Court TV because

having watched Court TV, I recognised that our police officers can do even more but I understand the limitations. Therefore, I believe that the establishment of this DNA laboratory would help to empower them, coupled with, of course, further equipment to help them to carry out their duties.

Mr. Deputy Speaker, I support the efforts that the facility has put in place to assist the Police Force to carry out their tasks effectively. As I said earlier, the lack of evidence, insults, threats or molestation, causes numerous victims not to come forward to give evidence. Sir, so many things can happen during that period that would impact negatively on these witnesses, that in this way the DNA testing will help.

Mr. Deputy Speaker, another issue which I have, which I think the establishment of this DNA testing will help, deals with our young children. Sir, many Barbadians believe that because Barbados is a society where, for many generations, we have been hearing about incest, or about older men and sometimes older women taking advantage of younger children, a lot of us would want to sweep it under the carpet. They believe that if you open up and start to talk about it, that it would create much confusion in the society. I suppose it would be the same feeling that people would get if there were a national debate on black versus white.

Mr. Deputy Speaker, I want to be a part of any discussion that will help young children in Barbados or anywhere else in the world where I would have to go, to be given the opportunity for their fundamental rights to be respected. Therefore, about two months ago, I felt very depressed when I saw a report of the Child Care Board 2002/2003, which is already a document of this Honourable House. That report contained 59 cases of young girls, who, under the age of 16 years, gave birth to babies at the Queen Elizabeth Hospital. I do not have statistics regarding how many of them otherwise might have had babies at home or in another hospital, or as to how many of them might have had abortions. There are also details in the Child Care Board's Minutes which deal with young boys who have been sexually molested.

H:No.54(24) 310 p.m.

Tuesday, February 8, 2005

Continuation of Miss. C. Y. FORDE:

I spoke earlier about women being involved in the whole exercise but what almost broke my heart was when four children between the age of zero and four years old during 2004, were sexually molested three or four different ways. I believe when those samples are made available that the police should be able to carry out their duty because the minds of these young children are impressionable, they are coerced and encouraged to do things that are not in keeping with the good morale standards that we know and because of their innocence, adults are taking advantage of them. Therefore, we are left in this country with a lot of young people whose lives are damaged. Sir, young girls under sixteen are destroyed socially, educationally and emotionally. When a check is made, many of them call the names of men who will not be my match when it comes to age. This is the dilemma of what is happening to our

young children.

Mr. Deputy Speaker, this is why I believe all these systems must be put in place. There is nothing more heartbreaking than a parent, whether male or female, to have learnt that their young five-year-old daughter has had her hymen or pelvic totally destroyed as a result of a big 'hard-back' old man penetrating parts of her body. Sir, it is just as bad for a boy to have that type of penetration from a 'hard-back' old man. Sir, I believe if samples are collected that DNA and this legislation before us would help us to determine these matters.

I am happy to see that this has come to the fore because as a woman I would never put a man in court for support for a child but women have to go to court for child maintenance. Many Barbadians do not like to deal with this but I am very concerned that women have children and have to put their partners in court to get maintenance for children. I believe that the embarrassment must leave our society because DNA would give the necessary evidence so that the court can determine.

Mr. Deputy Speaker, men and women get rape but I want to emphasize the rape of women. A lot of information is not given to the police and the cases do not get near a court of law as people withdraw because of the embarrassment which they have to go through. Sir, no DNA test is taken and, therefore, people have to carry the underpants which they were wearing to court when they were raped in the cane fields and all types of strange things happen to demoralise our people. This is what I call unconstitutional, when people have to give evidence to prove that someone has raped or sexually molested them in some way. Sir, those are the kinds of things that this legislation would help us to overcome.

I had the experience two weeks ago to listen to Sharon on "Afternoon Delight" and it plagued my heart when she read a letter. Sir, five individuals called and one woman said that her brother had sexual relationship with her, that she got pregnant and he took her for an abortion. It happened a second time when she about twelve years old and she blames her mother for not listening to her because she now has a child who is thirty-five years old for her brother.

Sir, a lot of mothers are holding on to information and not sharing it with the police because their lovers are involved or it will bring the family name into disrepute in the society or some other frivolous situation.

Mr. Deputy Speaker, facilities have to be put in place to determine that the substances we have collected are truly marijuana, cocaine diluted or whatever the substance. Mr. Deputy Speaker, we need to have identification of gunshot residue ongoing because every day we hear of some type of shooting, somebody got killed or someone is found with a gun. We need to have the facilities up and running to be

able to do the necessary investigation and testing.

Sir, we need chemical identification in suspected arson cases. Many people are losing their houses but we need to have the scientific evidence so the forensic laboratory needs to be up and running to facilitate such.

Mr. Deputy Speaker, before I close, I want to say that this facility would not only serve Barbados but a number of regional countries which do not have this type of facility. It will serve Antigua, Anguilla, Barbuda, British Virgin Islands, Dominica, Grenada, St. Kitts, St. Vincent, Montserrat and St. Lucia to mention a few islands.

Mr. Deputy Speaker, I can see how this too would help to bring in the necessary funding to help to pay for the establishment of the same institution so that we can do our businesses with the Caribbean and internationally. Therefore, I believe that the funds that would be generated would help with the maintenance of the structure as well as with the equipment needed.

Mr. Deputy Speaker, I know that every year Government spends millions of dollars in nursery, primary, secondary and tertiary education. We have a lot of young people who have risen to excellence in the area of science. Many of them leave Barbados and go overseas but do not return because in the past, they did not have a facility where they could get into the job market. I believe that the establishment of the forensic laboratory would help us to attract some of our young people who went overseas to further their studies so that they can return and offer their service to this country.

H54/15:20

Sequence 25

Tuesday, February 8, 2005
Continuation of ... Hon. C.Y. FORDE: I believe that if we can invest millions in our people we should be able to benefit from offering them the training and they returning to play their part.

Mr. Speaker, the legislation before us is very timely and important if we are to be seen as a developing country that is at the highest level when it comes to education, health services, road infrastructure and housing. I believe that if we are to remain on the cutting edge, we need this kind of legislation being instituted so that we can continue to take advantage of whatever is being offered in the local and international market. More important, I believe that those individuals among us who do not have the means to be able to benefit by the system, that this legislation would assist in helping them to be able to take advantage of whatever is being offered.

I want to laud the expertise of the staff in the

Attorney-General's Office. I also want to let those persons in the constabulary know that we are supporting them 100 per cent in their exercise in ensuring that every Barbadian gets the opportunity to be able to present their cases so that their innocence or guilt would be brought to the fore. I believe that the DNA facility would help to enhance whatever the outcome so that there will be no doubt as to what has taken place because we have put the scientific procedures and technology in place to be able to obtain the best benefits.

Mr. Deputy Speaker, with those comments I wish to wholeheartedly give my support to this piece of legislation.

I thank you.

Mr. DEPUTY SPEAKER: The Honourable Member for St. Michael West.

Rev.J.J.S. ATHERLEY: I am happy to make a contribution to the Bill before us. Having arrived at a position on these issues, which is influenced by my own assessment as to where these matters fit in terms of what is the broad policy outline of the Government as indicated to the people of Barbados and where these issues fit in the general template Government's agenda and the agenda for the development of Barbados at this time.

Sir, I believe, in part, that what we are discussing here today speaks to the issue of modernisation of the justice sector of Barbados. I do not know that we can divorce our thoughts in this debate from that particular context. It is important that we seek to ensure that we continue the business of bringing modernisation to that critical sector as we do with reference to other sectors.

There is much that obtains as practice and at institutional level in the justice sector today that is archaic that has been suggested by both sides at different points in time in this debate today. There is much that has to be relied upon in terms of legislation today, where it is believed, and I think rightly so, to be inadequate to serve the needs of the modern context from time to time.

I think that one of the threads of thought running through and underpinning this debate is the fact that we have a situation where, having created a facility, we want the availability of the kind of services which will bring that modernisation to the sector, this particular instance, but we have a situation where the legislative frame is not up-to-date. It is, therefore, inadequate and not sufficient for the cause.

Sir, reference has been made on either side to the practice of gathering and preservation of evidence. I am persuaded of the view that what we want to achieve and anticipate, through the creation and modernisation of a forensic science centre and the improved and expanded services in this regard, cannot be realised in the present

circumstances with reference to the existing legislative culture and the practices which obtain in the various fields of operation around this issue whether it is at the levels of the court, police service or otherwise.

We can talk about modernising the sector but, in fact, when we consider that today Barbados is poised for the opening of new horizons in terms of national development and Barbados is poised and on the verge of coming to a stage of development where we can be regarded as a developed state. Sir, some are of the view that we have reached that stage of development but I do not necessarily share that view, but we cannot be far from that point. If we think of this issue in terms of national development, we would understand that it is more than simply modernising a sector, it is also creating the kind of culture around dispensing the administration of justice in our land to serve the needs of a developed society in the not too distant future.

Sir, if it is our objective to be a developed society and it is our objective to be a just society as we become a developed society, then the administration of justice must be continually seen as the bedrock of such a society. This view has already been expressed by the Honourable Member for St. Philip North. I do not think that it is a view with which anybody in this Chamber would take exception. The administration of justice, therefore, is critical as one of those foundation elements, the bedrock of a just society. We cannot seek to be a properly developed society, if we ignore the importance of sustaining the concept of being a just society.

Mr. Deputy Speaker, we want to preserve the gains that we have made over time. In order to do that we must ensure that we have a properly functioning, fair and modern system of justice. I think that this measure before us helps to create the climate in terms of providing the legislative frame within which these services can be expanded and can be seen as credible and useful to us, to that extent being in sync with the type of physical facility that we have created as a centre for this purpose.

Sir, the gains that we have made through toil and sweat of our people at all levels of our society over time is important and, therefore, must be maintained whether there are gains in the area of economics, social relations or the development of the culture of democracy, then those gains must be preserved. Sir, we see unfolding before our very eyes, the reality that democracy is very much alive. Therefore, we want to make sure that it stays alive, grows and matures.

Mr. Deputy Speaker, in this regard, I look to measure to see if I can identify certain elements which I consider to be important around the stipulations which are being provided for in the Bill. Reasonableness is an important one and I think that one of the main premises upon which those are lodged is the element of reasonableness. It has been

clearly stated that action which is not based upon that element of reasonableness is action not to be anticipated in the implementation of this legislation.

H54: 15.30 p.m.

Sequence 26

Tuesday, February 08, 2005

House 54, sequence 27, 3:30 p.m.

Continuation of Rev. J.J.S. ATHERLEY:

Sir, the element of fairness to everybody on either side of the issue, whether you are an accused person or an offender, whether you are 'John Public' or whether you are part of the prosecution or the defence, the element of fairness and transparency also, I think, is captured in many of the clauses of this legislation. Those are some of the things which concern me, as I look at the actual document in which the Bill is presented.

I think, Mr. Deputy Speaker, those are the kinds of things which will concern you yourself, as a prudent persons, who is very sensitive to the importance of the proper administration of justice, and the fair and transparent way in which we go about matters around the dispensing of justice in Barbados.

I think clearly, Mr. Deputy Speaker, that a proper legislative frame is now being set which will facilitate a cutting edge discipline of inquiry in several respects, and that is clearly coming through. We want to be at the cutting edge of this field. Some have thought for some time that in Barbados, forensics constitute the way of the future. If that is true, the future is now and I think we have arrived at that point where we need to be on the cutting edge of this field of inquiry, in this particular discipline. Therefore, I think the legislative basis in this measure, is providing for this and several aspects as I intimated.

Sir, whether we are talking about policing, and the gathering of evidence at the level of the investigation of the police and detective entities, the reliance on confession has been prominent in police investigations into serious crimes in Barbados. We hear of the frequency of reports of persons avowing that they have made confessions under duress, the application and wrongful use of excessive force, et cetera. The stories are multiple and one would have one's opinion as to the degree of accuracy that attends these situations.

Nevertheless, the reality is that in many instances the reliance, in terms of successful investigation has revolved, in the past, around the presentation of confession statements, on the parts of accused persons. Certainly, we have to be able to pass that type of a situation where there is that heavy and imbalance reliance on confessions.

There has been, and properly so, the reliance on eye witness reports. The culture in which we live and the times in which we live also is suggestive of the fact that there may be many instances where serious offences take place and, in small societies such as ours where everybody knows everybody else, and where people are vulnerable to some extent, we may have situations of serious crimes and offences against public safety where eye witness reports are not forthcoming because people for one reason or another, may feel a sense of fear or some sense of lack of desire to come forward and offer those eye witness reports.

Therefore, in the absence of confession statements, and eye witness reports, whatever produces that type of absence, then those who are in the front line of doing investigations, need to have as wide as possible, a resource to scientific methods of discovery, and finding out what has transpired in incidents in which they are charge to investigate.

Sir, much has been said with respect to the issue of the domestic dynamics operating in our particular culture and, again, in this society. The paternity issue has been the one which has been prominent in this discussion. This has been a major issue in Barbadian social and domestic life over time. If the bringing of this type of investigation can help us to resolve some of the tensions which arise out of this particular issue, the matter of settlement of paternity, then I say this is something that we need to support to the extent that we can have some degree of greater certainty brought to bear on that particular matter.

Mr. Deputy Speaker, there are health related issues as well, the disease spread and prevention and the analysis in that particular context. These are all very important concerns for us at this time. The world in which we live is so plagued with these events and occurrences these days, although we have had the advance in medicine and science, we are seemingly now even more exposed to the spread of these diseases because of the intertwining nature of international life.

Sir, if the provision of these services would give us the ability to prevent the spread of these diseases and to do other aspects of analysis, then from that perspective, I suggest that this measure we are bringing here today is one worthy of the support of all in this Honourable House.

We live also, Mr. Deputy Speaker, in a climate of growing concern over the matter of security, and that carries its attendant realities. I think that forensic type inquiry gives us the capacity to deal with some of the issues which are thrown up out of that mix, where there are security realities with which we have to deal that occur within societies. Our society is not immune from that because we had our own experiences, where there are occurrences which we have to reckon both at the level of prevention and at the level of address and redress.

Therefore, to the extent that again, scientific measures and methods can be brought to bear in helping us to improve our response and our preparedness for these events, then I say we need to support this measure.

Mr. Deputy Speaker, it seems to me that it follows naturally that having made an investment of our \$25 million in a modern facility after the continued investment, in terms of recruitment and employment of suitably qualified and skilled persons, is a substantial outlay of investment, that we have to take the next step and make it possible that we can provide, as fully as possible, the services which would be attendant on having that modern facility and having staff of that kind of calibre. This constitutes a natural progression in that whole policy frame and is a submission I am seeking to make at this time.

We need, beyond that, Mr. Deputy Speaker, to come to a place where we can do better accident investigation scenes. I think that this will help in that regard. We need to be able to do better ballistic investigations. The presence of a gun and the misuse of a gun is something that has been a growing concern. We all share that concern and many of the serious crimes today are committed with the use of firearms. The ability therefore to have as modern as possible, ballistic investigation capacity, is something that we need to embrace and I think that we are providing for that in this measure.

We need the ability to do better fire scenes examinations. It is a well-guarded secret in this country that many of the fires which take place, especially in the instance of building are in fact arson related cases. Sir, those who are charged with investigation in these matters are limited, both in terms of the facilities, resources and skills available to do the most advance and scientific investigations of fire scenes.

Therefore, I think we have an opportunity to enhance the capacity of our people to do examination at scenes of fires, especially where there is the suspicion that arson has taken place. We are not in a position to treat to such arson for the purposes of insurance fraud, or arson resulting out of malicious endeavour but whatever the motivation, the capacity to do the examination is something which we need to acquire, and this measure would help us to that end.

House 54, sequence 27, 15:4025

Tuesday, February 08, 2005

Continuation of Rev. J. J. S. ATHERLEY:

Sir, mention has already been made of pathology investigation. This has been quite a very lucrative field for a very small number, but I speak of it in its widest possible sense. The ability to do the kind of pathology investigation

that would help us in various ways is also going to be enhanced. Scenes of crimes examination which is largely a police function will continue. There are those who are specialist skilled, but who perhaps would not have access to greater skills, more resources and a context in which their services can be more greatly utilised. Mr. Speaker, it is for these and several other reasons, that I would want to add my support to this measure.

Mr. Speaker, if we are going to develop the offering of forensic services in the country through the public sector as well as in the private sector, then it must be accepted that there is a need to bring the proper regulatory and legislative framework into place. I think that this is what we have embarked upon by building upon what already exist, recognising the datedness of what exist, recognising the need to create a newer and more serviceable environment and recognising that offerings in this area would be expanded not only at the level of public service but also in the private sector. Therefore, it must be provided for so that the interest of all concerned, those who offer the service for a fee and those who avail themselves of the service, are protected and in matters where private issues are being handled, then the issues at that level that exist are also properly treated too so that none is disadvantaged.

There are some concerns to be addressed when one contemplates whether one would want to support this measure or not. Having looked at the Bill I think that several of these concerns are responded to and are addressed. The Bill provides for recognition of the rights of the individual and the reasonableness of suspicion so that one police officer simply cannot speak to suspicion without having reasonable grounds for that suspicion.

I do not share the view of the Honourable Member for St. Philip North that this Bill sets up a situation where some police officers operating out of some sense of mischievous notice and without due regard to the rights of the average citizen, would therefore exercise indiscretion and therefore abuse and misuse authority in this connection. I think reasonable suspicion is one of the elements that are identified there.

The matter of court orders being required at the hand of a magistrate with respect to intimate samples to be taken speaks to the rights of individual being observed. Proper documentation of evidence which is gathered and proper documentation of reports which are constituted also speak in the interest of securing the rights of the individual. The admissibility of evidence on the existing legislation as well as with reference to this particular Bill is also covered, and again speak to the rights of the individual.

It is avowed by this legislation that a person so becoming the subject of this type of forensic enquiry has a right to be present at hearings when orders are made, has a right to be represented properly by a legal practitioner and has a right to have his doctor or dentist present in that

regard. I think all of this speaks to an effort to safeguard the rights of the individual.

The other concern would be the matter of the privacy of the individual. This is always a dynamic that comes into the discussion when we have to talk about public policy which tends from time to time to make individuals specific subjects in the indifference instances. The writer of the individual must always be balanced with the rights of the rest of us, the John Public.

In fact, in the international arena around this issue when the element of privacy becomes the subject of discussions, there are two main principles which are concerned; the prevention of disorder or crime which must be balanced against the rights of the individual that is to be balanced against the right of disorder or crime and the proportionality of that element of privacy to the benefits to be served in the interest of the public.

Sir, there is a balancing situation where the rights of the individual are not discarded or disregarded but where the concerns for public order where the public interest is also seen as being prominently a part of that equation. No one here is advocating that we delude any individual of his or her rights. Certainly, the legislation is not suggestive of that, but creates a balanced situation where both aspects of the issue are dealt with, public safety and public order and public interest, as against the individual rights and the right to privacy.

Mr. Deputy Speaker, I believe that this legislation also has the capacity, and I like to express it in this way, to give a voice to victims who can no longer speak for themselves, whether or not they actually still have a voice, or where they can no longer speak with certainty or exactitude on events which have affected them. If this service is properly available, the voice of your brother can still speak from the grave. I think that is exactly what we are trying to suggest. Here, we are therefore creating the capacity for a man whose voice has been silenced, perhaps forever to speak and to say what has happened to him in this particular instance. I think that is significant and it represents some forward movement in terms of the ability of those who investigate and those who prosecute to ensure that justice is done and that the perpetrators of evil cannot simply walk freely without fear because we have a system and a culture which does not have the capacity to investigate fully or to prosecute successfully because the victim of the offence does not have an actual voice.

Issues of procurement of forensic evidence; the issue of handling and management of evidence; the use and control of it and the disposal and the retention of it, are properly addressed in this Bill especially as it relates to the DNA databases which is an important area for us and which is a subject of much discussion internationally in North America, more so these days in Europe.

Notwithstanding all of this, Mr. Deputy Speaker, I have to admit that there are some concerns from a layperson perspective. We have heard a lot of legal opinions expressed here today, the majority in favour and one or two expressing some concerns. However, as a layperson I have to admit that there is some concern over this matter of the right of appeal. A person is made the subject of an order for sampling and apparently there is no provision for right of appeal against that order and that order in fact has to be carried out. I leave it to the wisdom of the legal expert here but I just want to suggest that there is some concern.

This Bill and these services would also facilitate a new area of economic activity. There is growing emphasis here in Barbados on the provision of services and the importance of that to our economy. This would open a new dimension in the services which we can offer locally among ourselves and in a regional market. There is limited regional availability of these services and skills. The Honourable Attorney-General has made that quite clear to us, we are aware of that.

There are some efficiencies to be realised if we can have these services available here. There is also the potential for the earning of foreign exchange both regionally and beyond as we sell this type of service and when we move to the stage where we have proper levels of accreditation, where in the international marketplace we can also provide these services. Mr. Speaker, we recognise that we must improve the standards of management, the standards of operation and the standards of reliability because we are providing, substantially so, a modern and scientifically credible service here in Barbados.

House 54 Sequence 28

3:50 p.m.

Tuesday, February 08, 2005

Continuation of Rev. J. J. S. ATHERLEY: Mr. Deputy Speaker, one would want to know that the interest of defendants are preserved and protected, and equally that the Prosecution has every sense of finding success. Sir, we know of instances where cases have been tried and dismissed in court on the basis of technicalities, on the grounds of inappropriate charges being laid because the Police and the Prosecution would have worded or would have listed the charge wrongly, or where substances were incorrectly measured or classified. Therefore, on these technical grounds, suspects have been allowed to go free. Sir, these are technical grounds which we can seriously minimise, if not totally eliminate, when we have the capacity to do this kind of service that would allow for more success.

Mr. Deputy Speaker, science will not produce certainty. I do not think it ever has. Science will increase probability but it will not produce certainty. It will establish

some levels of corroboration which is important. It will also help to establish some measure of correlation between different things. It identifies for us what are the possibilities as well. If we are dealing with a service, the basis of which is scientific inquiry, then I think we are helping to improve the situation which now exists.

Mr. Deputy Speaker, it is, therefore, a facility to enable us to do better what we are doing insufficiently well today. I thank you, Mr. Deputy Speaker.

Hon. Miss M. A. MOTTLEY: Mr. Deputy Speaker, there being no further speeches by Honourable Members, unless any Honourable Member wishes me to give way, I rise to close this debate and to indicate to all Honourable Members that this has been a debate which, perhaps I would have wished in some quarters, may have been better informed.

I regret that the Opposition has focused only on one aspect of the legislative framework, and that is in relation to the criminal aspect but this legislation goes far wider than simply treating to the criminal justice system. I indicated this at the beginning of my introduction speech last month.

Mr. Deputy Speaker, the reality is that this is a situation in which we have matters in the Family Law Act that can be affected. This is situation in which we are learning from the requests from the World Anti-Doping Agency that stands to have Barbados established as being one of the five centres of excellence in the global community, in relation to the testing of sporting persons.

Mr. Deputy Speaker, in relation to these matters, there are no other testing centres in the English-speaking world, other than Montreal and California. Therefore, to that extent, Barbados stands to gain tremendously by our ensuring that we meet the International Accreditation Council's standards that would allow us to offer these service, not only for Cricket World Cup, 2007, but for any form of sporting activity.

Mr. Deputy Speaker, the Honourable Member for Christ Church East Central, as head of a sporting body, is well familiar with the extent to which people are precluded from participation, not only at professional levels but also amateur levels, both at regional and international competitions, by reason of the use of improper substances.

Mr. Deputy Speaker, we feel very strongly that the decision of the Government to construct a Forensic Centre and Laboratory, the decision of the Government to amplify a framework within which forensic scientists can find employment in this country, is a wise one. The reality is that more and more Barbadians are completing secondary school and are going to the University of the West Indies. Therefore, this must be one of the more legitimate occupations for young Barbadians who would want ultimately to ensure that they have skills and that they have

a global currency. Therefore, to the extent that they have invested in these skills, we believe we have a duty to create a framework that allows persons to benefit from such skills.

Mr. Deputy Speaker, the construction of the Forensic Centre and the establishment of protocols guarding and regulating administration of the Centre would have been insufficient. Barbados is the first Caribbean country that has decided that we must put on a proper legislative footing, the framework that should govern the application of the forensic sciences and DNA identification in the region.

Mr. Deputy Speaker, many of us, unfamiliar with the details of the criminal justice system, may not be aware that the Police Force already fingerprints suspects on a routine basis. A fingerprint is a non-intimate forensic procedure. The taking of a strand of hair from one's head is a non-intimate forensic procedure. The taking of blood samples would be an intimate forensic procedure and that, periodically, throughout the conduct of their work as they pursue persons within the criminal justice system, the Police Force routinely deals with forensic procedures.

Sir, even before this legislation, any person who is charged with a controlled substance in Barbados must have the court satisfied that the substance for which that accused person is charged, was tested and has proven to be that substance; that the chain of custody is one that is pure and, therefore, would not challenge the integrity of the sample and the test results.

Mr. Deputy Speaker, therefore, all of the concerns expressed by Honourable Members are, in fact, routinely dealt with in the court system on a regular basis. Therefore, let us be clear as to what is one's responsibility. It is the Government's responsibility to establish a legislative and regulatory framework that seeks to balance the interest of the State with the interest of the individuals. Sir, that is how our Constitution proceeds and that is what we have tried to do in this legislation.

Mr. Deputy Speaker, as both the Honourable Members for St. Joseph and St. George South would have averted, out of an abundance of caution where there are rights that may or may not be deemed to be on or about the edge, that legislation would be passed in accordance with section 49, such that it falls within the acceptable derogations that already exist within the Constitution of Barbados. Therefore, when I hear Honourable Members on the Other Side speaking as if the Constitution only speaks to absolute fundamental rights, I feel that it is unfortunate because it gives the impression to the public that the fundamental rights provisions under Chapter 3 of the Constitution, are absolute in nature.

Mr. Deputy Speaker, I will use the opportunity to show how they are not absolute in nature. Sir, a person may have the right to life but that right is constrained by that life being taken by reason of an order of the court. In other

words, a conviction for murder or for treason can lead to a person legally losing their life. A person may have the right to liberty. That person only has a right to liberty, only insofar as that person is not convicted of an offence and forced into imprisonment by reason of the order of the court. That, therefore, means that the right to liberty is not an absolute right but that there is a derogation to the right to liberty that is required by the interest of the State maintaining the rule of law and good peace and government in this country.

H:No.54(29)400 p.m.

Tuesday, February 8, 2005

Continuation of Hon. Miss M.A. MOTTLEY:

by the interest of the state maintaining the rule of law and good peace and governance in this country.

Mr. Deputy Speaker, there is a right to the freedom of expression but other than in this Chamber which we all occupy that right to freedom of expression is circumscribed by the laws of defamation and slander. You cannot go outside of these precincts and say what you would like to say about somebody because their rights are protected. Even though you have a constitutional right to freedom of expression that right is constraint by your duty not to libel, slander or defame anyone. Mr. Deputy Speaker, that right too is circumscribed and there are derogations to that right.

I was happy to hear the Minister of Housing remind the citizens of Barbados recently that if Government does not act on acquisitions within a certain time that the legislation gives them rights in order to review the Act even when approved by Parliament.

Mr. Deputy Speaker, there is a right to freedom of assembly and that right is circumscribed by an Act well-known to the Democratic Labour Party, the Public Order Act passed in 1971 to circumscribe the rights of citizens in circumstances where they felt their activities were nefarious or would be used to subvert measures to undermine the rights of the state. Mr. Deputy Speaker, the right to freedom of assembly is not an absolute right. It is a right that acknowledges a derogation.

Mr. Deputy Speaker, I believe that Honourable Members have a duty when speaking to these matters to speak from an informed basis. In the same way that the Honourable Member for St. George South acknowledges that there are no absolute rights in the Constitution, I too assert and all this Government has done with the Forensic and DNA Identification Bill is to say that it is being passed in accordance with Section 49 of the Constitution recognising that Section 48 of Constitution requires Parliament to make law for peace, order and good Government of Government.

We said we had a judgement to make. We have introduced a new forensic centre, we have expanded the services that would be available but we do not believe that these services can be offered without proper legislative framework and regulations and in those circumstances we are balancing the rights of the state to protect individuals and find justice with the rights of the individuals as defined by the fundamental rights circumscribed by the derogations.

Mr. Speaker, what are the rights and safeguards in this legislation. No person who is incapable can give consent under this legislation because there must be an adult present. Mr. Speaker, this legislation requires that an Attorney-at-Law of choice be present on almost every single procedure governed by this legislation. This is the first piece of legislation in the criminal justice system and in the Caribbean that says that a medical practitioner can be present when someone is taking a blood test or an intimate sample from you. Mr. Deputy Speaker, these are the safeguards.

We require the police to go through a whole series of steps before you can determine whether you are consenting or not. We require the magistrate to satisfy an eight-point test to determine whether he should order that the sample be taken against your while.

Mr. Deputy Speaker, we require that any information be recorded in writing and electronically wherever possible. More than that, we say that the suspect shall be entitled to that without having to pay for it and that they are to be entitled to the copies of it. Therefore, when I say that the Honourable Member for St. Philip North and Honourable Member for St. Philip West clearly did not read the legislation, I stick by what I say, Sir.

Mr. Deputy Speaker, it relates to a failure on their part to understand that the legislation does not stand in isolation from other aspects of the criminal justice system. If a person is detained for two long a period as a suspect before charge you can still go for a writ of habeas corpus to the High Court and you can still go for bail application if they have been charged already. Therefore, this legislation cannot be taken in isolation from the other protections in the criminal justice system.

Sir, any order of a magistrate or High Court can be appealed. This legislation would not rewrite the whole body of criminal law in this Bill simply to satisfy the lack of intellectual rigour on the part of the Opposition.

Mr. Deputy Speaker, I believe there is a duty on the part of all of us to speak on a position of informed research. I have no difficulty with Honourable Members asking question as to how we can improve aspects of the Bill. I welcome suggestion and, as I indicated in my opening remarks, there would be a vigorous public education programme such that everyone in Barbados knows what this

legislation provides for. The reality is that there is no country any part of the developed world that has been able to proceed in the criminal justice system without taking cognisance of the scientific and technological improvements that are available to us.

Mr. Deputy Speaker, it is the Government's duty to put the legislative framework but it is the duty of the courts to monitor whether what we have set as the standards are being adhered to by the police, the forensic staff, the judges in the Magistrates' Court, and the High Court and to the extent that they do not comply to what are very high standards in the legislation then I would anticipate that the appropriate actions and remedies would be taken. Indeed, the state is left liable in terms of civil liability where the standards here are to be reached. We have indicated that we choose to use the Australian model because we felt it was the most balanced model in terms of balancing the interest of the accused.

Sir, may I quickly say that DNA evidence more often than not helps the accused. I say that because in this system people have been traditionally convicted on the basis of a confession that has been disputed, we are not providing an alternative mechanism that allows people to test the truth or lack thereof of the participation of accused in a particular crime. More people across the globe have benefitted from having convictions overturned or having verdicts of not guilty returned as a result of the availability of DNA and scientific evidence.

H54/16:10

Sequence 30 Tuesday, February 8, 2005 Continuation of... Hon. Miss M.A. MOTTLEY: I, therefore, stand as a former defence lawyer and assert again that is a substantial improvement in the weapon of a defense lawyer's arsenal in the protection of the rights of the accused, while at the same time if the person is found guilty it will also assist the State in being able to determine where the guilt ought or ought not to lie.

Sir, the mere fact that high probability exists is not the end of it. A defense lawyer routinely has to cross-examine a forensic scientist on the chain of custody of drugs, on the quality of testing of the drugs, on the quality that ascertains in relation to ballistics, on the quality ascertains in relation to any test done by a forensic scientist or during a postmortem. All the lawyers in this Honourable Chamber can, in fact, assert that. If a defence lawyer does not do that in his/her cross-examination or in the case of the defence, then it is generally felt that the defence counsel has let down his client in relation to the conduct of the case. These are issues to be determined, not by Parliament but by the court and I want that clear distinction to be made.

Mr. Deputy Speaker, as I said, there will be a full public education programme. We will ensure that we will make it known that these rights do not stand in isolation to other rights that exist within the criminal justice system.

Finally, we look forward to the issuance of regulations under this Bill which will govern other aspects of the Forensic Centre. We look forward to the international accreditation of this centre being sought such that we start to earn additional foreign exchange. We already service nine countries in the region for which we intend to be able to receive some payment once we put in place the legislative framework to charge for such services. It is anticipated that in the first year of operation we should be able to yield just under \$4 million to the Consolidated Fund, which is not now currently coming to the Treasury.

I, therefore, want to thank all Honourable Members who spoke in this Honourable House. As I said, I regret that some of it was constrained, I think genuinely, by a lack of understanding as to what and how the constitutional amendment is being done in the House, but I hoped that I was able to explain that there are no absolute rights under our system but only rights that are circumscribed by derogations.

Sir, out of an abundance of caution we ensured that a judge or magistrate ordering an intimate sample would not be exposed to any allegation and, hence, this falls as a derogation in the same way as the right to hang; in the same way that legislation is circumscribed by deformation; in the same way that even though there is a right to private property and a right to compulsorily acquire for public use. Sir, this is just but one other example of the state balancing the rights of the state against the rights of the individual.

Mr. Deputy Speaker, I, therefore, obliged to you and beg to move that this Bill be now read a second time.

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

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

On the separate motion of Hon. Miss M.A. MOTTLEY, seconded by Hon. R.C. EASTMOND, the House resolved itself into Committee, Mr. R.D. MARSHALL in the Chair.

COMMITTEE

Mr. CHAIRMAN: The House is now in Committee.

Parts 1 to 5 were called and passed

Part VI was called.

Hon. Miss M.A. MOTTLEY: Mr. Chairman, I would like to move that in Clause 45, we delete the word "subsection 1" in line three so that the section reference should be section 13 instead of section 13, subsection 1, just for the avoidance of doubt. Subject to the amendment, I beg

to move that Part 6 stand part.

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

The question that Part 6, as amended, was put and resolved in the affirmative without division.

Part VII to IX were called and passed.

Part X was called.

Hon. Miss M.A. MOTTLEY: Mr. Chairman, in Part X Clause 66 (2) subsection (11) I beg to move that we delete the number "78" and substitute the number "67". This is a typographical error referring to the incorrect clause of the Bill. I beg to move that we delete the number 78 and substitute the number 67. I beg to move that Clause 66 be amended as stated.

Hon. Dame Billie MILLER: I beg to second that, Sir.

H54: 16.20

Sequence 31

Tuesday, February 08, 2005

House 54, sequence 32, 4:20 p.m.

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

Clause 66 (as amended) was passed.

Hon. Miss M.A. MOTTLEY: Mr. Chairman, I beg to move that the words, "in writing" at clause 68 subsection 1 subsection A, be deleted.

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

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

Part X (as amended) was passed.

Part XI, Clause 76 was called and passed.

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

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

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

The First Schedule became the Schedule to the Bill.

The Second Schedule became the Schedule to the Bill.

The Third Schedule became the Schedule to the Bill.

On the motion of Hon. Miss M.A. MOTTLEY, seconded by Hon. R.C. EASTMOND, Mr. CHAIRMAN reported to His Honour, the SPEAKER, the passing of one Bill, as amended, 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 Forensic Procedures and DNA Identification Act, 2005.

A division has been called.

The bell was rung.

DIVISION

The House was divided as follows:

Ayes: Rt. Hon. O.S. ARTHUR, Hon. Miss M.A. MOTTLEY, Hon. Dame B.A. MILLER, Hon. R.C. EASTMOND, Hon. R.R. FARLEY, Hon. G.A. CLARKE, Hon. A.P. WOOD, Hon. H.F. LASHLEY, Hon. Miss H.E. THOMPSON, Hon. Dr. J.X. WALCOTT, Hon. D.D. MARSHALL, Hon. Miss C.Y. FORDE, Hon. K.D. SYMMONDS, Hon. G.W. PAYNE, Mr. L.R. TULL, Mr. T.A. PRESCOD, Rev. J.J.S. ATHERLEY, Hon. R. St.C. TOPPIN, Dr. W.F. DUGUID, His Honour J.M. EDGHILL, Mr. R.D. MARSHALL. - 21

Noes. Mr. C.A. MASCOLL, Dr. D.C. ESTWICK, Mr. R.D. JONES, Mr. D.J.H. THOMPSON, Mr. R.L. SEALY, Mr. D. St.E. KELLMAN. - 6

Mr. SPEAKER: Honourable Members, 21 Honourable Members having voted aye and six Honourable Members having voted no, the Bill is therefore passed and so cited in accordance with Section 49 of the Constitution..

ORDER NO. 8 - RESOLUTION TO MOVE THAT THE HOUSE RESOLVE ITSELF INTO COMMITTEE OF SUPPLY TO CONSIDER THE GRANT OF MONEY FOR THE SERVICE OF THIS ISLAND

On the motion of Hon. Miss H.E. THOMPSON, seconded by Hon. R.C. EASTMOND, the House resolved itself into Committee of Supply on the Bill, Mr. R.D. MARSHALL in the Chair.

COMMITTEE OF SUPPLY

Mr. CHAIRMAN: This Honourable House is now in

Committee of Supply.

RESOLUTION TO GRANT THE SUM OF \$16 654 939 FROM THE CONSOLIDATED FUND AND TO PLACE IT AT THE DISPOSAL OF THE GOVERNMENT TO SUPPLEMENT THE ESTIMATES 2004-2005

AS SHOWN IN THE SUPPLEMENTARY ESTIMATES NO. 9, 2004-2005 WHICH FORM THE SCHEDULE OF THE RESOLUTION AND THAT THE EXPLANATORY NOTES TO 48 BE AMENDED AS SET OUT IN SCHEDULE II TO THE RESOLUTION.

HEAD 28 - MINISTRY OF HOME AFFAIRS
IN THE AMOUNT OF \$35 000

Hon. Miss M.A. MOTTLEY: Mr. Chairman, the sum that is requested of this Chamber is to allow us to be able to purchase a vehicle for the sum of \$35 000 before the end of the financial year, to accommodate the Government Information Service.

The amount of \$65 000 which was voted was deemed inadequate in order to be able to purchase the vehicle and therefore the additional \$35 000 is needed, if not the \$65 000 will lapse before the end of the financial year.

I beg to move, Sir, that Head 28 stand part.

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

House 54, sequence 32, 16:3014

Tuesday, February 08, 2005

Continuation of Hon. Miss M. A. MOTTLEY:

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

HEAD 48
MINISTRY OF HOUSING, LANDS AND THE
ENVIRONMENT
\$16 619 939

Hon. Miss H. E. THOMPSON: Mr. Chairman, the request before the House is to grant \$16 619 939 to the Ministry of Housing, Lands and the Environment for uses which I will outline during the course of my speech.

Mr. Chairman, out of that sum of \$16 619 939, \$3 450 000 will go the National Housing Corporation. This supplementary is to deal specifically with the Kensington redevelopment and the relocation of the residents of Pickwick Gap.

Mr. Chairman, back in 2002, the Cabinet made a decision that Government should, pursuant to requests from

the Barbados Cricket Association, acquire certain parcels of land at Pickwick Gap and Fontabelle, to accommodate the expansion of the historic Kensington Oval, to enable Barbados and the Barbados Cricket Association to host the Cricket World Cup in 2007. A tremendous amount of proprietary work needs to be done to facilitate Kensington's expansion. The principal part of that work is to increase seating capacity.

Sir, there can be no doubt that the work at Kensington Oval is indeed a worthy public purpose for the acquisition of the relevant properties and the expansion work that need to take place given Barbados' love of cricket and its history of cricket, though its recent history has not been what my mother would describe as 'been too happy'.

Mr. Chairman, there are some four commercial properties which are to be acquired. I will indicate the value of these individual commercial properties and what arrangements have been made for them. The removal of these properties which are on the Fontabelle Main Road will be phase 2, while the removal of the residents will be phase 1. Given the fact that these are large entities engaged in commercial enterprise, which would be affected by the dislocation and removal, some negotiations have gone on with them to deal with the issue of their moving.

Mr. Chairman, it should be noted too that a decision has been taken that Herbert House on Fontabelle Main Road, a Government property, which is located north of the Nation Newspaper, will be leased to the Barbados Cricket Association for administrative and other offices because it would allow them to have access to a property that is within close proximity of Kensington Oval.

Mr. Chairman, we are talking about the relocation of four large commercial entities specifically A & R Temprow Limited, Curacao Laboratories, Woodville Guest House and Aerosols Limited.

The commercial property A & R Temprow Limited has been valued by the Commissioner of Land Tax at some five acres. Negotiations have taken place between the attorneys and representatives of the owners of A & R Temprow Limited and the agencies of the Government and a value of \$3.4 million has been agreed for those five acres along with the building attached to the lands. A & R Temprow Limited will be relocating to lands at Lower estates to continue their commercial activity.

Armstrong Agencies which is the next commercial entity was also valued by the Commissioner of Land Tax. Negotiations went on with their representatives and representatives of the Government, our chief legal officer and members of the Legal Department, people who are experienced in this area, and the value of \$4 375 000 has been agreed for that property.

The Woodville Guest House which is substantially

smaller than the commercial properties followed the same process and was valued as well by the Commissioner of Land Tax followed by negotiations and subsequent discussions. The value attributed to that property is \$1.4 million.

Sir, we then come to the private owners. There are some 22 structures in the area but the owners will not number 22 because there are persons who own parcels of land which are carrying more than one house which is rented to other persons. There are landowners with three parcels of land and therefore if you seek to reconcile the 22 structures with the property owners you will not get a perfect fit or a perfect match.

Mr. Chairman, let me stress that the process here has been exactly the same as that of the commercial properties. The Commissioner of Land Tax gives valuations to the Ministry of Housing, Lands and the Environment. Those valuations are communicated to the property owners who are entitled to hire, at Government's expense, surveyors, valuers, attorneys and other professionals whom they can rely on to help to negotiate on their behalf or help to make what they determine to be a fair estimate.

A person, whether commercial owner, private small landowner or the small black man that we like to talk about so much, is not obligated to take a valuation offered by the Government. There are implicit mechanisms in the Land Acquisition Act for the protection of the rights of these individuals who can challenge the valuation given by the Commissioner of Land Tax and to seek separate professionals at Government's expense to facilitate the negotiations, to come to what they determine to be a more realistic value.

Mr. Chairman, apart from challenging the valuations where Government does not act in a timely manner as there is particular a time frame specified by the legislation within which these matters are supposed to be completed, property owners can ask the Government to abandon the acquisition process.

House 54 Sequence 33

4:40 p.m.

Tuesday, February 08, 2005

Continuation of Hon. Miss H. E. THOMPSON: Mr. Chairman, admittedly that is not a procedure that is frequently used, particularly by private land owners. One tends to see this being applied more frequently by commercial property owners or by owners of large parcels of land.

Mr. Chairman, the price given is subject to

negotiation. If a price cannot be agreed to, the property owner has a right of appeal to the court. Where Government abandons the acquisition, the property owner can ask to have compensation for disturbance, loss of revenue that they might have had during the ownership of the property but that through Government's attempt to acquire, were put out of such compensation. Sir, what cannot happen, and I have before given some of these points but I think they bear repeating, is that given the fact that we are now proceeding with what is a large group of acquisitions that have attracted much public attention.

Mr. Chairman, once the notice under section 3 of the legislation is published in the newspaper and in the Official Gazette, Government then has the right to come on the land and start to do its work and preparation for which the lands are being acquired, even if the negotiations for the value of the property are not yet completed.

Mr. Speaker, the value of the land must be the open market value. If there is a parcel of land and Government wants to acquire it, that property owner is entitled to ask Government to pay the price of what that property could have attracted, were it sold on the open market to any purchaser other than Government. Government cannot simply take people's land and pay less than the value of that land. Also implicit in what I have said, is that the property owner is entitled to hire, at Government's expense, a range of professionals in order to ensure that one gets the true value of one's property. Property owners can also ask for compensation where damage to the property is occasioned by Government.

Mr. Chairman, these are all attempts to protect the rights of the individual, in cases where Government has the right, via this legislation, to enter upon one's property.

Mr. Chairman, there are 13 private land owners whose property values, would have been assessed by the Commissioner of Land Tax but please let us remember that this is not the value that would be negotiated with them. The values as indicated by the Commissioner of Land Tax range from between \$36,000 at the lowest level to \$237,000 for the largest property. Sir, 13 persons are landowners but there are 22 structures, some of which would be occupied by tenants of these 13 landowners.

Mr. Chairman, there has been much discussion as to whether or not in its efforts to address this issue, Government has had adequate interface and discussion with persons affected by the proposed acquisition. One would wish to note that the Ministry of Housing, Lands and the Environment, through its Housing Planning Unit, had its officers in the field since 2002/2003, meeting, talking and engaging directly with all of the property owners and residents within the area.

Sir, just as provision has to be made for property owners, those persons who are tenants of properties and

who are being dislocated and relocated pursuant to the Government policy, also have to be provided for, and provided for fairly. Therefore, in pursuant to this policy framework, the Housing Planning Unit has met and has engaged with members of every household, including those who have commercial interest, those who have private interest and those that are purely residential property owners, tenants and landlords.

Sir, it is important for us to know the size of every parcel of land, not only for reasons of compensation but in terms of relocation of properties. Where persons are going to be moving into new properties, it is the policy of Government to ensure that these persons are not disadvantaged and that their circumstances, if anything, would be improved. Hence very often, when there are relocation projects, people are relocated to properties which are larger in size than those which they would have previously occupied.

Sir, there are very good reasons for this. It is not only the desire of Government to upgrade people's circumstances and to ensure that living standards are good but very often in urban areas, there is a lot of unplanned development and for instance, the sizes of the parcels of land do not necessarily meet the Town Planning requirement but when Government relocates persons, there is an obligation on Government to come within the letter of the law. Therefore, to that extent, people often get properties that are larger than those which they would have previously occupied.

Mr. Chairman, apart from the dialogue with the members of the Housing Planning Unit, there have been a number of Town Hall meetings which were held on September 10, 2003; October 30, 2003; November 2003; and September 18, 2004. These Town Hall meetings have been fully attended by a number of people who asked a number of questions and who were given information that could guide them. People had their attorneys-at-law appointed to act on their behalf and in addition, they have been having direct dialogue with the members of the Legal Department within the Ministry of Housing, Lands and the Environment, as well as with members of the Housing Planning Unit.

In addition, the office of the Honourable Member for the City of Bridgetown has been fully engaged in this process. In fact, the first Town Hall meeting was not organised by Government but by the Honourable Member for the City of Bridgetown, at the residence of one property owner, where residents turned out in large numbers. Sir, it is doubtful that the Opposition has played any serious role, other than to act as an irritant, even to the residents themselves.

Asides.

Hon. Miss H. E. THOMPSON: Mr. Chairman, options were put to the residents. The options included financial

compensation for those residents who do not want to be relocated. I want to make the point that apart from compensation for residential properties, there are persons who were engaged in commercial activity and would have derived particular benefit from their proximity to Kensington Oval during matches there. These persons were able to augment and to supplement their incomes substantially from revenues that they would have derived from the sale of foods, drinks and general refreshments on cricket days. Hence one of the priorities of Government was to ensure that those persons who wanted to remain living in and around the City and that those persons who would have derived revenue from activities generated by events at Kensington, could continue to do so.

H:No.54(34)450 p.m.

Tuesday, February 8, 2005

Continuation of Hon. Miss H.E. THOMPSON:

Sir, our search to satisfy those requirements meant that we had to find land in close proximity to Kensington that would allow people to continue to ply their trade and do their business and remain within the environs of wider Bridgetown should this be where they want to live and in this regard, the Barbarees House site was identified.

Sir, we told residents that they could receive money in their hands if they did not want the Government to be responsible for their relocation and that they could negotiate through their attorneys and valuers so that we could agree on a figure to give them compensation in hand. Alternatively, if they wanted to be relocated, they would be given a house of the same type as that in which they currently live, so the owner of a two-bedroom house, would get a two-bedroom property.

I have explained before that in the process of relocation, the size of the house is considerable bigger than the house which occupied previously. For instance, in the process of relocation when people have pit toilets, Government never replicates those circumstances because people are always given water-borne facilities.

Sir, residents with businesses would be offered compensation for their commercial enterprises. Residents who indicated that they did not want to go to Barbarees Hill, for whatever reason can move elsewhere on a parcel of land owned by Government. Persons who were renting were advised of the provisions that would be made for them. They were also advised that the relocation offered the opportunity for them to be able to purchase a primary home and thus become a property owner if they so wish. Sir, persons who rent land but own their houses would be given the option of relocating to land owned by the Government and would have the opportunity to pay \$2.50 per square feet to own the land. Sir, they are not compelled to do so because they can rent from Government if they wish but

they can buy the land at \$2.50 per square foot.

Sir, subject to the approval of Cabinet, the residents have asked that their new development be called Barbarees Gardens. The majority of the property owners at Pickwick have now committed to the relocation at Barbarees. We indicated at that time that it would be an attractive residential development, that we would attempt to landscape and put in green spaces to make it a beautiful, liveable and desirable community, that opportunity for micro enterprises and small business would continue, that those persons who make a living selling food in relation to Kensington would not be deprived of the opportunity to conduct activity of this sort.

Sir, it is my understanding that all the residents of Pickwick have not indicated a willingness to go to Barbarees. I believe there is some goodwill and good faith on the part of prospective property owners at Barbarees Gardens and Government will act on the commitment it makes.

Sir, it is our intention that the investment of Government should be done through Barbados Tourism Investment Inc. (BTII) and in this regard, the lands will be vested in BTII but at this stage we are only coming here with the money to do the acquisition but we have not yet vested in any entity.

Sir, there are a number of other issues in which Parliament would have an interest. The vesting of lands at Pickwick will be in BTII as the agency through which Government will execute this development. The lands at Barbarees will be vested between the Ministry of Housing

and the National Housing Corporation.

Asides.

Hon. Miss H.E. THOMPSON: Sir, in order to provide housing for the residents at the new Barbarees Gardens, permission to subdivide the land has been obtained and so far, the plan is that nine detached units will be provided for both owners of houses and land. Eight terrace units will be provided for residents who only own houses and two sets of duplexes will be provided for those residents who only own the house and for those who are tenants. The new tenancy agreement would be with the National Housing Corporation in whom the property at Barbarees would be vested.

Mr. CHAIRMAN: The Honourable Member has two more minutes.

Hon. Miss H.E. THOMPSON: In terms of the breakdown of the financing, the compensation to the residents is expected to be \$9.6 million. We will, on the basis of the present Estimates have \$122 000 in legal fees, approximately \$300 000 will be paid to valuers who are

working on behalf of the residents.

H54/17:00

Sequence 35

Tuesday, February 8, 2005
Continuation of ... Hon. Miss H. E. THOMPSON: The compensation to residential owners will be \$1 612 000. We expect that the Barbarees Great House which will have to be demolished will cost us in the region of \$50 000. The surveying cost will be \$28 000 and the cost of construction of new property is anticipated at this time to be \$3.4 million. Other lands at Barbarees Hill will also be acquired to relocate the residents of Lakes Folly and do other independent housing development but will be the subject of a separate Resolution to this Parliament.

There is one other point. The partially derelict Barbarees Great House which is being acquired, stands on Barbarees Hill site at the moment. It is in excess of two acres of land and can accommodate all of the Pickwick Gap residents but further lands would have to be acquired to do the other relocations.

I believe that Government has tried very hard to ensure that some principles of equity and justice have been followed and people will be relocated in a safe and attractive location and this development is for the benefit of the country as a whole. I thank you, Sir.

Mr. CHAIRMAN: The Honourable Member for St. Lucy.

Mr. D. St.E. KELLMAN: Mr. Chairman, I rise to speak on this supplementary and to say from the outset that it is clear that the Government has made the decision to acquire this land against the advice given to them. I have recognised that they are now using the Barbados Tourism Investment Incorporated as the entity to own the land at Pickwick. Under normal procedures in this Parliament when we acquire land, we acquire land for the Ministry of Housing, Lands and the Environment and then that land is vested in another entity. It is clear that something strange is occurring within this particular project and the Ministry of Housing is admitting that they have a problem when it comes to this particular project.

Sir, you were in this Honourable House for over ten, years and I have been in here for over ten years, this is the first time we are seeing this particular approach. We have to ask why this approach at this point in time. My advice to Government that it might be better that if they want to avoid any legal problems that they should acquire all the land at Pickwick, the land which belongs to the Barbados Cricket Association, and make sure that this procedure is above board. As it stands now, Government cannot acquire land for a private entity that it does not own cricket. World Cup

2007 Inc. will be owned by two entities, the Government and another entity. Sir, the Government was advised by the Solicitor General when GEMS of Barbados wanted to own a hotel on the south coast, the Land Acquisition Act could not be used to get property for GEMS. I am saying that we are being faced with the same case today.

Mr. Chairman, to avoid large legal bills, I am advising Government to make sure that the land that belongs to the Barbados Cricket Association is acquired so that they will be one shareholder in that company and not two or more. The way that the Land Acquisition Act is worded, the land must be acquired for a public purpose and a public purpose cannot be Government and another entity. We must understand that if we want to do that, we would have to amend the Land Acquisition Act so that we could avoid any legal problems.

Sir, I am aware that there are legal luminaries within the Barbados Cricket Association, who are waiting for the completion of this project to fight Government on this particular matter. That is why it is in the interest of the public that I say today that it is better for Government to bring the other supplementary, that is acquiring the land that belongs to the Barbados Cricket Association, so that it can be owned by one entity to avoid any legal battles.

I am also saying that I want to congratulate the Honourable Members for the City of Bridgetown and Christ Church East because this is the second time that I have seen such speed in this Honourable House when it comes to the acquisition of land to protect the interest of constituents. The first time that I saw land being acquired with such speed was at Fairy Valley. I think this might be the third time because some time ago land was acquired in Bush Hall along the boundaries of the constituencies of the St. Michael Central and St. Michael North East.

Sir, it is clear to me that seniority is counted in this Parliament and once you are a senior member of Government you can get your acquisition of land and payments quickly. This is the first time in the history of Parliament that I have ever seen compensation completed even before the acquisition is completed.

I want to thank the Honourable Members for using their seniority in coming to this Parliament and being able to achieve what they want to achieve. I honestly want to thank the Honourable Member for the City of Bridgetown for being able to achieve that feat. I hope that Honourable Members on the backbench would know that when they have land acquisition in their constituencies and if I do not see any speed, I will be out there...

Asides

Mr. D. St.E. KELLMAN: I am saying that the backbench must understand that they have to stop loitering on the backbench and get up and fight on behalf of their

constituents. I have taken the word of the Minister seriously that there is no need for any lapse in payments after a year of acquisition. The last time the Minister spoke on the Land Acquisition Act that was a point that was made in this Parliament and I trusted her. To ensure that she meant what she said, she quickly came back with this compensation package for residents in Pickwick Gap.

Sir, I want to tell all Barbadians that they need not worry about the Ministry of Housing and Lands delaying their payments because this is a new dispensation and a new minister who is prepared to pay them up-front, even before the completion of the acquisition of their land. Barbadians need not complain because we have a new pathway, a new minister and a new light dishing out the largesse in the right way. There, the masses in Barbados would not have to worry.

I want to congratulate the commercial section for making sure that they receive their money within a reasonable time so that they can acquire new properties. They can also identify any properties that they might want to purchase because they know that they have the money to pay for them.

Sir, people would now understand that when I refer to the new minister as the new P.J. Patterson of this Parliament they know what I am speaking about. The 'bounce-back kid' has come back with the right punch and knows how to reposition herself to take over the leadership of the Party.

I want to congratulate her because there are not many ministers that can do that. I hope that some Barbadian cricketers would understand that you can be dumped but you can come back with the right punch. The Honourable Member should be the advisor to the Barbados cricket team to show them how to bounce back, make the right decision and put things in place to get the popularity that is needed to be blessed in this country Barbados and I congratulate you.

Asides

Mr. D. St.E. KELLMAN: Mr. Chairman, nobody on the other side will ever be able to treat me like a Blue Peter shark. I am the fisherman, not the shark.

I am saying that we have to understand that the same procedure that we are taking today must be the procedure that we should use in any future land acquisition in this Parliament.

H54: 17.10 p.m.

Sequence 36

Tuesday, February 08, 2005

House 54, sequence 37, 5:10 p.m.

Continuation of Mr. D. St.E. KELLMAN:

I want to know that when we come to Parliament that a time frame is given so that people budget and plan their businesses.

Sir, it is also interesting that I have been fighting with this Parliament for ten years to get the Government to accept that you just cannot take people's land from them and put money in their hands. The Minister has been able to show her colleagues how to do this. I want to congratulate the Minister who said that those who wanted cash would get cash and those who wanted land will get land. There is only one other Minister who has been able to do that and that is the Honourable Member for Christ Church East. He said that there should be no money for his people, and they must get whatever they wanted.

Sir, seeing that it is the accepted principle now, let us change the Land Acquisition Act, so that it will state that the vendor has the right to decide whether they want cash or land in exchange. Land is becoming too important in Barbados at this stage for us to allow the Government to walk around and put money in people's hands, because sometimes they cannot even use the money to buy back land.

Sir, the example used in Fairy Valley and Pickwick Gap should be the one used across Barbados and constituents should believe that this is an entitlement. The Honourable Member for the City always claims that she does not listen to anything I say, or do anything I say, but I want to actually congratulate her for taking this particular piece of advice at this point in time, in the interest of her constituents.

Sir, even though I congratulate the Honourable Member for the City, when I am told that the properties at Pickwick Gap range from \$36 000 to \$237 000 and I look at the properties down there, I have to ask who are the lawyers. Based on the information given in here by the Minister of Housing and the entitlements in the rights of those residents of Pickwick Gap, I have a problem with these valuations.

Sir, I do not have a problem with the commercial evaluations. They seem fair and some people might say, excessive but, I want to congratulate the lawyers, valuers, surveyors and all of them who worked for the commercial side in making sure that they sought and got the best results for their clients.

I am not sure, Sir, that the same thing could be said for those who are selling properties. I must admit, those have decided to be re-sited in Barbarees Gardens, based on what I am told by the Minister, they are fairly treated. I am saying that I cannot appreciate these evaluations that I am seeing here.

Hon. Miss H.E. THOMPSON: On a point of order. I just wish to make it clear that when the negotiations were completed, the prices would have been agreed by the attorneys, and other professionals who were selected by the property owners. The prices were not forced on them by the Government. It is of their own choosing.

Mr. D. St.E. KELLMAN: Sir, after hearing the Minister with all the rights and the types of things that they can be compensated for, I must admit that the Minister is very clever. I am sure in my mind that the Minister made sure that after there was settlement, to speak about the rights and entitlement of those in Pickwick Gap because when one considers what was said in her last speech, and the speech that she gave to this Parliament with the packages, it is clear that the Minister also observed that if the lawyers had stretched their demands, the compensation packages might have been much larger.

Hon. Miss H.E. THOMPSON: Mr. Chairman, on a point of order. The Honourable Member is misleading the House to suggest by implication that the Government sought to truncate negotiations to reduce the quantity of compensation which residents potentially get.

Sir, notices were given to residents as far back as 2002 or 2003, so that there was ample time for their lawyers to negotiate. It is no secret what is going to happen at Kensington, so the professionals would have fought for the highest amount that they could get and there is a right of appeal to the High Court, where there is no agreement on the sum to be paid. I do not want any impression to go out that the Government, in any way, reduced the quantity of compensation to which these people were entitled by any mechanism whatsoever.

Mr. D. St.E. KELLMAN: Sir, that was cleverly said but the Minister is well aware that I never accused the Government or herself of that charge. The Minister has cleverly stated that if the residents of Pickwick Gap were underpaid, it had nothing to do with the Government but the people who worked for them.

I cannot blame the Minister for saying that and I might agree with her on that particular point, but what I am saying is that all lawyers, in the future, who want to work for the masses must come to the Minister for advice, prior to submitting claims on behalf of clients about the possible compensation packages and what is entailed in the Land Acquisition Act.

Sir, after hearing what the Minister said, there is no way that we should see these types of settlements coming before this Parliament for the masses of people in Pickwick Gap. I am telling you that I would like the Minister to give us a break down on how the commercial packages were made up, and a break down on how the masses packages were made up. One would see that in the commercial packages, everything the Minister said that they were

entitled to were input to the claim, but when you look at the ones for the residents, you will see that the same procedure was not followed. I would bet anybody on that particular matter.

Sir, lawyers must understand that when they are working for the commercial side and the masses, the same input they gave to the commercial size, they must also give to the masses. I am sure that the commercial people knew what they were entitled to, but some lawyers did not know what they were entitled to put in that package, on behalf of the masses whom they represented.

Mr. CHAIRMAN: Honourable Member for St. Lucy, you have one minute more to conclude.

Mr. D. St.E. KELLMAN: Thank you, Sir.

Mr. Chairman, we must understand that land acquisition is a serious matter.

Hon. Miss H.E. THOMPSON: Mr. Chairman, on a point of order. I think that without intending it, the Honourable Member is making a very serious accusation, but perhaps, Sir, he intends it, but he misleads the House when he gives the impression that lawyers working for private property owners, did not fight vigorously for their clients.

A person can only act on behalf of the person who says that he wants you to work for him, that is the first thing. Secondly, in these matters, when I was in private practice I did not do many, if my memory serves me correctly, the legal fee is a percentage of what you get for the client.

Therefore, it is in the lawyers' interest to fight for the highest amount of compensation because their fees are predicated on that, so the notion that the lawyers ease off in some way because it is the Government, or that implicit suggestion is very false.

Mr. CHAIRMAN: Thank you very much. Honourable Member, please wind up.

Mr. D. St.E. KELLMAN: Sir, all I am saying to you is that any future land acquisitions in Barbados, you will see a different approach, which will be the approach given by the Minister in this House, based on the number of things that you can claim for, I am telling you that I want the Minister to bring a claim and break it down and match it next to the commercial claim and you would see exactly what I am speaking.

Thank you, Mr. Chairman.

Mr. SPEAKER: The Honourable Member for the City of Bridgetown.

Hon. Dame B.A. MILLER: Mr. Chairman, I am very pleased to give my support to the Resolution before the House. Acquisition for a public purpose is perhaps more frequent in the City of Bridgetown than anywhere else in Barbados. I think I can make that claim without fear of contradiction.

The truth is, Sir, that it speaks to the fact, not only that Bridgetown is our capital city but that Bridgetown, for quite a while now, is very much in an urban renewal mode and also, Mr. Chairman, a growth mode.

House 54, sequence 37, 17:2014

Tuesday, February 08, 2005

Continuation of Hon. Dame Billie MILLER:

That in turn is making a positive statement about the vibrancy of the economy of Barbados at a high level, let us begin there. That is also the context in which we see the City of Bridgetown.

Mr. Chairman, the City of Bridgetown is a relatively small city. I do not think anybody knows it as well as I do and I do not think anybody has represented it as long as I have. In all those years I have been very conscious of the fact that my back has been to the sea. There was a time when I was surrounded on all sides by Honourable Members on the other side. They were not always unfriendly but they were opposing me and they continue to do that.

Mr. Chairman, the City of Bridgetown is growing. It is sprawling in those directions open to it. It is sprawling north. We see it now going past the Port Authority, up the Spring Garden Highway. We see it sprawling east. George Street and Belleville have now gone virtually commercial, and in a good cause, as well as River Road and Bay Street. There is really very little room for much movement further south. North and east are the only possibilities, beyond any further land reclamation to the west. That land reclamation first took place when we built the Bridgetown Port and swallowed up what used to be Pelican Island, barring that, it is hardly likely that there would be any further expansion to the west.

Mr. Chairman, I am very happy to give my support to the proposals for the redevelopment of Kensington Oval because I see those proposals within the wider context of the redevelopment of the City of Bridgetown which is an ongoing work-in-progress and which I expect to be ongoing for many years to come.

Mr. Chairman, I offer my gratitude to the Honourable Minister of Housing, Lands and the Environment and to the persons in the Ministry of Housing, Lands and the Environment who have worked very closely with those 13 households at Pickwick Gap as well as the commercial

entities on Fontabelle because I am satisfied that the greatest care has been taken in respect of the relocation.

Mr. Chairman, that is not a new thing. The Barbados Labour Party, when in Government, has always taken the greatest care in this matter of the relocation of people where lands have to be acquired for a public purpose. I remember as a child when lands had to be acquired for a public purpose, the building of Government Headquarters at Bay Street. There was a little old lady who used to live there who was the grandmother of one of my cousins and we used to go there sometimes to visit her. I remember the big tamarind tree there. I am old enough to remember these things. Great care was taken to relocate people from that site so that Government Headquarters, now a landmark in Barbados and an historic building, if I may be permitted to say so, could be built.

Similarly, it was the same for the erection of the Queen Elizabeth Hospital. Most people would remember that site was where the Deanery of the St. Michael's and All Angels Cathedral was located. In later years, again a Barbados Labour Party administration had to relocate people who lived closer to Constitution Road so that road widening could take place at what is now the Belmont Roundabout so that a playing field could be provided for the use not only of the sports club at the Queen Elizabeth Hospital but for the children of the St. Michael School.

Mr. Chairman, I remember regretting deeply the disappearance of King James shop. That was another landmark in Barbados. It is not in the Honourable Member for St. Michael South Central constituency, it is in mine, technically speaking, across the road from his, but he would be too young to remember King James shop. It was a real landmark in Barbados. That was a shop of some class. That was like Mapp Shop at Eagle Hall and John Moore Shop down in Weston in St. James. King James Shop gave way to development and it was much regretted.

Mr. Chairman, there was also a substantial relocation of persons from Chapman Lane and Emmerton so that the sewerage treatment plant at Lakes Folly could be built. I was very much engaged in that process. Since then, even as we speak, people are still being relocated from Church Village to a place called Lower Burney just to the right of the Bussa Roundabout. It is now the turn of residents and businesses at Pickwick Gap and Fontabelle. In a few days, I expect to take part in a small town hall meeting for less than ten households at Seaview Lane near Reef Road, for those who know that part of the city, for expansion of the bus terminal there.

I am satisfied, Mr. Chairman, that the greatest care has been taken. The Honourable Minister made the point that I made the first, I would call it, drawing room meeting. In fact, it was in a nice room in the back of the house that we held the first meeting with residents and then there were properly organised town hall meetings by the Ministry of

Housing, Lands and the Environment, as is the way they always do these matters. Indeed, that is now a process underway in respect of the residents who should have been moved all of those years ago when the sewerage treatment plant was built. There are some now who still have to be relocated and I am involved even now in town hall meetings in respect of people who have to move from Emmerton.

Mr. Chairman, we are hoping that if it turns out that there are more lots or spaces available at Barbarees Hill which have been earmarked for these persons who are moving from Pickwick Gap, than there are people to be relocated, that the excess would be held for people who have to be moved now from Emmerton.

I know that the Ministry of Housing, Lands and the Environment is already embarked upon a plan for the acquisition of more lands which used to be occupied by Medford Creations and other lands in Barbarees Hill to which the Emmerton people are looking forward to moving in due course. So this is an ongoing process. It happens in cities, it happens in towns and even in some rural areas. For the greater public good, as we say for a public purpose, there has to be relocation and in a small city island state like Barbados, this will happen with a certain amount of frequency.

I am satisfied, Mr. Chairman, that in every single case the residents of Pickwick Gap and the businesses along Fontabelle that are to be relocated will go to an improved location and improved housing, as is the wont of this Barbados Labour Party administration.

House 54 Sequence 38

5:30 p.m.

Tuesday, February 08, 2005

Continuation of Hon. Dame BILLIE MILLER:

Mr. Chairman, at the last meeting, there were people who were enquiring about the possibility of they beginning to expand no sooner had they moved in. Some of them were thinking of adding a top story and finding themselves with an upper story where, perhaps bedrooms would be located, where they would look to maximise a square footage which, in most cases, would be an improved square footage to that from which they were moving.

Mr. Chairman, I am satisfied there is going to be an upgraded environment into which people will move. I am pleased that they have had a choice in the naming of it. There are some people who want it to be named Barbarees Gardens and the Ministry of Housing, Lands and the Environment is acceding to that request. They already have a feel and an excitement generating about moving to a nicer environment.

Mr. Chairman, just as Barbados has a reputation for a world-class superior tourism product, I would like to think that Barbados would regain itself in the world in respect of a world-class reputation on the field of cricket.

Mr. Chairman, it is long passed that Barbados, with its long reputation and with our only living national Hero, Sir Garfield Sobers, still with us, that Barbados should be upgrading its cricket-playing facilities so that we could present to the world and to the game, a world-class product. We should have done that a long time ago. Sir, I am very pleased that the Kensington Oval is being intended to be a multi-purpose facility. That makes sense in small communities such as ours.

Mr. Chairman, I am very pleased to give my support to the measure which is before this Honourable House and to give the assurance that as the Honourable Member for the City of Bridgetown, I will continue to monitor, very closely, this entire relocation process.

I thank you, Mr. Chairman.

Mr. C. A. MASCOLL: Mr. Chairman, I rise to make a contribution in this debate and to enquire of the financing of this acquisition and the grant to the Ministry of Housing, Lands and the Environment.

Mr. Chairman, it is well-known that World Cup (Barbados) Inc., was established as a private company to oversee the affairs of all the events associated with the execution of Barbados' portion of the World Cup, 2007. It is also known that the Barbados Tourism Investment Inc., (BTII) is supposed to be the means by which World Cup (Barbados) Inc., would be financed. That is, the monies which go to World Cup (Barbados) Inc., will be raised by the Barbados Tourism Investment Inc., in the form of bonds.

Mr. Chairman, I think it is fair to say that the acquisition of properties in Pickwick Gap, along with the pending relocations, should be considered to be part of the expense of Cricket World Cup, 2007. Therefore, it means that by a simple \$16.6 million, we are underestimating the cost of the World Cup, 2007 because these acquisitions, along with the relocations, must be seen as being related to the hosting of World Cup, 2007 and should have been included in the overall cost of the project, which, as I said, is expected to be funded by way of raising bonds through the Barbados Tourism Investment Inc., and into World Cup (Barbados) Inc.

Mr. Speaker, perhaps it ought to be the case that World Cup (Barbados) Inc., will, in fact, pay the Ministry of Housing, Lands and the Environment some \$16.6 million at some time in the near future because if the monies raised for World Cup, (Barbados) Incorporated, 2007, are not going to be part of this acquisition and relocation, then, in short, we have underestimated the cost of the World Cup, 2007.

Mr. Chairman, concerns have been raised that any land acquisition must be for a public purpose and that in this instance, with the involvement of World Cup (Barbados) Incorporated and the Barbados Tourism Investment Incorporation that, in fact, one could question why it is that the Ministry is acquiring lands for a private company. Sir, that is a legal matter that has to be entered into and I cannot pretend to know the solution. I do know that this cannot be separated from the overall cost of World Cup 2007 for Barbados.

Mr. Speaker, I am, therefore, suggesting that having already assigned a cost to World Cup 2007, that World Cup (Barbados) Incorporated, I repeat, will owe the Ministry of Housing, Lands and the Environment \$16.6 million when it raises its funds.

Mr. Chairman, I had the opportunity to visit what will now be called Barbarees Gardens. It is supposed to be a nicer environment but it is also next to St. Leonard's Burial Ground. It is locked by buildings to the west. It is landlocked by what used to be Barbarees Plaza and there is just a small entrance off Barbarees Hill, into the proposed site, Barbarees Gardens. It will become a gated community and I think what we need here is to ensure that there is reasonable access in and out of this new Barbarees Gardens area. As one visits now, there is just a small road running next to a small church as an entrance. Certainly this cannot satisfy an area that is now supposed to be a nicer environment. There must be an entrance as well as another exit.

Asides.

Mr. C. A. MASCOLL: Mr. Chairman, in fact, that particular case has now been resolved because an entrance has been cut by the rock and one can now enter via Maynards Housing Area and below. Sir, in this instance, there is need for a proper entrance because two cars cannot pass the current entrance to Barbarees Garden.

Mr. Chairman, another thing is that it is going to require much work to be done there. I have visited there and Honourable Members should not make it seem as if it is going to be so simple to get that area prepared.

H:No.54(39)540 p.m.

Tuesday, February 8, 2005

Sequence 40

Continuation of Mr. C.A. MASCOLL:

Sir, I have seen what is there, my problem is how quickly the area can be prepared and would it be done in time to permit for so-called construction to begin at Kensington on time. Sir, I am not making any frivolous comments because there is a guarantee of US\$25 million in the event

that Barbados does not execute World Cup Barbados.

Hon. R. R. FARLEY: Mr. Speaker, on a point of order. The Honourable Member is misleading the House. He is off on a merry tangent but that is his right. In terms of the fact, he knows full well that the guarantee of which he purports to speak about in terms of US\$25 million is really US\$12.5 million. I want to encourage the Honourable Member to be accurate.

Mr. C.A. MASCOLL: Sir, the Honourable Member is cutting it in half but it is still a lot of money. It is \$25 million and that is nothing to scoff at. Sir, it is a guarantee and must be taken into account. When you look at all the incidental costs associated with the hosting of World Cup Barbados, we must start to get serious about the overall cost of the project. Nobody in this Chamber could wish for World Cup Barbados to be a success as much as I do, given my love for cricket and my desire to see us develop once again as a cricketing nation. I am also fully aware of the ability of Government to spend monies, as is now being done, and it is not properly accounted for because this \$16.6 million cannot be anything but an expense associated with World Cup Barbados.

Sir, in putting together the entire package for World Cup Barbados and in sourcing the finance, I thought that Government would have put into the Estimates sums such as these, such that the raising of the bonds by BTII would be justified around a set of expenses that are expected to be incurred in the not too distant future.

Sir, Government should be appreciative that I am highlighting the fact that when expenses are allocated that \$16 million should be allocated as part of the overall amount of World Cup Barbados Inc. It is well-known that \$150 million has to be raised by BTII. Has it been identified how this money would be spent or has Government already made provision for excessive expenditure associated with World Cup Barbados? In that regard we are not sure because at one stage it was being indicated that World Cup Barbados would cost more.

We have had a revised figure in recent time and it is now \$25 million less but I want to wait and see what the overall cost would be. It is not a question of simply hosting World Cup Barbados, which we would all like to see succeed, but a question of being able to scrutinise the spending of Government because the record of Government on spending is not a good one. In fact, Government has a very poor record on spending.

I well recall a few weeks ago speaking to issues relating to tourism which would involve Barbados Tourism Investment Incorporated and being told that the issues which I raised were not so but it was only a week later that the Auditor-General revealed what we were discussing last week Tuesday. We were told that the expenditure that I identified was not relevant and could not cause a \$15

million supplementary but you could only get to \$15 million if you sum the parts. Therefore, you cannot exclude \$600 million being wasted by Government and not being legally channelled and done in the correct way. Sir, \$0.5 million plus \$0.5 million is \$1 million and \$0.5 million multiply by 30 equals \$15 million. Therefore, the parts must be summed to get the whole but the Minister denied that at the time.

Mr. Chairman, the evidence is clear that this Government has to be kept in check on the world cup event from early because it is important that the execution of this project be seen as above board, transparent. This has to be so because we do not want for any unnecessary attention to be brought in this project by the international Press. The first thing that would happen is that the international Press would be monitoring the development and progress at Pickwick to see whether or not small nations, especially small black nations, can execute a programme of this magnitude.

If you check what happens in cricket, especially in Australia, they have a habit of making issues external to the cricket ground, which are peripheral, prior to any event whether test cricket or one-day cricket in Australia. Sir, all the peripheral issues surrounding Brian Lara, the appointment of coaches in the region and other such matters become highlighted in the Australian Press.

I am saying that we have to make sure that in executing World Cup 2007 that we do it in the best way possible to enhance the reputation of small islands within the region especially because these islands are small and black. Therefore, putting World Cup 2007 together is more than just business for the region. It is the ability of the region to show its capacity to execute in such a major way, in such a major programme.

Mr. Chairman, I wanted to make that contribution because public servants would agree with me that expenditure being incurred to relocate houses at Pickwick Gap and to acquire such properties ought to be expense not of the Ministry of Housing and Lands and the environment but an expense of World Cup Barbados Inc. If it is not so classified, then in our assessment of the cost of the project, it would eventually have to be included to see whether or not it has been financially viable for us. Sir, as much as we love cricket, we cannot ignore the cost associated with executing this project.

Mr. Chairman, I thought I needed to make a few comments in that vein. I thank you, Sir.

Mr. CHAIRMAN: the Honourable Member for Christ Church East.

Hon. R. R. FARLEY: Mr. Chairman, I had some difficulty following train of thought of last Honourable Member who spoke. The Honourable Member must

understand in moments of lucidity that it rests within the province of the Ministry of Finance to make a determination concerning how, where and through what channels it will commit for expenditure for part or whole of a give project.

H54/17:50

Sequence 40

Tuesday, February 8, 2005
Continuation of Hon. R.R. FARLEY: I, therefore, totally reject his assertion that there is any underestimation of the world Cup.

Sir, his perspective of an underestimation might be, perhaps, driven by a very narrow view of the World Cup. For him, perhaps, the World Cup is about putting on some cricket matches and, therefore, he would consider World Cup expenditures to be those things associated narrowly with the staging of these games. For us, we take a broader prospective.

The World Cup is the cricket Olympics and essentially the benefits to a country like Barbados and any country hosting a World Cup is showcasing of country. Therefore, whether you are doing your cost-benefit analysis as to whether you should or should not, what cost is in and what is not and how you do finance, you start from that broad perspective. Unless the Honourable Member is trying to say that every cost associated with hosting the World Cup and showcasing Barbados has to be made through World Cup Barbados Inc. or through the Barbados Tourism Investment Incorporated, then I want him to explain to me whether he is going follow that logic to the illogical conclusion that any road improvements, improvements at Immigration...

Mr. C.A. MASCOLL: On a point of order. Certainly, the Honourable Member is misleading this Chamber. In order to begin the stadium at Pickwick Gap, we need to relocate residents and commercial entities. I am saying that the first cost that should have been put on the books would have been associated with such, land acquisition and relocation of residents in the Pickwick Gap area.

Mr. Chairman, if I need to repeat I will, but I believe that I am extremely clear, I cannot see where there is any problem with my reasoning. If World Cup Barbados, which is being financed by Barbados Tourism Investment Incorporated, has identified a particular sum for the execution of the project and that sum identified did not include this particular part of the process, I am suggesting that we need now to add this land acquisition, and this relocation, to the cost that has been identified by Barbados Tourism Investment Incorporated and World Cup Barbados Inc. because it is only reasonable to think that the original bond to be raised should have considered this initial move to relocate residents and acquire land and property in

Pickwick Gap.

Hon. R.R. FARLEY: Mr. Chairman, the Honourable Member must know that the Crown is a shareholder in Barbados Tourism Investment Incorporated and that the Crown can undertake shareholder expenditure and the Crown so chooses to capitalise in the company in relation to World Cup Barbados, for example, the initial expenditure for pre-project cost.

The Honourable Member is trying to suggest by way of a little broadside that the Government is hiding expenditure and I am not letting him get away with it, even by whispering it.

Sir, the Government has been very clear on the expenditure required for the hosting of the World Cup. One, we are satisfied that it is money well-spent and two, contrary to what the Opposition would say about secret arrangements and deals, when they leave this Parliament, you cannot buy land in secret when you are in Government. I want to be able to use the law and Parliament publicly to do these transactions so that everybody is clear of what is being purchased, from whom and what value it is being purchased for, so that at the end of the day whether it is under a street light or on a platform, the Honourable Member, other Honourable Members and their associates...

Mr. C.A. MASCOLL: On a point of order. The Honourable Member for Christ Church East is misleading this Honourable House. Nobody talked about secret deals. It was stated publicly that the commercial entities in the Pickwick area would have been acquired through private treaty. It is well-known that in that regard that the Government does not have to reveal the cost of acquiring property when it uses private treaty. Therefore, we are happy to know that Government is now being so transparent in this process that it has been able to reveal the cost of the commercial entities being acquired in this instance. I am happy for that but there is no talk about a secret deal.

Hon. R.R. FARLEY: Mr. Chairman, the Honourable Member said that he had a concern about whether this company and the mechanisms that we had allowed for a full and proper check and continuous examination of the expenditure on this project. As I said to the Honourable Member on a previous occasion when he raised this point, that the same Public Accounts Committee legislation that this side brought to this Parliament to expand the membership of the Public Accounts Committee and to expand the scope of its operations, the legislation which we put in place in relation to how government-owned companies need to relate by way of reporting and laying of annual reports in this Parliament, those mechanisms of financial accountability and transparency will be governing the operation of the World Cup. The Honourable Member is free, if he does his work as Chairman of the Public Accounts Committee, to keep this project under his watch.

I hope that he would work for the money that the taxpayers grant him every month and as Chairman of the Public Accounts Committee and that he would not sit back and hold his head and complain that he does not know what is happening with World Cup, nobody tells him what is happening and that he cannot find out how much is being spent.

Asides

Hon. R.R. FARLEY: Whether he says it in bass, baritone or soprano, the fact of the matter, as Chairman of the Public Accounts Committee, thanks to the legislation brought by this side, he is in a position to scrutinise World Cup and I will help him work for the money that he is being paid as Leader of the Opposition and Chairman of the Public Accounts Committee.

Sir, let me say a few words about other aspects of this matter. I am very pleased that the Resolution for the acquisition of these properties has come to this Parliament today. We have a lot of work to do and the Board of World Cup Barbados has been working with a group of distinguished and honourable Barbadians from a wide cross-section of our community to advance the development there.

In fact, they have identified a programme of work which will ensure that they are able to have, based on the Board's mandate, all of the permanent structures completed by October 31, 2006. We will remember that in the 1970s, we had something called a late one. A chap would see a car coming down the road, wait until it got very close to him, then dash across the road and look back at the driver and say, that was a late one.

Asides

Hon. R.R. FARLEY: occasionally a few fellows were referred to as 'the late one'.

H 54: 18.00 p.m.

Sequence 41

Tuesday, February 08, 2005

House 54, sequence 42, 6:00 p.m.

Continuation of Hon. R.R. FARLEY:

The Board has determined that the redevelopment of Kensington Oval at Pickwick Gap for which this acquisition is important, will have a permanent seating component and expanded temporary seating which allows then, Sir, the time past October to be used for the construction for the temporary seating to accommodate the 30 000 or more, which will be the plan for the World Cup. Sir, that will be

separate from the more than 13 000, which will be the permanent size.

Sir, I want to let this House know as well, that the sequence of work which is planned to allow us to get there is also designed in such a way that we are able to accommodate the relocations. There will be no hasty ejection of people off their properties, but the work between the relocation of the commercial and residential properties, would be done in such a time frame that both the residents and the other business occupants are happy, as well as the construction is able to proceed on time.

Sir, the first aspect of the work will be on Herbert House on the side of the road where Manning is located, and Woodville on the corner of Pickwick Gap, where the Accreditation Centre and facilities of that nature will be located, and work there will start as early as March of this year. Then in June, the first work will start on the actual Kensington Oval facility, where work on the Sobers Pavilion will be the first to get started, and the second, will be the Challenor Stand.

Therefore, on that northern end of the ground where the commercial properties are located, will be in the first sequence of the work, so that all of Kensington will not lay bare and made a construction site. Sir, for the simple reason that although there will be no more Division 1 Cricket and Regional First Class games played there until the work is done, we have to accommodate Test Match Cricket this year, as well as next year.

Sir, this is very important because it will allow us to continue to meet our test obligations and to further the economic stimulation of Barbados. All of the records have proven and even, the Honourable Member for St. Michael North West who expresses no confidence in his former employer, the Central Bank but quote from their statistics often, would admit that the statistics indicate that we get an economic boost from the hosting of cricket, particularly, the English but other teams as well.

It provides an opportunity as well for the ordinary man, the small business people, to become involved in the enterprise of cricket. We therefore will not likely want to avoid taking on a test match.

Sir, another reason is that as we build our new facilities and change procedures, because a significant procedural change that will be undergone in preparation for the World Cup, in terms of how people enter the facilities, how they leave and where they go, each and every match, starting as far back as last year, and the One Day International that is done at Kensington, provides an opportunity for systems to be tested.

Therefore, in 2007, we will not just have new facilities, but there will be new facilities that have already been tested, so there will be no surprises.

Sir, the work will continue smoothly with work on the Media Centre somewhere around July of this year. Following on that, Sir, the work on the pitch and the field, because this will be, obviously, after the cricket, somewhere again in July. Remember, the cricket field at Kensington as it stands now, does not meet modern ICC Cricket requirements for the size of field and boundaries. Therefore, the opportunity is being taken to enlarge the field, and to ensure that the boundaries are of the specified size. The pitch is to be shifted from its present location. Work on the type of turf and the quality of turf will also be undertaken. This is all part of the construction and cost for which reference is made.

Mr. CHAIRMAN: The Honourable Member has one minute more to conclude.

Hon. R.R. FARLEY: Thank you, Sir.

Sir, the bottom line is that there is a clear, detailed plan which has been drawn up by World Cup Barbados, a company set up by this Government. I hate this terminology that is used these days about a private company. It is not a private company as if it is somebody's personal property. Sir, it is a company registered under the Companies Act, owned by the Crown. It is the people's company. The choice of vehicle is necessary such that the entity can contract with parties and conduct business in a particular way.

Sir, I hope that the Honourable Member for St. Michael North West, as Chairman of the Public Accounts Committee, would not ever give the impression that the type of structure chosen is such that he is not able to undertake the job that he is constitutionally required to perform. There will be all transparency in the transactions and in terms of the work plan, I am pleased that this Resolution is here, so that we can get on with the necessary work.

I can say to the public that in terms of the consultants whom we have used so far, the architectural consultants, quantum surveyors, structural engineers, planners, land surveyors, mechanical and electrical engineers, external works and others that there have been a substantial use of Barbadians.

In the case of architecture, mechanical and electrical engineering, there have been lead consultants, persons who have international experience in state of design. There have been two and three local consultants to each one. For example, in the case of architects, Arrow Associates that have designed stadia for the Commonwealth Games and others. Sir, the east section designed, Gillespie and Steel Associates, local, the west section, Tony Brooks Associates Architects, and I could go through the line. The bottom line is that part of what some persons who are less than generous have been doing, Sir, is trying to weaken the support of the public for the World Cup.

In conclusion, Sir, the public money which is being invested for the public purpose of putting on this World Cup is also going to be used in such a manner as would provide economic stimulation for that wider business public in Barbados.

I thank you, Sir.

Mr. CHAIRMAN: The Honourable Member for St. Philip West.

Dr. D.C. ESTWICK: Mr. Chairman, I rise to speak on this Resolution specifically with respect to Programme 522 and Programme 520, which look at land and property acquisition, as well as the sum that is required to meet the cost of certain infrastructural developments at Barbarees Hill.

Sir, why I want to speak specifically on this matter is that I do not think there is anyone of us on This Side who does not understand the importance of the development of World Cup aspects here in Barbados, whether to the infrastructure or otherwise. I think what is also important to us and to me, specifically, is the speed with which the Resolutions would have come to Parliament to have these particular works started.

However, Mr. Chairman, if I am to look at the Land Acquisition Act and how it is being utilised in this particular instance, I am not too sure how one is defining a public good. I really need to have this defined by those experts because I think that is an area where some debate needs to occur.

House 54, sequence 42, 18:1009
Tuesday, February 08, 2005

Continuation of Dr. D. C. ESTWICK:

I make this statement because I believe that the time has come when this Land Acquisition Act needs to be expanded. I, as a parliamentary representative, know of time in Barbados where sites and services did not have an organised structure. In that period we had individuals who placed their houses in a haphazard fashion on plots with no organised road network, no electrical component, no plumbing, et cetera. The result being that these residents had no access to their houses at all by road and were unable to get any social services vehicles down to them.

Mr. Chairman, it seems to me that it would be a responsibility of Government to look at utilising this Act, after some form of amendment, to ensure that these particular individuals would have those particular services placed.

I want to speak now specifically with respect to why it is that this administration would have seemed it fit, when

establishing the Tenancies Freehold Purchase Act in Barbados, to have residents who are tenants of a longstanding plantation tenantry who would qualify under the Act not benefiting from Government's use of the Land Acquisition Act in a slightly different way than is being used now. In Barbados there are many plantation tenancies where residents qualify under the Tenancies Freehold Purchase Act but because the plantations would have been sold to private sector interest, even though the right to purchase cannot be in any way negated by the sale, there are many tenants who have been struggling for seven and eight years to get access to their plots.

If I am to accept the rapidity with which the Land Acquisition Act is being used in this sense, I want to find out why it is that the Act cannot be amended to allow for scenarios like that, where Government has a responsibility under the Act to ensure that those persons get access to their plots in the most timely manner. I will deal with some of those other matters in other debates.

Sir, I believe that making those amendments to the Land Acquisition Act would allow for this type of acquisition for public good because this Act is too narrow at this particular point in time. There are too many individuals in Barbados to whom it does not apply and I believe Government still has a responsibility to provide a number of different services for them.

Mr. Chairman, I support the Honourable Member for St. Michael North West, for the simple reason that we have had many debates in this Honourable Chamber where the use of a private company has been very clear. Earlier the Honourable Member for St. Lucy raised the possible legal paradigm that may exist where the National Housing Corporation does not have authority on the law to acquire land for a private company. I do not mind the shenanigans that might be played by trying to define the private company but once it is established under the Companies Act there are certain legal guidelines that have to be followed. As a result, that particular legal scenario will have to be played out. However, it does not surprise me.

As far as I am concerned, and I have said it before, this tendency by this administration to establish a private company for every single project that they want to introduce in Barbados is nothing more than an attempt to move around the parameters of Parliament as the watchdog of expenditure in Barbados. That is my inference and I stand by that.

In a day when we are talking about less Government, it is indeed a very dangerous pattern when Government can spend the people's money for five and six years one may not get a financial statement laid in Parliament. That is why I have some concerns because I am not too sure that after the taxpayers' money have been expended through the Barbados Tourism Investment Incorporated that we will know for a long time after how the taxpayers' money have been

expended based upon the record of this administration.

The last report that we have that was laid in this Honourable Chamber was 2002. Up to a few weeks ago several other reports have been laid, 2001 and 2002. I do not know how you can have any sensible caduciary planning or establish any type of organised management in a proactive way, if you do not have a financial statement that is current or as close to current as possible, but certainly not 2002.

Mr. Chairman, that is why I support the Honourable Member for St. Michael North West that one would have, in drafting the entire project, included the acquisition cost as part of the total overall project. If that was not done, it is an error and those who may want to defend it, well then do it. I think that average Barbadian is not foolish. A man does not build a house without having a plan and go to try to get money from the bank to cover that particular expenditure.

Mr. Chairman, my basic point is that I think the time has come when the Land Acquisition Act needs to be expanded. It needs to be expanded because there are many Barbadians that need to benefit from acquisition by Government to provide sites and services for themselves. I believe very strongly with respect to tenancies in Barbados that Government had a fundamental responsibility to have made sure that no plantation tenantry was sold unless those particular tenants got their conveyances in their hands with respect to ownership after they have established that particular law.

I thank you very much.

Hon. Miss H. E. THOMPSON: Mr. Chairman, in winding up I just want to respond very quickly to some of the issues of substance raised by colleagues, but there have not been many issues of substance raised by Honourable Members on the other side, so I will not be long.

Sir, the Honourable Member for St. Michael North West raised a very valid question on the issue of timing relative to the infrastructural and other developments that need to take place and what happens with residents in the interim. At the town hall meeting of October or November of 2004, that was the only one to which I went - but the Honourable Member City of Bridgetown was present at the others and as I indicated, initiated some but this is a process that started before I would have taken the portfolio - we discussed with the residents the fact that given the urgency of the need to start the infrastructural development for Kensington Oval that rented accommodation may have to be provided for the short term for residents, until such time as all of the properties are completed. Clearly, we will take cognisance of persons who are aged, unwell or physically challenged in some way and for whom the disruption of two moves of housing, because moving houses can be a very major event, would be too difficult for them to undertake but outside of that where the circumstances warrant, rented

accommodation of some comfort, would be provided to those persons who are being dislocated if their properties are not ready and we have to get them move with some speed.

House 54 Sequence 43

6:20 p.m.

Tuesday, February 08, 2005

Continuation of Hon. Miss H. E. THOMPSON:

Mr. Chairman, the Honourable Member for St. Michael North West has also spent considerable time being critical of the Barbarees Gardens location. Sir, the reality is that the Honourable Member, having being unable to persuade the residents not to accept Government's offer, now finds himself still arguing the same point. Sir, the residents have gone to the site and have made decisions about whether or not it is suitable. Very few people will agree to live in a place that is not acceptable and the residents have decided that this is where they are prepared to be located, even though there were other options available to them.

Mr. Chairman, the Honourable Member has made a point about the access and egress to Barbarees Gardens. There are many small developments in Barbados which have one access but that situation with Barbarees Gardens is known to the Honourable Member for St. Michael North West. Sir, it has been raised in this Honourable Chamber and has been made public elsewhere, that the Government has had initial discussions with the Medford family who owns the property adjoining Barbarees House and that those lands will also be acquired for development of the area, hence the sole access will not be the current entrance to the Barbarees House. That entrance can be upgraded and improved to facilitate the carriage and movement of vehicles and pedestrians, et cetera.

Sir, we have made it clear in this Honourable House that the Barbarees House is not the only property that Government is, at this time, discussing, negotiating or looking to purchase. In fact, it is to my knowledge that despite the fact that the discussions with the Medford family are not concluded, that they have put their tenants on notice that Government could possibly be acquiring the land and that those tenants may have to make alternative arrangements for the relocation of their businesses, as there are a number of small businesses there.

Mr. Speaker, I know this will cause some eyebrows to be raised, even if not much comment but the figures which we have brought before this Honourable House for the Supplementary, may not, in fact, be the final cost. I am, therefore, giving Parliament early notice that we may have to come back at some time to review these figures, if there is a divide over what it is now anticipated, we will have to

pay and what we do, in fact, end up paying for the property.

Mr. Speaker, there is already a sharp divide among the owners of Barbarees House, their lawyers and realtors as to the value of that property, and the valuation given by the Commissioner of Land Tax. Sir, I am speaking from memory, the Commissioner of Land Tax has valued the property at \$1.4 million and the realtors, lawyers and agents of the landowners, are asking \$3 million. The estimate which I have brought to the Honourable House today is based on the Commissioner of Land Tax valuation, in a situation where negotiations are not yet concluded. Therefore, if negotiations are concluded for a higher sum, which I fully anticipate there will be, this figure will vary. Sir, that will also happen with the private owners of the residential properties, if, in fact, their negotiations are not yet concluded. Therefore, the figure that we are using is a large ballpark figure for the facilitation of the event.

Mr. Speaker, the Honourable Member for St. Philip West, has raised the issue of the public purpose and how it is defined. I know that in this regard, the Honourable Member is being supported and urged on by one who thinks he knows everything there is to know about Town Planning legislation but who has lost so many cases in the law court and refuses to accept the decisions of the court in relation to the definition of this purpose.

Mr. Speaker, in respect of that matter, the public purpose will be defined differently to the words being used up to this point and the notice which will have to be published in the Official Gazette and made public will include language that says: "To facilitate the redevelopment of Kensington Oval to provide a multi- purpose facility for sporting, cultural, entertainment, business, social and other public uses".

Sir, Kensington Oval has been widely used for a range of activities, from cricket to carnival-type activities, cultural shows of all types, activities of all kinds, including school sports, reggae or calypso shows. I believe it is still being used for recreational purposes and other activities by schools that are in close proximity to Kensington.

The Honourable Member for the City of Bridgetown has also informed me that a number of years ago, Kensington Oval was used for the performance of a number of plays, theatre and dramatic presentations and that she has had reason to be there on occasion for performances of choirs and other dramatic presentations. Therefore, on the one hand, Kensington Oval has a history as a mecca of cricket but also simultaneously as a home for cultural, public and a range of activities, including religious activities, as there have been religious services of various types being held there.

Sir, I do not believe that any reasonable individual could truly challenge the use of Kensington Oval in this instance as being outside of the scope of public purpose.

Mr. Speaker, in moving that this Head stand part, I would wish to urge that the Preamble to the Resolution be amended and that the word "Head" be included before the number 48 in the Preamble to the Supplementary and that the Explanatory Note be amended, as guided by this Honourable Chamber.

Mr. Chairman, I beg to move that the Explanatory Notes be amended as set out in Schedule II to the Resolution.

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

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

With these words and having had the comments of Honourable Members on both sides, I beg to move that Head 48 now stand part.

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

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

On the motion of Hon. Miss H. E. THOMPSON, seconded by Hon. R. C. EASTMOND, MR. CHAIRMAN reported to His Honour the Speaker, the passing of one money Resolution in Committee of Supply and MR. SPEAKER resumed the Chair and reported accordingly.

H:No.54(44)630 p.m.
February 8, 2005

Tuesday,

On the separate motions of Hon. Miss H.E. THOMPSON seconded by Hon. A.P. WOOD, the Resolution was read a first and second time and agreed to.

Hon. Miss M.A. MOTTLEY: Mr. Speaker, this brings us to the end of Government Business for today's Sitting. In moving the adjournment, I wish to alert Honourable Members of the House that it is the intention of the Government to proceed with the debate on the Computer Misuse Bill on the next occasion we meet. It was on the Order Paper for a few weeks and with this additional notice of one week, I hope that this would enable all Honourable Members to participate in a fulsome matter.

I beg to move that this House be adjourned until Tuesday, February 15, 2005, at 10:00 a.m.

Hon. R. R. FARLEY: I beg to second that.

The question that the House be adjourned until Tuesday, February 15, 2005 at 10:00 a.m. was put and resolved in the affirmative without division and Mr. SPEAKER adjourned the House accordingly.

H54/18:34

Sequence 45