
THE

House of Assembly Debates

(UNOFFICIAL REPORT)

PARLIAMENT 2018 – 2022

HOUSE OF ASSEMBLY

Tuesday, September 11, 2018

Pursuant to the adjournment, the House of Assembly met at 10.00 a.m. on Tuesday, September 11, 2018.

PRESENT

His Honour G. A. CLARKE, J.P., B.Sc., Dip. Ed. (Deputy Speaker)
Hon. G. W. PAYNE, Q.C., M.P. (Minister of Housing, Lands and Rural Development)
Hon. R. St.C. TOPPIN, LL.B. (Hons.) (Minister of International Business and Industry)
Hon. Miss M. A. MOTTLEY, Q.C., LL.B. (Prime Minister, Minister of Finance, Economic Affairs and Investment, Minister of National Security and the Civil Service)
Hon. Miss C. Y. FORDE, J.P., L.C.P., (Minister of People Empowerment and Elder Affairs)
Hon. D. D. MARSHALL, Q.C., LL.B. (Hons.), L.E.C., (Attorney-General and Minister of Legal Affairs)
Hon. T. A. PRESCOD, B.A., (Minister of Environment and National Beautification)
Hon. K. D. SYMMONDS, B.A., LL.B., M.P. (Minister of Tourism and International Transport)
Lt. Col. the Hon. J. D. BOSTIC, MVO, B.A. (Hons.) (Minister of Health and Wellness)
Hon. E. G. HINKSON, LL.B (Hons.) L.E.C., LL.M (Minister of Home Affairs)
Hon. D. G. SUTHERLAND, B.Sc., M.Sc., M.B.A (Dist.) (Minister of Small Business, Entrepreneurship and Commerce)

Hon. Miss S. J. O. BRADSHAW, LL.B. (Hons.), L.E.C., (Minister of Education, Technological and Vocational Training) (Leader of Government Business)
Bishop the Hon. J. J. S. ATHERLEY, J.P., B.A., B.Sc., PgD. (Leader of the Opposition)
Dr. the Hon. W. F. DUGUID, J.P., B.S.S., F.D.S., F.D.R.C.S., M.Min. (Minister of Transport, Works and Maintenance)
Hon. W. A. ABRAHAM, LL.B. (Minister of Energy and Water Resources)
Hon. Ms. C. S. V. HUSBANDS, B.A. (Hons.), M.sc. (Minister in the Ministry of Foreign Trade)
Mr. R. A. THORNE, Q.C. LL.B., L.E.C., Dip. Theology
Hon. I. A. WEIR, M.B.A. (Minister of Agriculture and Food Security)
Hon. A. R. FORDE, RPh. (Minister of Youth and Community Empowerment)
Hon. C. McD. GRIFFITH, B.Sc. (Minister in the Ministry of Housing, Lands and Rural Development)
Hon. P. R. PHILLIPS, (Minister in the Ministry of Transport, Works and Maintenance)
Hon. J. A. KING, BSS (Minister of the Creative Economy, Culture and Sports)
Mr. G. P. I. GOODING-EDGHILL
Hon. C. E. JORDAN, B.Sc. (Hons.) (Minister of Labour and Social Partnership Relations)
Dr. S. E. BROWNE, M.B.B.S. (Chairman of Committees)
Hon. K. D. M. HUMPHREY, B.Sc., M.Sc., M.P.A. (Minister of Maritime Affairs and the Blue Economy)

Hon. R. R. STRAUGHN, B.Sc., M.Sc. M.P.
(Minister in the
Ministry of Finance)
Hon. Miss M. K-A. CADDLE, B.A., M.Sc.
(Minister in the
Ministry of Economic Affairs)
Mr. N. G. H. ROWE, (Parliamentary Secretary in the
Ministry of People Empowerment and Elder Affairs)
Prayers were taken by Rev. Father Mark Harewood.

Mr. DEPUTY SPEAKER: Good morning
Honourable Members, this Sitting of the House is now in
session.

MINUTES

Mr. SPEAKER: The Minutes of the Meeting held on
Tuesday, August 28, 2018.

Lt. Col. the Hon. J. D. BOSTIC: Mr. Deputy
Speaker, I beg to move that the Minutes for the Honourable
the House of Assembly for its Meeting of Tuesday, August
28, 2018, be confirmed subject to any omissions,
corrections and/or observations.

Hon. Miss C. Y. FORDE: I beg to second that, Sir.

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

PAPERS

Lt. Col. the Hon. J. D. BOSTIC: I am commanded to
lay the Barbados Fire Service Annual Report, 2016.

Hon. K. D. M. HUMPHREY: Mr. Deputy Speaker, I
am commanded to lay the Barbados Port Inc. Annual
Report for the year ended March 31, 2017.

ORDERS OF THE DAY

SUSPENSION OF STANDING ORDERS

Lt. Col. the Hon. J. D. BOSTIC: Mr. Deputy
Speaker, I beg to move that Standing Orders Nos. 6, 16, 18,
20, 42(5), 43 and 44 be suspended for the remainder of this
day's Sitting.

Hon. Miss C. Y. FORDE: I beg to second that, Sir.

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

GOVERNMENT BUSINESS

ORDER No. 8

APPROPRIATION (AMENDMENT) BILL, 2018

Mr. DEPUTY SPEAKER: The Honourable Member
for Christ Church East Central.

Hon. R. R. STRAUGHN: Good morning, Mr.
Deputy Speaker. In moving the second reading of the
amendments to the Appropriation Bill, 2018, this reflects
the change in respect of the structure of Government to
include the finances for the newly created ministries such
as the Ministry of Maritime Affairs and the Blue Economy,
the Ministry of Information, Broadcasting and Public
Affairs, the Ministry of Youth and Community
Empowerment, the Ministry of Labour and Social
Partnership Relations, the Ministry of Transport, Works
and Maintenance and the Ministry of the Environment and
National Beautification. Mr. Deputy Speaker, the
Appropriation Bill was passed earlier in February this year
and so this morning the Ministry of Finance is just
presenting the Bill as it currently reflects the structure of
Government and so therefore after the passing of this
amendment this morning the Government and the
accounting officers should be in a position to discharge of
their duties in the manner in which the Government has
been constructed. This amendment this morning, Mr.
Deputy Speaker, is simply a procedural measure on the part
of the Government but I want to assure the House that the
Ministry of Finance, as we have entered into an
arrangement with the International Monetary Fund, is in a
position to make sure that we are able to maintain the
targets monitored within the respective ministries such that
we are able to execute the programme of Government over
the course of the adjustment period.

Mr. Deputy Speaker, this is a simple procedural
matter this morning and I therefore beg to move that this
Bill be read a second time.

Dr. the Hon. W. F. DUGUID: I beg to second that,
Sir.

*The question that the Bill be read a second time was
put and resolved in the affirmative without division.*

*On the motion of Hon. R. R. STRAUGHN, seconded
by Hon. J. A. KING, the House resolved itself into
Committee, Dr. S. E. BROWNE in the Chair.*

COMMITTEE

Madam CHAIRMAN: This House is in Committee.

Clauses 1 - 2 inclusive were called and passed.

The Schedule was called and passed.

On the motion of Hon. R. R. STRAUGHN, seconded by Hon. Miss C. Y. FORDE, MADAM CHAIRMAN reported to His Honour the DEPUTY SPEAKER the passing of one Bill with amendments in Committee and Mr. DEPUTY SPEAKER resumed the Chair and reported accordingly.

On the separate motion of Lt. Col. the Hon. J. D. BOSTIC, seconded by Hon. Miss C. Y. FORDE, the Bill was read a third time and passed and cited as the Appropriation (Amendment) Bill, 2018.

ORDER NO. 5

Second Reading of the Offences

Against the Person (Amendment) Bill, 2018

Mr. DEPUTY SPEAKER: The Honourable Member for Christ Church East.

Hon. W. A. ABRAHAMS: Mr. Deputy Speaker, I rise to pilot and spearhead the debate on the amendments of the Offences against the Persons Act, 2018. Mr. Deputy Speaker, because we are seeking to abolish the mandatory death penalty, it is not necessarily to consider simply The Offences Against the Person Act and the amendments thereto but there are other pieces of legislation that will necessarily impact and will have to be amended in order to have the mandatory death penalty under our laws removed and any amendments make sense. The other Acts that are necessary of amendment to achieve this are, the Constitution of Barbados, the Penal System Reform Act, and the Criminal Procedure Act, so I propose, with your leave, to treat this as a cognate debate, so while I am substantively debating and presenting the amendments to the Offences Against the Person Act, my presentation will touch and concern all of the other Acts mentioned so that when we come to deal with those a debate will not be necessary. It is impossible for me to do otherwise, so I seek your leave to treat this as a cognate debate. I am grateful. Mr. Deputy Speaker, I now beg to move that this be treated as a cognate debate.

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

Mr. DEPUTY SPEAKER: Honourable Member, please proceed.

Hon. W. A. ABRAHAMS: Mr. Deputy Speaker, there are a few things in Barbados that capture the attention of the public of Barbados and has generated as heated a debate nationally: in shops, in churches, among gatherings of friends as the death penalty in Barbados. Now, the debate for the most part has centred as to whether or not there should be a death penalty in Barbados, but that is not

what we are debating here today and there seems to be some misunderstanding as to the nature, the exact nature of our debate. Mr. Deputy Speaker, we are to debate amendments Against the Person Act and other supporting legislation to remove the mandatory nature of the death penalty in Barbados. That has to be made clear from the very outset, the mandatory nature of the death penalty in Barbados.

Mr. Deputy Speaker, it is perhaps useful before I go into the details and particulars of the amendments to frame this in a way that makes sense. I am going to take my time with this, Mr. Deputy Speaker, because it is not... I am here today not simply to convince my colleagues and to convince the Leader of the Opposition that we should pass the amendment but it is also necessary that at the end of this debate the general public in Barbados and anybody [who is] listening understands fully how we got here, what it is we are trying to do, the implications for what it is that we are going to do, and the status quo after we have done it, so let us start by putting some context to the debate. Barbados under its Savings Law clause... There is a Savings Law clause in our Laws which suggests or which states that any Act or any law that existed prior to Independence is naturally incorporated into our legislation, our laws going forward unless specifically revoke or amended, so if we have passed no other laws touching and concerning a law that existed prior to Independence, that law is automatically saved within the Laws of Barbados, one such was the mandatory death penalty.

Successive Governments of Barbados have long defended the mandatory nature of our death penalty. The last successful defense of it and the constitutionality of it was in the Lennox Boyce and Jeffrey Joseph case and that was before the Privy Council. The Privy Council handed down its judgment on 7th July, 2004 and although the Privy Council recognised that a mandatory death penalty conflicts with a modern interpretation of Chapter 3 of the Protection of the Fundamental Rights and Freedoms of the Individual and other Human Rights Treaties to which Barbados was a party, it upheld the mandatory death penalty as a result of the same Savings Clause at Section 26 of our Constitution. Barbados also is a member of the Inter-American Convention of Human Right and the Inter-American Court of Human Rights. On 20th June 1978 we ratified, we signed onto the Inter-American Convention on Human Rights and on 5th November, 1981, we ratified it and recognised the jurisdiction of the Inter-American Court of Human Rights. Barbados was only one of four CARICOM countries to recognise this Court's jurisdiction, however, even in ratifying the Convention Barbados at the time entered reservations with respect to the Convention and one reservation in respect of paragraph 4(4) was that the criminal court of Barbados provides for death by hanging as a penalty for murder and treason, and the Government is at present reviewing the whole matter of the

death penalty which is only rarely inflicted but it wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4).

Article IV of the Convention deals with the right to life. In the case of *Boyce et al vs. Barbados*, the lawyers for Lennox Boyce and Jeffrey Joseph argued that Barbados violated Articles IV (1) and IV (2), in addition to other Articles in the Convention, and in both of the judgments the Inter-American Court of Human Rights observed that Article IV(2) of the Convention allowed for the deprivation of the right to life by the imposition of the death penalty in those countries which have not abolished it.

Therefore, capital punishment was not incompatible or prohibited by the Convention. It also said that the imposition of the death penalty must be limited to the most serious common crimes not related to political offences.

“The sentence must be individualised in keeping with the characteristics of the crime as well as the participation and degree of the culpability of the accused, and the imposition of the death penalty must be subject to certain procedural guarantees. Compliance with them must be strictly observed and reviewed.”

In specifically addressing the mandatory nature of the death penalty, the Court held that the reference to “arbitrary” in Article 4(1) of the Convention and the reference to the more serious crimes in Article 4(2) rendered the imposition of the mandatory death sentence incompatible with such provisions where the same penalty is imposed for conduct that can be vastly different and where it is not restricted to the more serious crimes. Sir, let me put this in context. In Barbados, every time an incident or crime occurs that results in the death of a person, with the exception of vehicular manslaughter, the accused person is charged with murder. That charge of murder applies where a man or woman follows somebody and beats the person unmercifully in their head with a piece of board and bashes their brains out. I am sorry to be so graphic but we are talking about murder, so it is necessary to be graphic. That same charge would apply in a situation where, let us say, somebody threatened my son and I took up a piece of board and struck the person in the face with it and the person unfortunately died. Anyone looking on would see that the circumstances are not the same. In one circumstance, yes, you committed an illegal act in hitting the person in the face with a piece of board, but that you left the person standing or being able to walk away would tend to suggest that your intention was not to kill the person. This is fundamentally different from a situation where I beat you until you stopped moving.

However, our law as it stands now does not distinguish between those two scenarios, so that the person

who did not necessarily intend to kill the victim faces the exact same charge of murder as does the person who intended to kill the victim. That is what the Inter-American Court of Human Rights was trying to get across. We cannot stop you from having a death penalty if that is the rule or the law in your country, because some cultures, some people and some societies require the option of death as being the final and most severe penalty that the law can impose. What it says is that the sentence of death must necessarily be reserved for the most heinous of offences and most serious of crimes such that no other sentence would suffice. The Court further found that the failure of Barbados to amend or invalidate Section 2 of the Offences Against the Person Act so as to bring its laws into compliance with the Inter-American Convention was a violation of Article 2, and that Section 26 of the Constitution effectively denied citizens the right to seek judicial protection against violations of their right to life.

The Court felt that all murder should not be punishable by a mandatory death sentence, and consideration should be given by any judge to mitigating or aggravating circumstances when arriving at the appropriate sentence. Therefore, Barbados was found by that Court to have violated the Convention, and Barbados was ordered to adopt legislative or other measures to ensure that the imposition of the death penalty did not contravene the Convention and that the mandatory nature of the death penalty was abolished. We then fast-track to June 2018. The Caribbean Court of Justice, our final Court of Appeal and hopefully soon to be the final Court of Appeal for more of the Caribbean, in its June 2018 judgement in the case of *Jabari Nervais and Dwayne Severin v. the Queen*, the then Director of Public Prosecutions (DPP) urged the court to find that the imposition of the mandatory death penalty for conviction of murder in Barbados without mitigation and individual sentencing was unconstitutional. Please note that our own DPP at that case, in front of the CCJ, accepted the unconstitutional nature of the mandatory death sentence.

Although it took the CCJ to make its final pronouncement to make it actual law in Barbados, the reality is that the last executions in Barbados took place in, I believe, 1984. Although we have had persons charged with, tried and found guilty of murder since then and sentenced to death, we have not executed anyone. The reality is that successive Governments, Attorneys General and Directors of Public Prosecutions, and successive rulings of other courts whose judgements we are bound by convention to acknowledge, have accepted that it is not fair that there should be no option on a finding of murder but to sentence a person to death. A lot of us watch crime movies in the United States and you hear of somebody being tried and charged with murder 1 or found guilty of murder 1, first-degree murder or second-degree murder or third-degree murder or manslaughter. Other countries which have the death penalty as the final sanction for murder

actually recognise degrees of the offence, with only the most serious degree being punishable by the sentence of death. Why does this matter?

It all sounds like something in abstract until this comes home to roost, until it starts to touch or concern someone we know, or until an accident or an incident happens where someone we know is killed. Quite often, the family and friends of the victim want blood. They want whoever is responsible to hang, but the flipside of it is the family. Very often the family of the accused person wants that person to get some measure of leniency. How do we balance them? Is our system so infallible that the imposition of a mandatory death sentence is actually appropriate in Barbados? I suggest it is not for a number of reasons. As I indicated before, no matter the circumstances of the offence, in Barbados once an offence or an incident results in death, the charge that follows that is a charge of murder.

Prior to now when preliminary inquiries were still the law, very often when the prosecution presented its evidence first before the Magistrate's Court effectively to test the evidence, in a number of circumstances the magistrate found that while there was enough to sustain a charge, the appropriate charge should not have been actually one of murder but one of manslaughter. The incidents, the details, the peculiarities of the case, the circumstances of the accused or the behaviour of the deceased suggested something other than premeditated, wanton and malicious killing. Although the person faced a preliminary inquiry on a charge of murder, after hearing the initial evidence the court would in some circumstances rule that the charge be downgraded to manslaughter and the person would then leave the Magistrate's Court with a manslaughter charge as opposed to a murder charge. Why is that important, because bail for murder is very difficult? Until recently you very seldom got bail for murder, bail for murder was effectively non-existent but because of delays in our court system, because of inefficiencies, because of inefficacies, we had no choice but to start a practice recently of admitting certain persons accused of murder to bail because their cases were not coming off and if I sit down on remand for eight or nine years and my case cannot start then I should be entitled to bail. At the end of a PI, the man charged or the person charged with murder looked forward or anticipated the decision of the Magistrate's Court because if the charge was downgraded to manslaughter then bail became a consideration. What then happened, Mr. Deputy Speaker? This is a very upsetting thing is that in the majority of those circumstances, in almost all of those circumstances, although the magistrate reduced the charge to manslaughter and said the matter should proceed to the High Court on the basis of a manslaughter charge, a manslaughter indictment, in every instance, the DPP would come back up to the High Court and reinstitute the charge of murder, so we wasted time at

the Preliminary Inquiry. The other thing with that, Sir, is that it is unfair to an accused person. Our laws protect everybody on every side, our laws are supposed to protect everyone in this country. If you are an accused person your behaviour probably constituted manslaughter or something else. You might have been prepared to fight that case in the High Court if the case was manslaughter because there is no sentence of death hanging in your future. If you reach the High Court and the charge is reinstituted as a murder charge, the possibility of death once again is a very, very real factor and what used to happen is that the Crown would use the possible sentence of death hanging over your head to negotiate you pleading guilty to a lesser offence in order to get the cases off the docket, that was an abuse, it was an abusive situation. Those of us who used to practise criminal law, it was a situation where the right of the accused person was being trampled on the altar of expediency. A man should only be tried for the offence which he committed, he should not be subject to a threat of a higher charge just to simply to get him to plead guilty to a charge which he could have offended. I am going to make this very real for all of my colleagues and for us listening and it would explain to you why it is important that we do the right thing and that we abide by the constitutional rights of our citizens. For those of us who have had no contact with the criminal justice system, those of us who do not know anybody personally who was murdered, those of us who do not know anybody who was accused of committing offence, these words may mean nothing. If you are the person in the system, the circumstances mean a lot. Throughout the entirety of my presentation even in the research that many of my colleagues would have done, we kept harping on the fundamental rights and freedoms and the protections against abuses and inhumane treatment.

Mr. Deputy Speaker, years ago, about 14 years ago, I represented a young man. He was a drug addict, some would call him a 'parro'. This man left Nelson Street a day and he was routing around in the garbage and inside the garbage in Nelson Street he found a gun. He took out the gun and walked through Nelson Street trying to sell the gun for \$5 because he was just trying to get enough money to get a hit. He went showing everybody and asking people to buy this gun for \$5 and nobody would take him on. He turned and went down on the beach to smoke some dope out by the Boat Yard. As he was going on to the beach, two men who he had approached to buy the gun had followed him and they jumped him by the beach trying to get the gun from him and to steal the gun from him and in the struggle the gun went off and one of the men died and the other man ran. My client stopped right there next to the dead body until the police came because he did not what to do and he was then arrested and he was charged with murder. Now, based on what I explained before, that does not satisfy and criteria of premeditation, that does not satisfy any desire to kill somebody. He did not actually go looking to commit an offence other than selling a gun but he was charged with

murder. He was a psychiatric patient, a drug abuser and a very fragile person. The boy went through hell. I assured him, and it taught me a lesson to never assure people, I assured the boy, do not mind that you were charged with murder, by the end of your case it is going to be manslaughter. The other person who jumped him to try to steal the gun gave a statement to the police saying that we followed him, we tried to get gun from him, we struggled with him and the gun went off and he effectively said that he did not mean to kill anybody, we were fighting him for the gun and the gun went off. We went through the entirety of the Preliminary Inquiry, the evidence of the prosecution was presented, the other fellow who did not get shot came and gave his evidence and at the end of it the magistrate reduced the charge to manslaughter. Sir, that Preliminary Inquiry took about 20 days and at every single turn, every time that fellow came into the court, he was crying and he would tell me every single time, Mr. Abrahams, Mr. Abrahams, do not let them hang me. When the charge was reduced to manslaughter I said to him, you see, nobody is hanging you. He got bail and when he reported to court for the Assizes a year later, they re-indicted him on murder. I remember Court No. 5 in the old Supreme Court, that is the court downstairs by round the back by the car park, that boy bawled when they read that indictment and he turned to me said, "Mr. Abrahams, you promised me... they are going to hang me, they are going to hang me." He left that court, Mr. Deputy Speaker, he went to Glendairy and two days later he was dead. I do not know how he got there. He found himself up on the top of Glendairy and threw himself off having a charge of murder where the necessary sentence is death hanging over your head does things to people. It is not fair for us to sit and determine that everybody charged with murder deserves to hang. The people get it wrong. The courts get it wrong. The problem with execution of death is that it is the most final sentence. If evidence comes up later to show that you did not do, then all the times people say sorry in the world are not going to help you because you cannot hear them.

Mr. Deputy Speaker, I just wish to put it in context for you. It is necessary that we actually hear and understand what it is that is pronounced on the person. When you are found guilty of murder in the High Court, it is a very, very sombre thing. The prison van pulls up outside, it is parked outside before the sentence. It used to be that the judge would come in wearing a black cap and black gloves to read the sentence, but the actual sentence that you hear is: "The sentence of this Court is that you will be taken from here to the place from whence you came and there be kept in close confinement and upon the appointed day that you be taken to the place of execution and there hanged by the neck until you are dead and may God have mercy on your soul." That is what the accused person hears.

It is necessary that we fully ventilate this so that the public understands what it is we are trying to do. From there when you leave understand that is the sentence regardless of whether you bashed a man to death or you were in a fight where the person died and you were found guilty of murder that is the sentence. There is no time for the reading of the warrant that you will be hanged the following morning. From thence until your sentence was commuted or until you were actually executed, every time you heard somebody coming down that corridor -- because those on death row were kept in a separate part of the prison -- outside of the regular times that someone was to come down that corridor you heart went in your mouth thinking that perhaps they are coming for you. That is no way to live. The other point there, Mr. Speaker, and that the Courts made over and over, and that they did it in the Boyce and Joseph case, was that even if you keep a man on death row there must be some point beyond which that is now abusive to the person who is serving that sentence and they deemed five years was well sufficient time during which anybody sentence to death should have all their appeals exhausted everything dealt with so that they can either be hanged or be commuted to life in prison, that it was unreasonable, unconstitutional, inhuman treatment to keep someone in that suspended state of panic for more than five years. All of these time frames I am giving are going to have relevance to the amendments in the legislation but I am just trying to put you effectively in a full picture as to which this is necessary. Understand, Mr. Speaker, we all have our personal opinions on this. I personally have no sympathy for someone who sets out to kill someone as a malicious enterprise with malice and forethought who plans and sets it up and ensures that criminal enterprise is carried out, resulting in someone's death, I have no patience for that person. That is where I apply the Moses law, "an eye for an eye". I believe, but I believe that is to be reserved for only those people who fall into that bracket where the law has no other option but to take your life because nothing else would suffice.

Mr. Speaker, the CCJ in the Jabari Nervais and the Dwayne Severin cases also felt that the mandatory nature of the death penalty fettered the judge's discretion. Under our criminal justice system the juries are the abattoir of facts. It is open for the jury to decide what really the facts in the case are, they sit down and listen to all the evidence and they decide based on the evidence what story they will believe but the judge now is charged with upholding the law and deciding on the sentence. In every other crime the judge has the discretion as to what sentence to apply so although you fall short and although you are found guilty of committing an offence, the judge should have the right to, based on the facts presented in the case or based on evidence that comes after to be able to apply some judicial discretion and let the punishment fit the crime. We all see the paper that after someone is found guilty, these character witnesses come forward and people say, you know he was

a good fellow, he was under a lot of stress, his father died, something, something, something or this person used to beat him and beat him and beat him all the time, and one day he just snapped. Although he killed the person it is not that he set out to kill them. It is that he couldn't take anymore and he snapped. We hear those kinds of things and then the judge listens to that and says well you know I hear what you say so as opposed to getting the full weight of the law you get half the weight or I start to take certain things into consideration, I am going to put it in context again, Mr. Speaker. I was once present in a court. If I am going to be entirely honest, I was actually the attorney for the accused person. This boy had committed 14 robberies and the very last robbery he shot the person and the bullet lodged close to the man's heart so that they could not take it out so the man has the bullet in him near his heart up to this day.

Everybody listening would likely say that he deserves to get locked up forever. He robbed 14 people and he shot a man. I am sure that not a person in this Chamber is even leaning towards leniency so far for this boy, but after he had been charged and he was granted bail, eventually, the boy went to counselling. His father who he was very, very close to had died. Since his father died the boy had not spoken a word to anyone. He did not speak to a person. In the States now or somewhere else they would have whisk that boy to therapy, let a psychologist examine him and tried to get some help for him. In Barbados, he stopped speaking, he stopped speaking. He started to commit these little robberies. Nobody knew and he did not tell anybody. He only got caught when he shot the man. After he was admitted to bail, we twisted some arms and we got him to see a psychologist and a psychiatrist. The boy got some help. He started to volunteer, he started to do things, he got some CXC's, it took a long time for his trial to come on but he got a whole set of qualifications and tried to turn his life around. He started to communicate again and he went from being a common criminal to being a model citizen. When the case came up, he did not even bother to fight anything. He decided to throw himself at the mercy of the Court. He pleaded guilty to every single charge so that the Court, instead of sentencing him for one act was there preparing to sentence him for 14 acts. Down the line, some of the people, to be honest with you, came and withdrew. They came and said that they did not want to proceed against the boy. On the very last day, as we were in Court and it was shown how far this boy had come and what he had been through and what amends he was trying to make and what he was trying to do with his life and the other young people that he had helped along the way, the man who was shot was in Court and at the end, when I finished speaking the man got up and asked, "Can I say something?" To be honest, I was there trying to get this man to not say a word because I was frightened for the victim to speak. However, the man got up and stated that based on all that he has heard, and he has followed the

boy's progress, based on what he knows as a fact, if the court wishes to sentence him to imprisonment let it not be in respect of his case, he is asking the court the imprisonment not be considered for the case where he was shot, and the court eventually put the boy on probation. He did not serve a day. I am deliberately not calling that name and being specific, that boy is now one of the managers in a very prominent business in Barbados, supervising a number of people and he has continued even now to help at-risk youth.

Mr. Deputy Speaker, the point of that is that had the judge not had the discretion to weigh all of the circumstances of that case, then that boy would have been imprisoned. Fourteen robberies and one shooting, he would have been lost away in jail. So, the Inter-American Court Caribbean Court of Justice (CCJ) and the other human rights courts make the point that from the time the judge has no other option but to sentence somebody to death, you have stripped away one of the fundamental pillars of our criminal justice system which is judicial discretion. You have denied the judge the opportunity to take all of the circumstances into consideration and to give the sentence that fits the crime and also the circumstances of the offence.

Mr. Deputy Speaker, our system also depends also on something called the separation of powers. A lot of people do not actually understand what that is. The separation of powers, separate the various arms of Government from undue influence into the workings of the other arms of Government, that is, the legislature, executive and judiciary. So, the legislature should not be giving instructions to the executive as to how to carry out their function. This is why Members of Parliament and Cabinet Ministers are not supposed to get involved in who is hired or fired in a Ministry.

Equally, the legislature is not to interfere into the realm of the judiciary. The argument has been made continuously and upheld that if you legislate that X is the crime, then Y must be the sentence and this is the legislature interfering into the judicial realm. You can give a discretion or a range, for example, the sentence is between 0 years and 100 years or 0 years and death. Often you hear in the drug cases that one can be fined up to \$500 000 and, or, up to X time in prison. They give alternatives. Most of the courts that have heard death penalty cases from Barbados or appeals from Barbados have insisted that the mandatory sentence fetters the discretion of the judge, and it is also a case of legislative interference into the judicial system.

What I want to reinforce again, I have my own views but I represent the Cabinet of Barbados and my constituency, and let there be no doubt that the Cabinet of Barbados has not made a decision to abolish the death

penalty. Nothing we are doing here abolishes the death penalty. Simply, what we are doing are doing is abolishing the mandatory nature of the death penalty and making amendments and corrections to legislation to give effect to that. Mr. Deputy Speaker, if we go a little bit further, it is not as though we had a choice. While we might have delayed in following the dictates of the Inter-American Human Rights court, or following the dictates of conventions that we are signatories to, from the time CCJ made the ruling that the mandatory death penalty was unconstitutional, the CCJ set out what the new law for Barbados was going forward.

Therefore, the law was already decided with the decision Of the CCJ in the *Jabari Sensimania Nervais v The Queen*. All we are doing now is making the legislative amendment that reflects the decision of the CCJ and harmonizing our laws. Having given that broad overview to seek to explain how we got where we got, I am now going to deal specifically with the amendments in the respective piece of legislation. I start with the Offence against the Persons Act. The Bill we are purporting to debate today would make provision for the repeal of the mandatory imposition of the death penalty for the offence of murder under Section 2 of the Offences against the Persons Act and for other matters related thereto.

Mr. Deputy Speaker, Clause 2 of the Bill deletes Section 2 of the Offences against the Persons Act and substitutes a new section. The proposed new Section 2 provides as follows: "Section 2 seeks to abolish the mandatory imposition of the death penalty by expanding the sentencing options available to the court for the offence of murder, pursuant to the decision in the case of *Jabari Sensimania Nervais v The Queen*." Once again we restate that the Cabinet has made it clear that the death penalty should be retained as a punishment for the offence of murder. Accordingly, Section 2 (1) (a) of the Bill makes provision for the retention of the death penalty as a punishment for the offence of murder. However, Section 2 (1) (b) provides that a person convicted on indictment for murder may also be liable to a sentence of imprisonment for life.

The language employed in terms of making the person convicted liable to imprisonment for life, should be interpreted in accordance with Section 22 (5) of the Interpretation Act CAP 1. This means that the sentence of life imprisonment is to be interpreted as the maximum sentence of imprisonment that can be imposed by a court on a person convicting the offence of murder. In other words, where the court deems that the appropriate sentence is not hanging but actually imprisonment, then the legislation sets out that the person is liable to a sentence for life. However, this does not mean they will get life. The court then has the discretion to give them between 0 years to life imprisonment. This allows the court to tailor the

punishment to fit crime, and to take into account the particular characteristics of the crime and the participation and degree of culpability of the defendant.

Section 2 part 2 sets out the circumstances in which the court may impose the death penalty on a person convicted for the offence of murder. If you go to Section 2.2, this is new and what the court makes consider when making the sentence of death. A court may sentence person convicted of murder to death where:

(a) the murder was committed with a high level of brutality, cruelty, depravity or callousness;

(b) the murder involved calculated or lengthy planning;

(c) the deceased was a judge, a magistrate, the Director

of Public Prosecutions or a legal officer in the Department of the Director of Public Prosecutions and the office of the deceased was a factor in the commission of the offence;

(d) the deceased was a member of the Royal Barbados Police Force, the Barbados Defence Force, a member of the Special Constabulary or a prison officer and the office of the deceased was a factor in the commission of the offence;

(e) the deceased was a member of a group of persons who have a common characteristic such as race, nationality, ethnicity or religion and this was a factor in the commission of the offence;

(f) the deceased was a witness or a juror in a pending or concluded trial and this was a factor in the commission of the offence;

(g) the deceased was particularly vulnerable because of his age, health or disability or because of any other factor;

(h) the person convicted was convicted of two or more offences of murder, whether or not arising from the same circumstances; or

(i) in the opinion of the Court, there are any other exceptional circumstances which must be taken into account and which justify the imposition of death.

Mr. Deputy Speaker, if you look at the criteria for the imposition of the death sentence the bulk of it involves some measure of premeditation, that it was not a random offence, that the person who was killed was targeted by virtue of their being a judge, a magistrate, a police officer

or a prison officer or of a certain orientation, et cetera, so in this case it imputes a level of thought, premeditation and execution on the part of the person who committed the offence. This is brand-new, and the judge has to sit down and run through all of this, look at all of them, look at the criteria, weigh the criteria and decide based on all of the stated criteria whether or not death is the appropriate sentence.

Section 2 (3) takes into consideration the decision in Pratt and Morgan. Thus, Section 2 (3) requires that where the Court sentences a person to death, that sentence must be executed within a five-year period or they risked being in breach of Section 15 of the Constitution which seeks to protect a person from being subject to torture or inhuman or degrading punishment or other treatment. Where the sentence is not executed before the expiration of the said time, the sentence must be commuted to a punishment to be determined by the Court having regard to the guidelines set out in Sections 39 and 41 of the Penal System Reform Act.

Mr. Deputy Speaker, in my lead up before I got into the meat and bones of the particular amendments, I had indicated that the precedents had leaned towards suggesting it was unreasonable to keep a person on death row for more than five years and our amendment seeks to codify that to take it out of the realm of suggestion and put it firmly into law that we must get our court system in order such that we are able to properly prosecute matters and the court system must be efficient enough to take a person from sentence to the exhaustion of his last appeal within five years. If we as a Government and the Chief Justice as the Chief Administrator of the Courts cannot manage to get our court systems running to a point where a man can have all of his appeals exhausted and heard within five years then that sentence must be commuted from a sentence of death to something else and the Court gets to look at what is that something else.

The other thing is that Section 2 (4) enables the court to impose a sentence of imprisonment for life on a person convicted of the offence of murder. The Caribbean Court of Justice has indicated in the case of Gabb versus The Queen that a sentence of imprisonment for life should not prohibit the possibility of parole. If the provision does so, it is unconstitutional. Section 2 (3) provides for the imposition of a sentence of imprisonment for life on a person convicted of the offence of murder but allows the Court to set a minimum time that must pass before the person be considered for early release. When we watch the same court movies on television and they hand down the sentence they say a sentence of life imprisonment without the possibility of parole for very heinous crimes or they sentenced you to 30 years but you cannot have a parole hearing before 10 of those years have expired. This gives the judiciary a chance to reevaluate and make recommendations based on the progress of the person.

Mr. Deputy Speaker, our penal system is not meant simply to punish people. We also looked at rehabilitation of the offender and we looked at compensating the victim, so if one of our factors is the rehabilitation of the offender that we have to take into consideration, it is not simply good enough to tell a man I sentenced you to 30 years. Imagine in that 30 years that man has been the model prisoner, he has saved a life, he has found the Lord, he has written books, he is publishing from the prison inspirational messages that are keeping young people off or he is participating in prison programmes aimed at trying to convince young people to stay out of crime, then there should be some avenue to look back at that man's sentence and say although you were supposed to be there for 30 years based on everything that you have done we think you might be good to go home after 20 or 15 years. It has to be a necessary factor otherwise what incentive is there for anyone who enters the prison system to try to do better. If I have to serve out every day of my sentence without the possibility of the circumstances of my incarnation being taken into account then there is nothing at all there that would motivate me to try to help a young person in prison or there is nothing there that would motivate me or inspire me to try to be a big brother to somebody else. Imagine if I can help 10 people in jail who might have passed through for minor offences to turn away from crime and I am so committed, imagine how much better I can do on the outside before they actually reach the jail, so all of these things have to be factored, so I welcome and applaud the steps that we are taking because it goes with the shifting concept of sentencing. It is no longer the Moses Law. It is no longer simply an eye for an eye or cut off their hand, it is you are sentenced but within the parameters of your sentence you could work to try to do better and we have to recognise when you have actually tried to do better and when you have actually done better.

Mr. Deputy Speaker, also under the Offences against the Person Act there is provision in here for persons who were sentenced to death prior to the passage of this legislation. If we are now saying that the death sentence is unconstitutional and the mandatory death sentence is inhumane and degrading punishment, we cannot simply change the law now going forward. If it is unconstitutional, it is unconstitutional. It is not unconstitutional going forward, it would have to be unconstitutional to those who are already under a sentence of death so the Offences Against the Person Act makes provision as well that all death sentences have now to be commuted and the persons under the sentenced of death have to have those sentences reviewed and the appropriate sentence given.

Mr. Deputy Speaker, prior to this amendment I think the only discretion that there was at Her Majesty's Privy Council was to commute death sentences to life imprisonment. I am seeking clarification from the Honourable Member for Christ Church South. I believe

that was the only discretion, to commute death sentences to life imprisonment, so bear it in mind that there was no other discretion other than from commuting from death to life in prison where your sentence has been commuted from death to life in prison. Now with this amendment you also have the opportunity to have your sentence reviewed and the appropriate sentence put in place, so [that] everybody who was once under a sentence of death, whether it has been commuted to life imprisonment or whether you are still on the death sentence, with the passage of this legislation everyone will have their sentence reviewed, death sentence is off the table for all you who have been sentenced before this amendment and your sentences will then be reviewed as to whether it should be life or whether it should be something else. That, Mr. Deputy Speaker, is pretty much the nuts and bolts of the Offences against the Person Act. The thing is, it does not stand on its own, we necessarily need to amend the Constitution from which all the other legislation derives its efficacy, so we are seeking to amend the Constitution as well by deleting the provisions in Section 15 that authorises the mandatory imposition of the death sentence for the offence of murder, redefining the effect of the existing law clause in Section 26, and refining the exercise by the Governor-General in the exercise of the prerogative of mercy.

Mr. Deputy Speaker, there are not that many, I will take us through the amendments. Section 15 of the existing Constitution is deleted and the following is substituted. No person shall be subject to torture or to inhumane or degrading punishment or treatment. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the imposition of a death sentence or the execution of that sentence or the holding of a person who is imprisoned or otherwise lawfully detained under conditions or arrangements prescribed by law under the Prisons Act or under any other law pending the execution of the sentence of death in accordance with any other sentence of the court. Mr. Deputy Speaker, I think that is pretty much self-explanatory. Section 26 of the Constitution, which is the existing clause has also been amended, that, the existing law shall continue to be in force but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with Sections 12 to 23 of this Constitution. Mr. Deputy Speaker, that is also self-explanatory.

The prerogative of mercy now reads, that is Clause 28 of the Constitution, that, the Governor-General may in Her Majesty's name or on Her Majesty's behalf grant to any person convicted of an offence against the Laws of Barbados a pardon either free of or subject to lawful conditions;

(b) Grant to any person arrested either indefinitely or for a specified period of time from the execution of any punishment imposed on that person for any offence;

(c) substitute a less severe form of punishment for that imposed on a person for any offence, or remit the whole or part of any punishment imposed on a person for an offence a penalty or forfeiture otherwise due to the Crown on account of such an offence;

(d) The Governor-General shall in the exercise of the powers conferred on him [her] by subsection (1) or any other power conferred on him [her] by any other law remit any penalty or forfeiture due to any person other than the Crown act in accordance with the advice of the Privy Council;

(e) Where a person makes a submission in accordance with subsection (5) in respect of an offence against the Laws of Barbados the Governor-General shall cause a written report of the case from the trial judge together with such information derived from the record of the case or elsewhere as the Governor-General may require to be forwarded to the Privy Council so that the Privy Council may advise him [her] on the exercise of the powers conferred on him by subsection (1) in relation to that person;

(f) a person who has a right to submit directly or through legal or other representative without representation in relation to exercise by the Governor-General or the Privy Council of any of their respective functions under this section;

(g) a person may in the appropriate circumstance as determined by the Governor-General or the Privy Council be granted an oral hearing and may make oral submissions directly or through a legal or other representative in relation to the exercise by the Governor-General or the Privy Council of any of the respective functions under this section."

Mr. Deputy Speaker, what that section actually effectively does is [that it] repeals and replaces section 7(a) to remove the Governor-General capacity to direct that there should be time limits within which any person may appeal to or consult any person or body of persons other than Her Majesty in Council outside Barbados in relation to an offence. So the time limits are necessarily addressed in the Offences against the Persons Act, which I went through before and effectively suggest that if you do not execute the person within five years from the time you sentenced him, then it can be commuted. Mr. Deputy Speaker that was pretty much the crux or the import of what informed all the other time limits with respect to appealing to other bodies or to the Court of Appeal.

The Penal System Reform Act.

As I indicated before, there are certain sentencing guidelines that the judge has to take into consideration. The Penal System Reform Act is what the lawyers use as the law relating to mitigation for their clients. They look at the Penal System Reform Act and at the criteria that the judge is supposed to take into consideration and then they would mitigate for their clients based on the provision of that piece of legislation, so we have to amend the Penal System Reform Act in order to give efficacy to the amendments within the Offences Against the Person Act and also the Constitution.

The sentencing guidelines set out in section 31 and 41 of the Penal System Reform Act apply to offences, the sentencing for which was discretionary. The new Offences against the Person (Amendment) Bill, 2018, will change the sentence for the offence of murder from one that is fixed by mandatory sentence to one that is discretionary in nature, thus the sentence imposed for murder can be tailored to fit the circumstances of the case and the individuality of the offender. As a consequence, the aforementioned amendment it was determined that it was necessary to amend Sections 31 and 41 of the Penal Systems Reform Act to ensure that they apply appropriately to the offence of murder. I would actually have listed most of the criteria in my address on the amendment to the Offence against the Person Act, but Section 39 said that the court is bound to consider certain mitigating factors. Nothing in this Act prevents a court from mitigating and offender's sentence by taken into account such matters as in the opinion of the court are relevant considerations with respect to the mitigation of a sentence, including...

Mr. Deputy Speaker, what I am about to list here are the factors that the court should consider before passing its sentence, so [that] these can mitigate you down from life imprisonment to something else: (a), the age of the offender; (b), the particular circumstance of the offender such as his social or economic circumstances; (c) whether the offender pleaded guilty and the point at which the guilty plea was made.

Mr. Deputy Speaker, I pause here for a second. It is standard and it has been the law in Barbados and in the common law that a judge is bound to take into consideration in passing sentence a guilty plea, because it shows that the person acknowledged their mistake and exercised some contrition. What the judge also has to factor is the time at which that plea is made because an accused person could change his plea to guilty at any point in time in his trial before the verdict is pronounced. What the court factors is if I as the accused person and I am sitting down there thinking to myself that I could probably get off and then I realised that [there are] 15 witnesses coming up, all

of whom are saying that they saw me, then they asked my mother who said, yes, trust me, I saw that it was him, and I then decided that okay, well, then, if my own mother testified against me there is no way I am going to get off so let me ease in my guilty plea quickly. While the court may take that guilty plea into consideration, it obviously does not carry the same weight as, for example, the youngster whom I spoke about who had 14 charges who on the first occasion before the court pleaded guilty to all of them, so that there is a difference to be considered there and the amendment to the section codifies that - the circumstances or facts of the offence and the degree of the offender's involvement in the offence and any attempt by the offender to make reparation for the offence.

Sir, our laws try to achieve equality in sentencing for offences, so what used to happen, for example, was this: Four people -- let us say myself, the Member for St. Philip West, the Member for St. John and the Member for St. Michael West -- set out on a criminal enterprise and somewhere in there all of us were going to rob a man but none of us knew, for example, that the Member for St. Michael West had a gun. Suppose the man then got shot and died, what would happen normally is something called joint enterprise. The law said we all set out to commit a criminal act and at the end of the day somebody died, so all of us are guilty of murder.

Asides.

Hon. W. A. ABRAHAMS: What this says now is that it looks at the culpability of each offender separately, so in this circumstance now instead of all of us being found guilty of murder, it might be the Member for St. Michael West who might face that by himself while the Member for St. John, who actually drove the car but did not know we were going to rob anybody -- he knew we were up to no good but did not know what was going to happen -- might get off, while I might be getting off with him and the Member for St. Philip West might have to do ten years with the possibility of parole after five. Do you see how we are now harmonising it to bring it in line with modern thinking with respect to penalising for offences? I will also show how this corrects some anomalies.

In the same case of Joseph and Boyce that would have gone to the Privy Council, there were four young men who were charged. I can relate the facts because they are there and are a matter of record: There was a young man, the deceased whose name was Hippolyte, and the facts bore out that he had seen one or more of these men on a bus and he had thrown a rock in through the bus window. The men got out and went looking for him, and they found him and started to beat him. Somebody threw in some kicks, then somebody picked up a piece of board and hit him with it. They left him there. He got up within their sight and he went to a house for help, so they watched him walk away

and go to that house. He subsequently succumbed to his injuries and died. Two of the men took the plea for manslaughter and pleaded guilty, while the other two sought to fight the case because they believed that they were the least culpable in the whole thing. What ended up happening was that two of the men got 12 years, I believe, and two of them were sentenced to death. It therefore cannot be that we have these anomalies.

We need to correct our legislation that removes these possible anomalies, because in a situation where those two men took a plea and got 12 years or got sentenced for manslaughter, now we have had the court hearing the whole matter through and hearing that maybe these two men who actually fought the matter were not the most culpable and actually should not be sentenced to death. The court now would be able to say, "Let me adjust their sentence or let me sentence them so that it does not create a disparate situation with the sentence of the other two." As the law stood before, once they were found guilty of the murder, that discretion was gone from the judge, so you had four men in one enterprise, two of whom pleaded guilty and got a term of imprisonment while two men were sentenced to death. This corrects all of that. The judicial sentencing guidelines are explained. In sentencing the offender, the court should take into account the following guidelines. You address your mind to the mitigation first, so you check off your mitigation points and then you address your mind to the sentencing.

In 41(2):

"In sentencing the offender the court shall take into account the following guidelines:

(a) The gravity of the offence and the need to hold the offender accountable for the harm done to the victim and the community by the commission of the offence.

(b) Any written representation made by a spouse or relative of the deceased in respect of murder or manslaughter and, in any other case any written representation from the victim."

This allows those affected, either the victim or his next of kin, to actually have a say to make representation before the sentence is passed for the judge to take it into consideration. It works two ways, because in an offence, let us say, of wounding, if the family or the victim comes forward and gives evidence and says, "Although he pleaded guilty to the facts now before you, this man stopped me and followed me and he beat me once, beat me again, and I went to the police, then he followed me again and beat me and we are now here," the court can take that into consideration. Equally, the court can also take into consideration an instance similar to what I alluded to with

the robbery, where the victim said, "I do not want him to do time on my behalf."

This now is included in the sentencing guidelines. The court must also take into account this guideline:

(c) "ensuring that the gravity of the sentence is commensurate with the nature of the offence committed by the offender."

That, as well, flows with respect to murder. That is the ultimate case where the sentence is commensurate with the actual offence. If I chop off your hand and I get time for it, my serving five years cannot replace your hand, but the ultimate sentence of taking a life to satisfy the fact that a life was taken is factored here as well and it has to be necessarily factored to once again give effect to the fact that we are now having levels of murder. The judge can factor that into the question: Was this crime so heinous that the only answer is the ultimate sentence? If you go for lesser sentences, the question can be asked: Is the crime so heinous that the person should be sentenced at the maximum end of the scale? The judge must also factor in the need to deter the offender and others from committing similar offences, so that is when the judge institutes a sentence to send a message.

(e) "the manner in which the offender executed the offence and the nature and duration of the relationship between the offender and the victim".

That is self-explanatory. That would normally factor in a circumstance where, for example, a parent is abusing a child or an uncle troubles his little niece or something.

(f) "The degree and culpability of the offender and the maximum penalty prescribed for the offence."

This is likely to be applied in cases where there is more than one offender and, rather than paint everyone with the same brush, we separate them as to their involvement in the crime.

(g) "Any attempt on the part of the offender to make reparation to the victim or the victim's family."

So that any attempt on the part of the offender to make reparation to the victim or the victim's family we are looking as part of our sentence to order also a compensation regime because the reality is if the Honourable Member for St. Philip West cuffs me in my face I may prefer to take \$10 000 from him as compensation for the injury and my embarrassment than seeing him go to jail for one year, so it will allow for that.

The need for rehabilitation of the offender and the need to promote a sense of responsibility on the part of the

offender for the harm done to the victim, this one is directly to the offender. The need for consistency in sentencing in respect of similar offences and it should be the case that a person facing a charge or facing a trial should be able to predict the sentence he is likely to get if I know that somebody broke and entered a house and stole a bed and they got two years, then I should also know if I stole a bed that I am looking at two years as opposed to one judge gives two years and other gives \$1 000 fine, and the possibility of providing restitution for the harm done by the offender, that is self-explanatory.

Mr. Deputy Speaker, I am coming home now, I am soon there. The last Bill we looked at is the amendment to the Criminal Procedure Act and the short form of this, the amendments that we are seeking create a new Section 6 (a) which makes provision for a person who is to be arraigned upon an indictment for the offence of murder to undergo a psychiatric evaluation to determine whether that person is fit to plea. As it stands now, that is not in our law but because of the ultimate sentence, you have to make all the necessary safeguards, so any person who is supposed to be arraigned and face a trial for murder, the court must send that person now for a psychiatric evaluation.

Clause 3 inserts a provision to allow judges to intervene where the defence of insanity and diminished responsibility should be raised in relation to an accused. This one bear listening to be because it allows the judge to interject and intervene and effectively interrupt the course of the trial.

“Where a judge determines from the circumstances of the case raised before him that a defence of diminished responsibility or insanity should be raised in relation to an accused the judge shall order that the accused undergo a psychiatric evaluation to determine whether the mental status of the accused would support the submission of arguments for diminished responsibility or insanity in relation to that accused person. Where the results of the psychiatric evaluation referred to in Subsection 1 indicate that the defences of diminished responsibility or insanity should be raised in respect of the accused the judge shall ensure that the defences are raised in relation to the accused.”

Sir, what this says is where a judge is hearing a case and it becomes obvious from the evidence before the judge and from the disposition and the presentation of the accused person that that person is likely suffering from a mental disability or does not have full mental capacity then the judge can order that be evaluated by a psychiatrist. If the psychiatrist then finds that the person is of diminished responsibility it will be unfair to allow the case to continue as if the person was a fully whole person because they may not be able to defend themselves properly, they may not have been able to give proper instructions to their lawyers

and in keeping with trying to balance the rights of the accused as well as the rights of the victim, it is necessary that the judge retains the discretion to intervene in there to ensure that defences available to the person are raised.

Mr. Deputy Speaker, I am sorry that I have taken this long, actually I am not sorry at all. It was necessary for me to take this long to present this Bill and these amendments because as I have said, it is not sufficient that these amendments pass if people do not United Nations what has happened. Let it not be that the public of Barbados leaves this hearing or switches off at the end of our debate and believes that the death penalty has been abolished in Barbados.

It was also necessary because of the nature of this debate to take up through all of the other pieces of legislation that might be impacted because the consideration of the mandatory death sentence occurs in many different pieces of legislation ultimately with the Constitution but it is not sufficient to just take it out. You have to take it out but still empower the judges to make other determinations. You have to take it out but still direct the judges as to mitigating circumstances. You have to take it out but also adjust the discretion and the remit of the Mercy Committee so it was necessary for us to go through all of the pieces of legislation so that the pieces drop into place. At the end of it all, and after the successful amendment of all of the relevant pieces of legislation the net effect will be the following: The mandatory death sentence in Barbados will be abolished. On a finding of guilty of murder, the judge will have a discretion as to what sentence to apply and guidelines for consideration as to how to arrive at that sentence. The judge will therefore have the option of sentencing the offender to death in the most heinous and egregious of circumstances where there is no other penalty under our law that would satisfy the balance of the victim, the society, punishment, retribution, having consideration for all of the factors which must be taken into consideration, the judge can decide that the only sentence that suits this particular crime because of its nature and because of the behaviour of the accused person is death but the judge also has the discretion where he finds that the circumstances do not warrant a death sentence to impose some other sentence.

Mr. Deputy Speaker, because we are making the amendments now they will necessary affect some people who are currently under a sentence of death so where a convicted person was under a sentence of death, whether he is still under the sentence of death or whether his sentence of death has been commuted to life imprisonment, that person is now entitled or must have their sentence reviewed and the judge reviewing the sentence must apply the guidelines that were specified in the legislation.

Mr. Deputy Speaker, we have now brought our laws in conformity with the bulk of the human rights conventions and also we have brought our laws in harmony with the decision of the Privy Council in the most recent case of Nerva, so that while we retain the right to sentence someone to death, it is not automatic and the other factors have to be taken into consideration. We also acknowledge and uphold in the Constitution the rights of the individual to be protected, to have their human rights protected from arbitrary, unreasonable, inhumane and degrading treatment. What we are putting before you today is the amendment to the Offences Against the Person Act, along with the reasoning and rationale for the amendments of the other Acts, to harmonise those so that our law, our written legislation will not come in conformity with the law as it now stands following the decision of the Caribbean Court of Justice which is our highest court in the land.

Mr. Deputy Speaker, I hope that those who are listening now have a fuller appreciation and understand why we are doing what we are doing, that it is necessary, that is correct, that is appropriate. I want to thank the drafters of the law because in addition to the drafting, the Explanatory Memorandum at the back of the legislation is perhaps some of the most thorough Explanatory Memorandum I have ever seen in the back of legislation and anybody who chooses to go on our website, on the Parliament of Barbados website, you can pull up the legislation and you can actually read the Explanatory Memorandum for yourself which is at the back of the legislation and anybody who chooses to go on our website, Parliament of Barbados website, you can pull up the legislation and you can actually read the explanatory memorandum for yourself which is at the back of the legislation and it sets it out chapter and verse and explains why it was done and the impact of it. Having said all of that, Mr. Deputy Speaker, I beg to move that this Bill be read a second time.

Dr. the Hon. W. F. DUGUID: I beg to second that, Mr. Deputy Speaker.

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

Bishop the Hon. J. J. S. ATHERLEY: Thank you very much, Mr. Deputy Speaker.

The Honourable Member who just took his seat having addressed this Honourable Chamber is reputed in Barbados and in the region as a very highly skilled legal practitioner before the Bar and he is regarded by many as a very good orator. I heard that comment this very morning from someone who just noticed him in passing but he is a very poor judge of character, Mr. Deputy Speaker.

Mr. DEPUTY SPEAKER: In what way?

Bishop the Hon. J. J. S. ATHERLEY: In what way? Well he introduced this hypothetical scenario of three of his colleagues and four of us in this Honourable House who embarked upon some imaginary crime and he sought to put the gun in my hand.

Asides.

Bishop the Hon. J. J. S. ATHERLEY: He must be a very poor judge of character because I think he included the Honourable Member for St. John in that four and the Honourable Member for St. Philip West in that four and I think he included himself, but yet he put the gun in my hand. He is a poor judge of character. Obviously the presentation was intended to not only introduce these very important amendments to our existing legislation but the presentation was attempted in a way to ensure that the Barbadian public became fully seized as to the nature of the action being undertaken by the House today and the intentions of the Government with respect to these amendments and, I think, so effectively presented. Obviously a move, Mr. Deputy Speaker, to conform to the emerging trends with reference to the practice of judicial matters in the region and even beyond. The attempt to amend the Constitution to provide for the discontinuation of a situation where there is imposed a mandatory sentence of death upon conviction for murder, the amendment to the Constitution to give effect to that occasions as we have been well informed, other related amendments, penal system reform, criminal procedures, Offences Against the Person Act and stuff like that. It is clear the context in which the amendment is being attempted from a legislative perspective.

Two-thirds of the established recognised states of this world have not carried out a death sentence in about a decade. There is a trend to move away from capital punishment as a mandatory sentence in response to a conviction on murder. More than half of those States have abolished the death penalty entirely, although. The understanding here is that this is not the case in Barbados, this is not what is being done. We are removing the mandatory death sentence upon conviction for murder and the build-up of case law in the region and much of it cited by my learned friend from Christ Church East suggests that the mandatory sentence of death upon conviction for capital murder breaches the constitutional provisions in relation to human rights and in relation to the right to life. These things are enshrined in our Constitution have come under scrutiny and challenge and now successfully so, hence we are here today in order to affect these necessary changes. Those developments with respect to the advance of the judicial practice across the region, the decisions which have been handed down thus far, some of which were eluded to by the Honourable Member who last spoke highlight the inconsistency of that mandatory sentence as a penalty for murder when put against the matter of

prohibition of inhuman and degrading treatment. All we are trying to say here from this position is that we understand what this Government today is trying to affect in this Parliament is in keeping with trends with respect to the dispense of justice across the region and specifically in the relation to the capital crime of murder. Ultimately our highest appellate court the Caribbean Court of Justice has ruled in the case cited by the Honourable Member for Christ Church East and the lead spokesman on this presentation today that mandatory death sentence, in fact, does contravene the right of convicted capital offenders to the protection of the law since it denies what is considered to be a critical essential in the dispensing of justice, that is, judicial discretion and hence as I understand it, we want to provide for judicial discretion upon conviction of offenders for the capital crime of murder. The Honourable Member in his presentation referred to the ruling of the Inter-American Court. I took note of that and the Article IV of the Convention of the Inter-American Commission of Human Rights which addresses the issue of arbitrary deprivation of life suggests and I think he may have referred to some of it and I quoted some of it myself, Mr. Deputy Speaker, in Barbados the purpose of statutory and common law defences and exceptions available to defendants in death penalty cases is to defend the innocence of the defendant not to determine the appropriate punishment once the defendant has been convicted. Though defendants have the right apply to the executive branch for amnesty, for pardon and for commutation of sentence Courts still have a responsibility to impose the most appropriate punishment for particularly crimes. This is taking a position against what obtains in Barbados even until now until this legislation before this House comes into effect. At Article IV(2), Limitations on the Death Penalty of the Convention reserves capital punishment only for the most serious crimes. Section 2 of the Offences against a Person Act contravenes the Convention because it requires the indiscriminate application of the death penalty as punishment for conduct that can vary tremendously as my honourable friend tried to illustrate. The imposition of a mandatory death sentence in the case of Da Costa Cadogan therefore violated his right to life and this is the document related to that document for which my honourable friend had quoted. Arguably, Mr. Deputy Speaker, I would also want to put on the table and in the midst for balance that though those who are found guilty of murder perhaps should not find themselves mandatorily faced with a sentence of death because certain rights are enshrined in our Constitutional and in other bits of our legislation that guarantees them right of protection and the right to life, and safeguards against degrading and inhumane treatment, et cetera. Arguably, we must also consider that these things must be subject to the rights and freedoms of others because at the end of the day we must never lose sight of the fact that no matter what my rights might be as constituted legally, when I infringe on the rights of others I

imperil myself and run the jeopardy of losing some of those rights.

I am just trying to say that while we discuss this and understand where these trends are taking us, and why we are here today in doing what we are about today, we also have always to ensure that we do not lose sight of the fact that my rights are not at the expense of the rights of others. He who murders may be subject to some rights and safeguards despite murder, however we qualify that murder, but he who murders and is subject to that qualification must also bear in mind that those who are victims also do have rights. We should never lose sight of that as a society, the right to life, the right to liberty, the right to security.

We understand that we must make an amendment to Section 2 of the Offences against the Persons Act, and that will have to be amended to accommodate removal of the mandatory death sentence, and to provide for expended sentencing options. I think that is ultimately the intention. I support strongly and wholeheartedly the Cabinet's insistence that we retain the option of the death penalty. I simply seek to reinforce what the Honourable Member tried effectively I think so to do, that Barbadians understand that we are not about abolishing the possibility of a sentence of death and conviction for capital murder, simply expanding the options.

Mr. Deputy Speaker, often the question is asked is the death penalty really a deterrent. There are many who come from the church who strongly believe we ought not as a modern state to have on our statute books the capital punishment of death, even for the most brutal murders. They attach a sanctity to life which they believe overrides the State's authority to take life itself. They take a negative view of any society or State authority which seeks to retain and exercise that right to take life as a punishment for the commission of capital murder. Mr. Deputy Speaker, as to whether it constitutes a deterrent or not, they say the statistics when researched show it does not. They say if you check in any region of the world you will find capital punishment does not deter persons from committing murder.

I do not know about that. I have a very simple view of this matter, Mr. Deputy Speaker. If I know well the Honourable Member for St. Thomas, I am sure she would concur the simple philosophical frame within which I look at these things. There are those who will commit murder whether or not there is a death penalty, and so, death penalty will not deter them. There are those who will not ever commit murder under any circumstances, so the death penalty sanction does not apply to their situation. However, Mr. Deputy Speaker, I am sure you will agree with me there are those who were there not a death penalty would commit murder in given circumstances, and that the death

penalty serves as a deterrent for them and those we must deter. There are only three types of persons, that is, those who would kill no matter what, those who will never kill no matter and those who will kill were they not deterred by so doing by the retention of a death penalty.

I support strongly the view of the Cabinet that it must stay in place as an option of sentence for the court, and if ever we feel challenged strongly to remove as a

Government, as a people, the death sentence in response to conviction for murder, that it be made the subject of referendum in Barbados. This is one of things I do not think that 23, 26 or 15 people in a Cabinet room should decide. It is not something that 30 people in an Honourable Chamber such as this, however configured, whether 29 to 1 or other, I do not think that kind of issue should be settled in that context. Therefore, if ever there is such pressure from the outside internationally or regionally, or a push from the inside locally, that we abolish totally the availability of the capital sentence to the court, that we make that a subject of referendum.

Mr. Deputy Speaker, we need to do necessary. When people are convicted of murder, especially in the anticipated context where mandatory death sentence does not now apply, we need to make sure that we do things in such a way that those who attract the mandatory sentence from the court when all things have been considered, that

we put our judicial process and architecture in such a state that we can expedite the matters of justice as quickly as possible. All I am saying it is good that as a society in this modern day, progressive as we are, we can come to this Chamber and effect such changes as would remove those stipulations which we believe impinge upon the rights of persons, even those convicted of murder.

Even as we do that, once a person attracts the ultimate sentence from the court in relation to this crime, we need to make sure that we expedite execution of that sentence in a sufficiently proper time, as that we do not make a nonsense of the courts, and of the process of justice in Barbados. We all know where it started for us with Earl Pratt and Ivan Morgan, Appellants v The Attorney General for Jamaica and The Superintendent of Prisons several years ago, and I have parts of that here to which I wish to refer. It is a serious thing. At present, we live with the consequences of a system of justice unable to carry out sentences determined by the court because we do not ensure that mechanisms to effectively, appropriately and quickly expedite these matters, are in place.

On the 9th of July 1987, the Inter-American Court of Human Rights, pursuant to further representations to Pratt and Morgan, informed the Jamaican Government of the following findings... Pratt and Morgan suffered a denial of

justice during the period 1980 to 1984 relative to Article 5 (2) of the American Convention on Human Rights that is the position they took. The Commission found that the fact that the Jamaican Court of Appeal issued its decision on December 5th 1980 but did not issue the reason for that decision until four years later, September 24th, 1984, was tantamount to cruel, inhuman and degrading treatment because during that four-year delay the petitioners could not appeal to the Judicial Committee of Privy Council and had to suffer four years on death row awaiting execution.

The Trinidad Government, some years ago, put in place a Management Commission intended to serve as a mechanism to expedite these matters so that once a sentence is given at the Court, the accused is allowed all of his appellate rights and the processes are gone through, the judgement of the Court can stand and the sentence can be carried out - you are old enough, Mr. Deputy Speaker, to remember this - that is why Dole Chadee and his gang are no longer with us because the Trinidad Government moved as quickly as possible to put mechanisms in place to expedite the sentences handed down in the Court.

Mr. Deputy Speaker, we are going to expand the sentencing options and we are going to provide for relief for persons in consideration of their rights and so forth and we also have to so equip the system and so expedite matters that once appellate rights are exhausted the sentence of the Courts can be carried out and some elements in Barbados would not be of the view I can kill because all I am going to do is to go up there and after a while, 10 years 15 years, get fed, and come out. That is part of the thinking that obtains among certain elements in Barbados.

We need to improve the technical capacity of the Courts and we need to remove all of the obstacles to efficiency so that justice can be dispensed evenly and fairly but as swiftly as possible. Justice delayed is justice denied not only to victims and not only to offenders but to the entire society. That is the terms in which I see things, Mr. Deputy Speaker, that when the offence of murder is committed it is not just one individual against one individual but it is an action against the State, against the society and against our domestic humanity, if I may put it like that, and therefore those things may be seen and must be seen in those terms.

I have to ask, and I do not know who is equipped to answer, where are we with forensics in Barbados and legislation relative to the use and employment of forensics and where are we in Barbados with reference to the matter of the used platforms for DNA and the legislative framework among...? Maybe the legal minds on the other side can tell me and perhaps by extension tell the public because we take stress from the world, and we are made sometimes to address ourselves to those trends introduced

by them and pressure is put on us to comply and conform. That is part of the world system, that is where we are, that is the nature of life in this world for States today but I also think that we need to take cues from them as to where they have gone in improving and better equipping their justice and law enforcement systems, so my question really is where are we in Barbados today both with respect to the legislative frameworks and the used platforms for things like forensics and DNA.

I do not know, Mr. Deputy Speaker that we can continue for much longer simply relying, if that is what we are doing as seems to be the case, on witness provided evidence. We have to get real, Mr. Deputy Speaker. Our reliance on witness evidence is something we have got to look at. We are a small society and everybody knows just about everybody else. The Honourable Member for Christ Church East is even aware that I have a gun, I was not even aware of that so everybody knows everything about everybody else. We know what is happening in our society, Mr. Deputy Speaker, and there are some people who are very unwilling to come forward and say anything in the face of certain crimes or in the face of crimes committed by certain types of perpetrators and so there is a disinclination to come and say what I saw or to come and say what I know because if I speak against him, if I speak against her, if I go to court and talk in this frame, they know me, they know my family, they know my children, they know where I live, they know where I hang out and so there is a jeopardy, there is an exposure. We must get beyond that point where we have to exercise a measure of reliance which we now do on witness evidence only, hence my questions: Where are we with respect to the used platforms and the legislative frameworks relative to DNA and forensics and all of that? I do not know. You guys need to tell me and to tell the rest of Barbados, but I think that these things are very important.

The immediacy of the threat to witnesses, the capacity to bribe on the part of criminals and offenders, the vulnerability to bribery in the light of poor financial economic situations affecting many people, very vulnerable to being bribed, are all things with which we have to deal. We do not have, as far as I know, a situation which allows easily for witness protection, we do not have that facility. In Trinidad they do that but Trinidad is not much bigger than Barbados. They also do that in Jamaica and the United States of America but we need to be able to get beyond the degree of reliance which we now seem to have on witness evidence and employ some of the more scientific techniques in resolving crimes and responding to the criminal elements.

I have to ask the Honourable Member for Christ Church East to clarify or expand on something for me, I am referring to Section 39, the mitigating factors in relation to the Penal System Reform Act. At Section 39 - the

Honourable Member quoted these, Mr. Deputy Speaker - mitigating factors include the age of the offender. I do not have a problem with that but the particular circumstances of the offender such as a social and economic circumstances... Taken at face value, I think I understand that but it would seem to me that that language leaves some leeway for some discrimination in the application of that particular mitigating consideration, that the particular circumstances of the offender such as his social or economic circumstances...

Asides.

Hon. W. A. ABRAHAM: Mr. Deputy Speaker, I rise on a point of elucidation, at the request of the Leader of the Opposition. Mr. Deputy Speaker, it starts by saying that nothing prevents the court from mitigating the offender's sentence by taking these things into consideration, so [that] the court has the option to consider them or not to consider them or [to] apply them or not [to] apply them but it needs to be aware of what they are, and it will be a council of prudence for the court to actually address its mind to each of these factors and then decide what weight it puts into it. This is standard language for similar clauses and what it seeks to deal with....

Mr. Deputy Speaker, I understand where my friend, the Leader of the Opposition, is going. I think that the circumstances of social and economic circumstance tend more to the lower end of the scale than to the higher end of the scale, so that it would likely not be a situation where you get off because you are wealthy and come from a good home, so to speak, but rather that the court in looking at your offence, for example, if you stole two loaves of bread, the court will be able to look at the fact that you stole two loaves of bread and [that] you had a family at home starving and a child that had not eaten. So rather than allowing abuses by those at the upper end of the social platform it would allow mitigation and some consideration and compassion to be given to those who are otherwise disadvantaged at the lower end. Mr. Deputy Speaker, I hope that has clarified that.

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

Bishop the Hon. J. J. S. ATHERLEY: Thank you, Mr. Deputy Speaker, for allowing that point of elucidation from the Honourable Member for Christ Church East, and I understand what the Honourable Member is saying and that is how I interpret and take it at face value, all I am saying is that there are some persons who reading this will alternatively interpret that to suggest that it speaks to privilege perhaps to fellows who are 'better off'. We have had a recent instance in Barbados where we began to hear the howls of despair, the voices of recrimination when it seemed as though there is a law, one for the Meads and

another for the Persians, one for the Jews and one for the Gentiles. All I am saying is, this language here falling on the wrong ears may be interpreted to mean not what the Honourable Member has just said, that the court now has to consider this as a mitigating factor, especially with reference to those at the lower end but that the court can now, based on this, look at those who are on the.... You agree with that, do you not, Mr. Deputy Speaker?

Mr. DEPUTY SPEAKER: I agree with what you are saying.

Bishop the Hon. J. J. S. ATHERLEY: Are you agreeing, Mr. Deputy Speaker?

Mr. DEPUTY SPEAKER: I am listening.

Bishop the Hon. J. J. S. ATHERLEY: I thank you for listening. Mr. Deputy Speaker, so that you have Section 39 and of course several other guidelines for judicial sentencing on Section 41. I am not going to read them, the Honourable Member for Christ Church East went through all of them, and I believe that it constitutes a good section on guidelines to the court in terms of how officers of the court should conduct themselves with respect to sentencing, but Mr. Deputy Speaker, we need to strengthen our justice systems, as I have been trying to indicate. We need to ensure better victim support in Barbados. We need to ensure better victim support in Barbados. In 2018, yes, we must be concerned that there are adequate sanctions for offences. In 2018, we must be concerned that we can provide for proper conditions in our penal institutions. All of this is good but in 2018 we have to 'up de ting'. Is that what the people say? We have to 'up de ting' when it comes to this matter of support for victims, and it is a serious responsibility of communities, it is a serious responsibility of the State because oftentimes the victims of offences in Barbados benefit not, at all, in any way, significantly, or in any way sometimes, except to see that justice has been served and [that] somebody has been sent to prison for committing an offence against my person, but I believe we need to better facilitate victims support in Barbados. There are a lot of non-governmental organisations, there are a lot of registered charitable organisations in Barbados, the Church not excluded, which are involved in support for victims not only of poverty but victims of crime and the State has to facilitate that kind of work. We have to make sure in Barbados that there is not only punishment for the offender but that there is healing, [that] there is remedy beyond what you get at the court for persons who are the victims of crime as well, and also healing for communities as well because communities suffer when some individuals suffer, depending on that degree of suffering and the nature of that suffering and offence, so [that] we need to ensure a better victims support, we need to better ensure non-discriminatory outcomes for what I call marginalised and minority groups

in Barbados. We cannot shut our eyes, we cannot shut our ears, and we cannot turn our minds away from the fact that there is a strong view in Barbados that depending on where you come from, depending on how you are profiled by Barbadian society, your exposure to the strictures of the court differs from those of people who are otherwise profiled. That is a reality and I think a Government worth its salt would face up to that squarely and [would] try to address the matter of even if it is only a perception, non-discriminatory outcomes at court at the hands of justice, the justice system for marginalised minority groups, those who live among the lower socioeconomic ranks in Barbados.

Asides.

Bishop the Hon. J. J. S. ATHERLEY: Come back after Lunch? I have to go bury the dead, you know, Mr. Deputy Speaker, but if you give me two more minutes I will conclude this. Thank you very much. Mr. Deputy Speaker, we have to go there, it is not just about locking away people, it is not just about protecting the rights of people who commit murder and ensuring that there are options of sentencing but it is to treat to victims, it is to treat to the system, make sure that the system is more expeditious in how it does it work and make sure that there is a better provision, a better atmosphere, a better environment, a better deal for those who are victims of these various offences.

Mr. Deputy Speaker, we need to address factors of urban poverty. This Administration historically has been noted and in its last iteration was particularly reputed for taking a significant interest in the matter of urban poverty and addressing this urban poverty. I am saying this because social erosion, community scarring, urban poverty, high not only employment but levels of underemployment conduce significantly to crime in Barbados, and if you are going to address matters such as this which require change in Constitution, a change in so much of the rest of the legislative framework and Articles, if you are going to do this you cannot lose sight of these other things. All I am saying is that if you are going to address crime you have to deal with urban poverty, community scarring, community erosion, high levels of underemployment in Barbados. The Honourable Member for St. Michael East will tell you this in glowing terms using far better language than I can, that you have to address this because as long as you have this you will have a problem of crime. We are preparing now to go into a harsh period of economic strictures, and the Lord knows what that will bring in terms of its impact upon those who are already poor. I am not treating to that right now, but all I am saying is that if we address the justice system at this level, with matters of sentencing and the issues of capital punishment, and we change of all of this, this is fine, but treat to victims as well. Facilitate groups that are involved in victim support but also deal with issues which conduce to crime, like poverty, urban community

scarring and erosion and the like, and high levels of under-employment which is really a serious feature in Barbados. I thank you, Mr. Deputy Speaker.

SUSPENSION

Lt. Col. the Hon. J. D. BOSTIC: Mr. Deputy Speaker, I beg to move that this Sitting be suspended for lunch until 1.45 p.m.

Hon. W. A. ABRAHAMS: I beg to second that, Sir.

The question that the Sitting do now suspend until 1.45 p.m. for lunch was put and resolved in the affirmative without division and His Honour the DEPUTY SPEAKER suspended the Sitting accordingly.

RESUMPTION

Mr. DEPUTY SPEAKER: This Sitting is resumed. Government Business is now the order of the day. The Honourable Member for Christ Church South.

Mr. R. A. THORNE: I am obliged to you, Mr. Deputy Speaker. Your Honour, there are not many issues that touch public sensitivity as viscerally as the death penalty. There are several issues that pass through the public domain for discourse among people but when one comes to the issue of the death penalty, it is normally an area in which one abandons political affiliation, one abandons narrow political interest and personal and individual conviction comes to the fore. It was almost fascinating as an example of that to observe the exchange between the Honourable Leader of the Opposition and the Honourable Member for St. Thomas this morning to whose contribution I eagerly look forward but even at that level of exchange there appeared between those two to be some commonality of thought and conviction on the issue of the death penalty. It maybe that they belong to the same generation, and I am not far behind. I know that definitely they come to life and they come to this Chamber with that sense of value that dates back to a childhood which was stable and which they were taught that law and order was to be respected. It clearly dates back to a time when authority was respected and that was time in Barbados in which the death penalty was taken as being the right thing to do in the event where a person was found guilty of murder, or indeed a person was in some cases found guilty of manslaughter there were people who still felt that a life was taken and that the only recourse was to take that person's life.

Mr. Deputy Speaker, that is not within my immediate contemplation this afternoon. I want to explore the legal and constitutional matters which spring from this amendment that is brought before the House. It is a matter of some regret that this amendment comes only because the

Caribbean Court of Justice has given a ruling in a case called *Severin and Nervais v The Queen*. It is ironic that men who commit these very heinous offences normally have their names celebrated in Parliaments and in legal discussions in law report. They become celebrated figures although what they have done is not worthy of any celebration, so I will not call the name again but it is that case that has caused this Parliament to reach this point today. I did say it is a matter of some personal and professional regret because we ought to have been at this stage a long time ago. We ought to have been amending the law that mandated a judge to sentence a person to death when a jury said that that person had been guilty of the offence of murder. Now, this is a new Parliament so it is not to reflect on this new Parliament but I cannot pass unless I criticise an earlier Parliament for its delinquency because as I have said, we should have been here a long time ago. When we were celebrating 50 years of Independence, we were still without all aspects of our sovereignty and I will say what I mean by that. There is a section in the Constitution, Section 26 and it called ordinarily the Savings Law Clause. I am addressing you, Your Honour, as much as I am addressing the public and to give explanation to this so called Savings Law Clause. When we received the Constitution in November 1966, that Constitution contained a section, Section 26, that Constitution also contained a Fundamental Rights provision, in other words, that Constitution gave to the citizen the right to life, the right to freedom of association, the right to freedom of speech, it gave several rights and freedoms that we call fundamental rights so that here was the Constitution in November 1966, giving to every Barbadian citizen his fundamental rights and that the State could not abridge those rights, they were fundamental, every citizen had the right to be exercised of those rights even against the powerful State but here was the same Constitution at Section 26 saying to the citizen that any law that was passed prior to 1966, any law that existed prior to 1966, which he felt or which objectively it was felt collided with or infringed any of his fundamental rights, that any law prior to 1966 remained good law, in other words, he could not challenge that law that existed to 1966 even if he felt and even if the courts felt that law abridged any of his fundamental rights and that is why we refer to it as the Saving Law Clause, it saved laws prior to 1966 even if those laws were in conflict with your fundamental rights derived under the Constitution. Sir, here was a Constitution giving rights and here was the same Constitution assertign to the citizen that any law prior to 1966 that collided with those rights remained good law and the law that we have come to amend today had been one such law. That law was contained in the Offences against the Person Act.

I said earlier that it really touches questions of sovereignty, sovereignty being that right and capacity to govern the entire geographical area that is called Barbados, but I press on from that to indicate to you, Sir, that looking

at the Offences against the Person Act more particularly. That Act said what we all know it said but let us say it again, that when a jury found a man guilty of murder, the judge had to, there was no choice - and I think the Honourable Member for Christ Church East explained it this morning -- it was automatic. It was almost ritualistic. The jury finds the man guilty of murder and the judge literally read the sentence, he had no choice in the matter. Was there not then a sense in which the jury, those 12 men and woman were determining what was to be the sentence because a jury went into that case, a jury went into that jury box, knowing, having been told by the prosecutor and they went into that deliberation as to a verdict knowing that a verdict of murder would result in the man's possible death. I submit to you, Mr. Deputy Speaker, that there is a sense in which the jury was passing the penalty of death, was issuing the penalty of death, not the judge. The judge's role, in my view and in a very real sense was ritualistic. He was reading what the law mandated him to read and I submit that for this other reason and to ask the question, when we come to amend the law in the words of the Honourable Member for Christ Church East is there not a case for a further discussion as to whether the discretion to execute or not to execute should reside with the judge alone or whether it should reside with the jury.

I submit to you, Mr. Deputy Speaker, - and I say to the citizens of this country that there are certain parts of the United States of America (USA) in which the systems says that after a man is convicted of the offence of murder, in their jurisdiction it would be first degree murder -- the jury, and this is only in some States, the jury then holds a separate deliberation, it becomes almost a separate trial and it is the jury that has heard the case that then tries to decide whether the person that they convicted is due the penalty of death.

I want to submit to you, Mr. Deputy Speaker, and I want the public that feels very, very strongly on the issue of the death penalty to consider whether the responsibility, the heavy and final responsibility, of passing a sentence of death should fall on one person, whether it should fall alone on the shoulders of a judge or whether, as in some jurisdictions in the United States of America (USA), that grave and weighty decisions should be made by a panel of 12 persons and whether that panel of 12 persons will be allowed only to pass that sentence of death if they are unanimous.

As I have said before, Mr. Deputy Speaker, under the system that we are changing today at the urging of the Caribbean Court of Justice in a very real sense it was the jury that was not only convicting but condemning that man to death. As I said, the judge's role was ritualistic. This amendment today places that entire responsibility on the judge himself. I think we as legislators, we as Parliamentarians need to invite the public into this

discussion because this is a discussion that has no political borders. This is a matter of individual conscience and individual conviction deriving from the state of one's value system therefore the public must be and might be asked to consider whether in the even that they wish to preserve the death penalty. Do they also wish to preserve that discretion in the hands of a single person who happen to have conducted the trial as a judge or whether that heavy responsibility should find itself distributed among 12 persons acting as composite whole; a jury and that it would only after they have found that the person ought to be condemned to death that they must do it unanimously. That is a heavy responsibility and the public that invest so much emotional energy ought to be engaged as to what is their position on it. Is it one man, or should it be a jury of 12 persons.

As I said, Mr. Deputy Speaker, this Section 26, this Savings Law Clause, I come back to it. The Caribbean Court of Justice (CCJ) sitting a few weeks ago reminded this country and in particular, reminded this Parliament that Section 26 of the Constitution should not hold a country hostage or should not hold a country's legal system hostage indefinitely. Indeed, that Court remarked that in Belize when they introduced their Independence Constitution their Savings Law Clause was expressed to be for a period of five years. In other words, it was transitional. What the Savings Law Clause does in Belize and what it ought to have done in Barbados 50 years ago was to have urged the Parliament to get busy that any law prior to Independence which was unjust, any law that was ripe for amendment, the Parliament of the country was urged to amend that law, to change that law, to update that law, to modernise that law so that Belize should not have found itself in Barbados' position 50 years after independence. The Belizeans said that Savings Law Clause will only exist for a period of five years. In other words, it was given the Parliament of Belize five years to put bad law right, to correct injustice within the legal system. We were around here in 2016 making a song and dance about 50 years when the Parliament of this country, at that time, should have been correcting unjust pre-independence law, but we preferred the party rather than to have an industrious Parliament fix the law that needed to be fixed. The CCJ stated in that case that the Parliament of this country should get on with the business of correcting pre-independence law as it relates to this amendment. So that, without diminishing on the efforts of the Attorney-General, the Attorney-General has done what the CCJ is suggesting what ought to have been done.

To that I add again, that what is being done today ought to have been done a long time ago. We as legislators must spend our time looking constantly at law reform. There is so much law which need reforming in Barbados. There is so much law that are antiquated. There is so much law that needs to be updated with technological advances, except that if that law, and I repeat if that law had been pre-

independence law you cannot challenge it if you felt that law offended against the fundamental rights provisions. We have been brought to this place by the Caribbean Court of Justice and this Parliament must be even more industrious, and on its own initiative must look at all those pre-independence laws which need updating.

Mr. Deputy Speaker, the case also highlights the relationship between two arms of the State, the relationship between the judiciary and the Parliament. I think the public needs to know there are three arms of the State, and when I say the State I am not talking about the Government. There is always a time to explain to the public what is the State, what is the business of the State and why the State must exist. The State is that human community which has legal responsibility for the security of this entity that we call Barbados. That is the State, it is a human community, a collection of human beings.

The State is not the Government, it is an entire human community stretching beyond the Government and that

State gives power or rather power is given to three entities within the State. The legislature, this Parliament which include the Senate which has the responsibility and the sole responsibility for passing laws because we all exist under law. No one is above the law, which is why we speak about the rule of law. The rule of law implies that none of us, no living person in this country can function above the law.

So, this Parliament always has the responsibility for passing laws and it is a serious responsibility. When that law is passed all persons become subject to it and all persons must obey. The Judiciary will say to you and the country that they do not pass law or make law. Some persons challenge that, but it is their responsibility to interpret the law. Of course, the other arm of the State is the Cabinet and it is the Cabinet that has responsibility for managing the day to day affairs of the country. They do so by setting policy and executive action.

I refer to that relationship between the three bodies of the State to indicate, Mr. Deputy Speaker, that not one of those bodies is superior to the other. Some months ago when this Parliament was differently constituted, I heard a Member who has since disappeared from here stating he would take action in relation to certain matters pertaining to the judiciary. That statement was an unhappy statement, it was unconstitutional firstly. Neither the legislature nor the Cabinet has any authority or supervisory authority over the judiciary. The legislature, that is to say the Parliament, and judiciary are equal under the Constitution of Barbados. They are equal, they have power within one does not exceed the power within the other except that they are separate. Being separate, one is not superior to the other.

The only supreme entity in this country, the only thing that is superior to those three arms of the State is the Constitution of this country, because all three arms of the State must function according to the dictates of the Constitution. This is what is meant when we speak of constitutional supremacy. However, we are brought to this place in this event today because the judiciary has ruled in this case that pre-independence law conflicts with the fundamental rights within the Constitution. The Constitution itself had said since 1966 that you could not challenge any law if it collided with the fundamental rights within the Constitution.

The CCJ has departed from that and that is what is so significant about this decision. The CCJ has departed from that and one may go as far to say the CCJ has taken a political initiative. I want to say that many of us who describe ourselves as progressive lawyers may well agree with them. Fifty-two years into your independence you cannot have your laws kept back by a provision in the Constitution that states you must keep old law. It is the CCJ that has sent us here today with this mandate that pre-independence law if it is unjust, it has to be dismantled. What the CCJ has done, Mr. Deputy Speaker, there is a sense in which the CCJ itself has promoted the dismantling of Section 26 of the Constitution. It is the CCJ that has promoted the dismantling as the Savings Law Clause.

As I said before, Belize long anticipated this situation and they passed a law within their Constitution that their Savings Law Clause would only last for only five years, and at the end of five years it ceases to be of any legal effect. We have waited 50 years to do what the Belizeans had the courage to do when they became independent. Finally, Mr. Deputy Speaker, the issue of punishment, there is nothing that touches public sensibility as much as punishment. I am willing to wager that we live in a country in which people are agnostic on things like the existence of God, things it is said cannot be proved. I do not believe I would ever meet a

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person who is agnostic on the question of the death penalty. I cannot say where the majority stands on it but I know everybody in this country feels strongly about the death penalty. They feel strongly either for it or they feel strongly either against it. Again, I say this is a discussion, this is a debate, in which the public must make that strong emotional investment as to whether we should continue with the death penalty, and we hasten to make the point to Barbadians that this amendment today is not abolishing the death penalty, that what this amendment is doing today is giving the judge, as the Honourable Member for Christ Church East said, a discretion as to whether he or she will impose that penalty of death. I submit Your Honour, it is a very, very heavy responsibility. I will not read exhaustively

where the judge is invited to exercise his discretion but it is obviously in extreme circumstances where it is heinous, where it really offends humanity, if you kill a baby for example.

This amendment also aims to protect the very existence of the State where you kill a police officer, for example or where you kill a judge, for example. A judge has responsibility for hearing a case of any nature. A lot of people leaves the family court and when they leave, you hear them - so many houses are burnt after the family court adjourns on Fridays - they are going to burn the house, they are going to burn the car, they might kill somebody, so it is not only in the criminal court in which the judge becomes exposed to potential danger but it is the court in every jurisdiction particularly in the family jurisdiction. A lot of people leave there believing that they have not had their rights defended and they are going to kill somebody and so in the event that that threat is ever carried out a future judge becomes entitled to consider that if that were the motive for the killing of a judge, I have no doubt that His Lordship or Her Ladyship will indeed sentence the person to death for killing his brother or his sister.

Mr. Deputy Speaker, I have asked the question earlier and I will ask I again so that the public may consider this: Is that heavy responsibility to be placed properly into the hands of a sole human being or the persons who heard the trial, the 12 persons who sit in a room and hear an entire trial for two/three weeks, then they sit and deliberate sometimes up to five hours so that they have a command of the facts, they have a better grasp of the facts than any other person, they do not derive their facts from gossip nor from social media, they derive their facts from what they heard in the court room in the form of testimony? Is that body of persons or should that body of persons participate in the imposition of the penalty of death?

Mr. DEPUTY SPEAKER: The Honourable Member has five minutes more.

Mr. R. A. THORNE: Thank you very much, Sir. I remind you as to what I said earlier, Your Honour, that there are parts of the world and I think in the United States of America where the jury participates in the penalty. We are asking people in this part of the world to place that responsibility on the shoulders of a sole judge. We looked at the various instances in which the judge may sentence a person to death, as I said, where for example he has killed a helpless child, where the person killed was a member of the Police Force, and let me happily say to the Honourable Member for the City of Bridgetown that this includes members of the defence forces so that the amendment is aimed at protecting the very existence of the State. You cannot target your State officials and if you kill your State officials the inference is that you are trying to destroy the State but then at the end it gives the judge an even wider

discretion. It says in the opinion of the court where there are any other exceptional circumstances which must be taken into account and which justify the imposition of a sentence of death.

Mr. Deputy Speaker, it is not for us to guess at this point as to whether this amendment will ever be employed in this country. The last time this country did it was on a sunny morning in June 1984. I remember a man indicating to the media that he went up there because he likes to hear the clap of the trapdoor. Death and punishment by death appeals to people in all kinds of weird ways. We like to be more dispassionate in matters of the penalty of death but I will end by saying this, Your Honour, to you and to my colleagues and to the public of Barbados, just to remind that this is not a partisan issue, this is not an issue where there are political barriers, that this is an issue of personal conviction and that personal conviction may even find its basis in religious beliefs, it may do so, but to consider that even after this becomes law that we must not leave it, that this Parliament must find itself in the not too distant future debating the question of a system of degrees of murder as in other countries, I think that time has come. I think the time has come when the degrees ought to be extended beyond what we have presently. At this point in time we only have murder and manslaughter, that is all we have, and to be honest sometimes you get a sense that a jury believes that the verdict or the penalty for murder is so severe that what may otherwise be murder they reduced to manslaughter. I am not a prosecutor but I will say this, I suspect that there are juries who have found men guilty of the lesser offence of manslaughter simply because they do not want the man to hang. There are cases in which they may well believe that it fits within the category of murder but they go for manslaughter as a compromise which is consistent with my earlier view that juries in effect sentenced and that juries sentenced by reducing murder to manslaughter if they do not want the accused man to hang, and so I think the time has come in this country, and I say this from a very personal position, that we ought to be introducing degrees of murder so that jurors have a clearer picture as to what they are dealing with. It could be first degree murder, second degree murder or third degree murder and beneath that manslaughter and the other homicides by misadventure and so on.

Mr. Deputy Speaker, the point I am making is that we have the opportunity, and I urge the Honourable Attorney-General to move beyond this legislation and to progress the issue of the death penalty under the Constitution of Barbados, to progress it further where men can feel that they are going to get a fair trial in the courts, and where the relatives of the deceased will feel that their matter is so respected that the system is willing to treat it with due respect, and I think that is the point we have reached.

Mr. Deputy Speaker, in the 30 seconds I have left, is it that or is it more than that?

Mr. DEPUTY SPEAKER: Please conclude, Honourable Member.

Mr. R. A. THORNE: Mr. Deputy Speaker, I want to respond to something the Leader of the Opposition raised about forensics. We have had forensics around here for a long time, a very long time. Forensics have made murder cases a lot easier. I think the first murder case that relied on forensic evidence was done sometime around 2006, that is 12 years ago, so that we do have a Forensic Laboratory. It certainly has made rape cases a lot easier to deal with because the man cannot say he did not do it if they prove that the semen is his. His defense then becomes reduced to that of consent, but a lot of men used to come to say and say: "Me, not me, I was not there." But forensic evidence can place him there, quite literally and physically [it] places him there, so [that] it reduces his defense and therefore promotes justice, so I want to assure the Leader of the Opposition that forensic evidence is alive and well in this country and that it has saved the courts a lot of time trying to deal with people who dispose themselves to telling lies for the purposes of freedom.

Mr. Deputy Speaker, I suspect this debate will continue another time. I will end by urging the Honourable Attorney-General to do what the past Parliament has not done, that is, to become industrious, to get busy with the Laws of Barbados, to look at pre-Independence laws which are unjust and to update them, so that the Constitution is genuinely supreme, because I say to you, Your Honour, that Section 26 denies the supremacy of the Constitution in which it is contained. We do not yet have a Constitution that is supreme if it allows pre-Independence law to govern our modern reality. With that, I am obliged to you. I thank you.

Mr. SPEAKER: Thank you. The Honourable Member for St. John.

Hon. C. McD. GRIFFITH: Mr. Deputy Speaker, I wish to participate in this debate, for a couple of reasons. I am forced to drink from the chalice of forgiveness and leniency as it relates to this particular Bill. I must admit that I would have vacillated a lot on this issue, if not for the simple fact that I am a father of three. Mr. Deputy Speaker, the reality is that the Honourable Member for Christ Church East and the Leader of the Opposition would both have mentioned the mitigating circumstances as it relates to the punishment of the death penalty and I want to take this opportunity to be pointed in relation to some of the areas or one particular area that I believe would strongly factor into the mitigating circumstances.

Mr. Deputy Speaker, if you look at the court cases, more often than not you would see youngsters from a socioeconomic background that speaks to struggle, and I want to be pointed here as it relates to parenting. I am not going to point the fingers at the females in Barbados because as a product of a single mother, I too could have done in that direction, but I want to point the finger today, Mr. Deputy Speaker, at the fathers or maybe those persons who donate sperm in this society and masquerade as fathers. Mr. Deputy Speaker, I believe that if the men in this society took greater responsibility at what we know as parenting, what we know as fatherhood, then the situation that we see reflecting in the daily papers about those guys who are facing the law courts for the death penalty [they] would not be there. Now, I am not saying that if you parent at a particular level that you would not still find youngsters who go rouge as we know it, but the reality is that the 'block' culture in Barbados will not, in any way, reduce itself soon because every day we have youngsters from communities who are gravitating to the 'blocks' because it is the only solace for these youngsters in life: there is no love at home, there is no father figure to actually guide them in a particular direction. Hence, the influence of peers will always redound, in some cases, to youngsters making decisions that will place them before the courts, so again I see that as the mitigating factor to remove the mandatory death penalty from some cases that we know as murder. Mr. Deputy Speaker, I really want to send a message to the men in Barbados, that if you enjoy a couple moments of ecstasy, I am saying that after that the results you must 'man up' to what is happening after that because if we do not do that, in the constituency of St. John, yours next door, Mr. Deputy Speaker, we are constantly see a flow of youngsters who will again and again and again end up before the courts.

Mr. Deputy Speaker, I spoke about sipping from the chalice of leniency and we have examples of giants who would have walked this earth, giants in the form of Martin Luther King who forgave those who would have done major, major damage to our lineage in the United States of America. We have giants like Nelson Mandela who in South Africa had to face some of the most trying times and came out forgiving those persons, so that I am saying the mitigating circumstances that are there are the only things that make me support, in a sense, this particular Bill as it relates to removing the mandatory death sentence, because I understand that those issues, those socioeconomic problems that we have across Barbados must be fixed if we are to reduce the court system, that we would see youngsters engaging in murder. Mr. Deputy Speaker, last month at the Vatican Pope Francis would have made changes to the Roman Catholic teachings as it relates to the death penalty and he would have suggested that he is pushing that the Catholic Church worldwide moves away and push for the total abolition of the death penalty as we know it.

Mr. Deputy Speaker, I am saying this particular piece of legislation has been happening from May 24 is one that is very, very progressive. It is one that is well thought out by the Barbados Labour Party. The Honourable Attorney-General is doing what is required in order to make the whole country safe. The legislation that is coming is proactive legislation. It is one that will, at the end of the day, rebound to a better society and hence I have that particular interest in supporting this Bill as it currently obtains.

Mr. Deputy Speaker, the reality is that the Honourable Member for Christ Church East would have identified and clearly outlined a situation where a youngster was able to turn his life around. I believe that we should not deprive persons who are seeking redemption, to have that redemption and to have that redemption coming from the State. Therefore, those guys who found themselves in situations of bad company or in a situation where something went wrong, and the remorse is actually there and we can see the fact that there is remorse, must be provided with a second chance in life to show that, yes, I would have done wrong but now I have recovered and I am prepared to give back to society. We must find a way to reintegrate those particular guys into mainstream society. I have been a part of the process for the better part of 20 years in terms of reintegrating those youngsters into society, and I am aware that there is a particular programme now that is targetting the blocks across Barbados to do a similar thing, to reintegrate. The fact that we are able as legislators to come here and put forward legislation that will again allow some families to have that recourse of knowing their son or daughter will not suffer the mandatory consequences of going to the hangman, I think is a plus.

I am speaking and not leaving out the victims because I am fully aware and cognisant of the pain that is visited upon the victims as a result of murder. Hence, the reason why I said first and foremost as a father of three, including two daughters, that I have vacillated with the issue in terms of where I should treat to the fact. That chalice of redemption and that chalice of leniency, with a level of maturity, I think all of us on this landscape are forced to drink from in terms of how we treat to our fellowman. The Barbados Labour Party is leading by example as it relates to that. I am aware that those persons as well who embrace pro-life are seeing abortion as being more prominent than the death penalty, and that maybe I can understand as well, but the truth is that I think this will resolve in the minds of some person in terms of this being a fair Government, and those persons who go before the law courts will be given a real opportunity to turn around and contribute in a special way to society.

Sir, the reality is that in every society there must be measures put in place to curtail certain levels of crime. We

are looking at putting measures in place to curtail the ZR culture. The sanctity of life is something which is important, and I know there are lots of persons who believe in that adage of an eye for an eye in relation to those persons who take a life. However, the reality is that again we must look at every single case based on the circumstances surrounding it, and understand that we must protect those who in some cases find it difficult to think for themselves. I believe this particular piece of legislation is timely. I believe that we are doing what is necessary to move this country forward as far as the social aspect is concerned, so I really -- as I said today -- want to embrace this and I think that I would have contributed what I had to say as it pertains to this.

Mr. Speaker, before I take my seat again I want to place particular emphasis on the fact that the men in Barbados must "man up" to their responsibility of fatherhood. It cannot be a case that you are walking around in a tie and driving big rides and all the rest of it, but the children who you produced are suffering. I know from firsthand knowledge that this is happening in Barbados, and females are facing the court system in the most embarrassing circumstances to collect money. You have fathers out there who are not interacting with their male children, and it is forcing those youngsters to look for love on the blocks and in groupings that will only lead to a negative finale. Mr. Deputy Speaker, I am obliged.

Mr. DEPUTY SPEAKER: Thank you. The Member for St. Michael South.

Hon. K. D. M. HUMPHREY: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Honourable Member for Christ Church East.

Asides.

Hon. K. D. M. HUMPHREY: I also know that we said and we promised as a Government that when that day comes we would have a much larger conversation than the 30 of us in this room and, indeed, whether or not we proceed to have a conversation on the death penalty and how we decide to move forward will depend on what the people of Barbados say they want to have through a referendum. Today, Sir, I want to speak specifically to what was raised by the Honourable Member for Christ Church East and, truth be told, I found it to be very passionate and very powerful and in some parts very poignant. Considering all that he said is true and considering what I also happen to know about the law as it relates to this particular case, I believe that we as a Government are simply doing that which we now have to do.

Before I move on to speak specifically to the Amendments before the House, as the Honourable Member

for Christ Church East spoke he reminded me of a poem by Oscar Wilde: The Ballad of Reading Gaol. I do not know if you have read it, Mr. Deputy Speaker, but it is a most powerful piece. The reality is that at the time he came up with the piece, Oscar Wilde was in jail for a crime which today many men would not consider to be a crime, but he was in jail for a crime in his time. At the time he penned the piece, a man had been brought to jail for having murdered his wife, but the poem does not speak to whether or not it was right or wrong to commit the murder. It just spoke to the reality of being on Death Row and hearing the gallows being swung every morning as they made sure the gallows worked, people making jokes at you and taunting you as you were there on Death Row.

Wilde wrote:

"I know not whether Laws be right,

Or whether Laws be wrong;

All that we know who lie in gaol

Is that the wall is strong;

And that each day is like a year,

A year whose days are long."

I can just imagine for a man who finds himself on Death Row that the days would be very long, and in the circumstances that the Honourable Member for Christ Church East spoke to I can imagine that those long days would even be longer. I therefore look forward to when we have that conversation on the death penalty in further detail; I really do. Not when we discuss the removal of the mandatory provision for the death penalty; there will be a day when we have to talk in more detail about the death penalty, and I look forward to that conversation. I will tell you why. I had friends who were murdered, Sir; more than one. I have friends who were also accused of murder. I have a very good friend who was on Death Row, and in fact I saw him last week or so because he is now a free man. Sir, when we get to that point I will speak on that issue from a personal perspective, but today is not that day, Sir.

Sir, I believe what we are here to do in essence is to correct a wrong in the legislation. That is how I see this. Essentially for me the mandatory death penalty takes away the freedom which we in Barbados wish to associate ourselves with. In a way, anything that denies freedom denies human development of human expression, and in a way that is where we are as a country, Sir. I heard the Honourable Member for Christ Church South say that he would hope the Honourable Attorney General would do his work and continue to bring legislation to the House, Sir,

and I think it is necessary. The reality is that for the last ten years or so there have been a number of cases of all kinds which should have been brought to this House for discussion, and things which should have happened in Barbados that did not happen. I will probably speak to that in more detail later, but we have to do the people's business when we come to this House.

Sir, the mandatory death penalty is on the decline everywhere. It is not only a case where it is happening in Barbados and it is on decline largely I am told because of judicial challenges and that since 2000, at least 18 countries have discarded the mandatory death penalty. Some concluded that it was unconstitutional and arbitrary and inhumane.

Mr. Deputy Speaker, Sir, we are doing in Barbados what other countries have already done. In fact, in 1976, the United States Supreme Court was one of the first courts to strike down the mandatory death penalty so at the end of the day we are taking away the power of the death penalty and for a judge to say the person is condemned to die. We are saying that it is not mandatory for the judge to condemn the person to die. I want to make it very, very clear that this Government is not taking the death penalty off the books, that we are removing the mandatory death penalty. It has also been the case with international tribunals. They have likewise condemned the mandatory death penalty. Sir, what the Caribbean Court of Justice did was in keeping with international applications I believe of the law and it was what was considered to be one of the most significant judgements of the Caribbean Court of Justice when they unanimously declared the mandatory death penalty was unconstitutional in Barbados. They decided that the mandatory death penalty was unconstitutional in Barbados, the Caribbean Court of Justice, our highest court, Sir. We are seeking therefore to execute that which has already basically been decided by the court.

Asides.

Hon. Kirk D.M. HUMPHREY: The Honourable Member for St. Peter is reflecting on my use of the word "execute" but the court ruled, Sir, that not everyone convicted of murder deserves to be executed and the court should be allowed to consider each case separately. They also went on to say that Parliament was wrong to legislate for an automatic death penalty because under the Constitution of Barbados the selection of punishment must be exclusively performed by the court and that we had somehow reduced the court to a rubber-stamping institution. Sir, in essence, we are doing what we have to do but I do look forward to having a much larger conversation on the death penalty and engaging wider Barbados in that conversation.

Mr. Deputy Speaker, I begin by saying that in my mind this is about human development and human expression and today we make no judgement whatsoever on the rights or wrongs on whether the death penalty should or should not be allowed to continue in the country. I listened very closely to the Honourable Member for St. John and I know how he feels about community work and I share his views entirely as it relates to the struggle faced by people of lower socio-economic status and the almost.... Sir, let me rephrase before I say something that is not necessary fit for this honourable place. I share his views and I know that it is disproportionate in the way that persons born into certain classes may find themselves (1) before the court and (2) guilty. Sir, that has always bothered me about the death penalty but there will be a conversation for that at another time, we do not make that judgement today. I believe that Barbados must be able to choose for Barbados and that we must empower the persons that we ask to be responsible for administering the laws of this country to be able to make the choices that they have to make and that we are seeking to correct a wrong is simply that, that we are now seeking to correct a wrong but what strikes me most of all about this whole thing is that for the last 10 years, I mean it has affected both Governments but certainly the movement has been such in the last 10 years that other people have gone ahead and done it, that we have taken so long as a country to right some of these wrongs. Sir, for the last 10 years there is a level of inertia or has been a level of inertia in the country that is perhaps unparalleled in the governance of the affairs of this country and it is not only here, Sir, you would see the Attorney-General, again the Honourable Member for Christ Church South said it, but you would see that the Honourable Attorney-General has been very, very busy trying to bring legislation to bring Barbados into the 21st Century and that we had a Government that at best, Sir, is guilty of doing absolutely nothing for the people of this country for 10 years and at worse, which is probably a more accurate reflection of who they are have done tremendous to the country and to the people of Barbados over the last 10 years, and I will tell you why I say that, Mr. Deputy Speaker. Sir, every single indicator, every index that matters in relation to a country's development, it is not only here that they have not done what they were supposed to do, to right these wrongs. If you were to look at our position on the Human Development Index Barbados has fallen. If you look at Barbados' position in relation to the International Maritime Organisation, we just did an audit and we failed in 21 areas, Barbados has fallen. If you look at Transparency International, the Doing Business Index, everything that matters, Barbados has fallen simply because people who were supposed to do what they are supposed to do did not do it. We bring legislation here to do what was supposed to have been done a long time ago and that we are correcting wrongs in this amendment that the Honourable Member for Christ Church East brought, is what we have to do. We have just removed the mandatory

part of the legislation. Sir, there will be a time when we will come to this Honourable House and talk more deeply about governance and why it is that legislation coming out of this place should be frequent and why it should be meaningful because these things matter to people. I think if there is one thing that perhaps we probably need to do more as a Government and I know we have done a lot of it, certainly more than any other Government is to continue to share with the ordinary man and woman in this country what it is that we do when we do it and what bearing it has on their lives. I heard the Honourable Member for Christ Church East as he spoke to the young man who almost fell to pieces when he, without intention, had taken the life of another person to have it read to him that he will be taken to place to hang until his body was deprived of life. That is a serious thing. In the instance where you never set out to do it, in the instance probably where the judge, if he had an option, would not have read it, would lend a young man to have to take his own life. These things have real impacts on real people that is why we come to this Honourable Place on this this day to correct a wrong.

Sir, before I take my seat I listen very closely to all who make contributions in this Honourable House. I listen and I try to assimilate, I try to learn from those who were here forever, like the Honourable Member for St. Michael North, who deserves to be here for six terms and who I think the House should recognise has been very recently his 24 years uninterrupted in This Place along with the Honourable Leader of the Opposition, but I sit, Sir, and I listen and I try to learn, because that is why we are here. We learn so that we carry forward for the next generation. It is the same thing that we bring legislation to this House.

Asides.

Hon. K. D. M. HUMPHREY: Mr. Deputy Speaker has been here for 30 years?

Mr. DEPUTY SPEAKER: Twenty-four, the same as Hon. R. St.C. TOPPIN.

A rousing round of applause.

Hon. K. D. M. HUMPHREY: Twenty-four years as well? Well, Sir, we commend you too. These things are significant achievements and to have done so and to do justice to your country, Sir, I commend you but I will never take this position where I stand here and I allow the people of Barbados to forget what it is that the last Government has done to us. We are discussing something that they should have done. I find myself in a ministry grappling with things that they should have done. You cannot find any paperwork, you cannot find any money either, I am told.

Asides.

Hon. K. D. M. HUMPHREY: You cannot find anything, no kind of benchmark, no light post, nothing to guide you as a young minister. In the Ministry in the last 10 years, Sargassum seaweed on the coast, they are acting as if it is the first time they have seen it. You have to start from the beginning. The Honourable Member for Christ Church East dealing with sewage almost from the beginning, difficult things that should have been, for us, Sir, in a position to build on what was left. Nothing. We cannot let the good people of this country forget.

As I close I want to tell you a story. It seems to me that they have decided now that they, the members of the former Government, must share and every time they see Kirk Humphrey, they must give some kind of advice, Mr. Deputy Speaker, so I have now been advised three times by former members of the Other Side. I am a decent person, I do not shut them down. I listen and discard, Mr. Deputy President, because if could do the kind of harm that you (they) have done to this country what are you talking to me for. Why? We come to do justice to the people and for the people of this country. In all that we do and every piece of legislation that we have brought here, Sir, is fundamentally important. These series of amendments that are now before this House, Sir, are so significant in my mind. To give the people we have authorised to make those judgments, the freedom to make the choices and fundamentally that is what human development is, the expansion of freedom. Sir, I wish to commend the Honourable Member for Christ Church East and to offer my fullest support to these amendments.

I am obliged, Sir.

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

On the motion of Lt. Col. the Hon. J. D. BOSTIC seconded by Dr. the Hon. W. F. DUGUID, further consideration on the Bill was deferred until another time.

ADJOURNMENT

Lt. Col. the Hon. J. D. BOSTIC: Mr. Deputy Speaker, we have come to the conclusion of Government Business for today's Sitting and I beg to move that the House do now adjourn until Tuesday, September 18, 2018 at 10:00 o'clock a.m.

Dr. the Hon. W. F. DUGUID: I beg to second that, Sir.

The question that the House be adjourned until Tuesday, 18th September, 2018 at 10 o'clock a.m. was put and resolved in the affirmative without division and Mr. DEPUTY SPEAKER adjourned the House accordingly.

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SPEAKERS IN THIS ISSUE

ABRAHAMS, Hon. W. A.

ATHERLEY, Bishop the Hon. J. J. S.

BOSTIC, Lt. Col. the Hon. J. D.

DUGUID, Dr. the Hon. W. F.

FORDE, Hon. Miss C. Y.

GRIFFITH, Hon. C. McD.

HUMPHREY, Hon. K. D. M.

STRAUGHN, Hon. R. R.

THORNE, Mr. R. A.

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EDITORIAL NOTES — NOT PART OF THE REPORT

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

EDITORIAL QUERIES

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

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

Q2. Chair, *passim*. Mr. Deputy Speaker opened the sitting and presided throughout, but two of the Chair's lines (the Minutes, and the call of the Member for St. John after Mr. R. A. Thorne's speech) carry the label 'Mr. SPEAKER'. Printed as in the source.

Q3. Order No. 8, *Appropriation (Amendment) Bill, 2018*. The second reading was seconded by Dr. the Hon. W. F. Duguid, but the motion to go into Committee is recorded as seconded by Hon. J. A. King; the Chairman reported the Bill 'with amendments' though none is recorded; and the Bill is 'cited as the Appropriation (Amendment) Bill, 2018' rather than as an Act. Printed as in the source.

Q4. Order No. 5, *opening*. After the first short paragraph of Hon. W. A. Abrahams' speech the source records 'The question was put and was resolved in the affirmative without division', before the Member is asked to proceed with the main speech; the question cannot have been put at that point. The Member also refers to 'the Offences against the Persons Act'. Printed as in the source.

Q5. Order No. 5, *Hon. W. A. Abrahams' speech*. The CCJ case is cited as 'Jabari Nervais', 'Jabari Sensimania Nervais v The Queen' and, near the end, as 'the decision of the Privy Council in the most recent case of Nerva'. Printed as in the source.

Q6. Order No. 5, *Mr. R. A. Thorne's speech*. A stray reporter's mark, 'LS-7', stands on its own line, and the next paragraph begins in mid-sentence ('person who is agnostic on the question of the death penalty'); some words may be missing. Printed as in the source.

Q7. Order No. 5, *close of debate*. Mr. Deputy Speaker calls 'The Honourable Member for The City of Bridgetown', but no speech follows; the next entry records that further consideration of the Bill was deferred. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The House of Assembly met on Tuesday, 11th September, 2018 at 10.00 a.m., with His Honour G. A. Clarke, Deputy Speaker, in the Chair; prayers were taken by Rev. Father Mark Harewood. On the motion of Lt. Col. the Hon. J. D. Bostic, seconded by Hon. Miss C. Y. Forde, the Minutes of 28th August, 2018 were confirmed. Lt. Col. Bostic laid the Barbados Fire Service Annual Report, 2016, and Hon. K. D. M. Humphrey the Barbados Port Inc. Annual Report for the year ended 31st March, 2017. Standing Orders were suspended for the day.

Under Order No. 8, Hon. R. R. Straughn, Member for Christ Church East Central, moved the second reading of the Appropriation (Amendment) Bill, 2018, describing it as a procedural measure to reflect the new structure of Government, including the finances of newly created ministries. The Bill passed through Committee, with Dr. S. E. Browne in the Chair, and was read a third time.

Under Order No. 5, Hon. W. A. Abrahams, Member for Christ Church East, moved the second reading of the Offences Against the Person (Amendment) Bill, 2018, to abolish the mandatory death penalty. He traced the Boyce and Joseph case before the Privy Council and the Inter-American Court of Human Rights, and the CCJ's decision in the Nervais and Severin cases that the mandatory sentence fettered the judge's discretion, stressing that the Cabinet had not decided to abolish the death penalty itself. The new section 2 made murder punishable by life imprisonment, listing the circumstances, such as lengthy planning or the killing of a judge or police officer, in which death might still be imposed; a death sentence would have to be carried out within five years, following Pratt and Morgan; and consequential amendments were made to the Constitution and the Penal System Reform Act, including representations from victims' relatives. The last executions, he said, had taken place in 1984.

Bishop the Hon. J. J. S. Atherley, Member for St. Michael West, supported the change, noting that two-thirds of states had not carried out a death sentence in about a decade, but asked about forensics and DNA legislation, the reliance on witness evidence, court delays and urban poverty; Hon. W. A. Abrahams rose on a point of elucidation on section 39 mitigating factors at the request of the Leader of the Opposition. On the motion of Lt. Col. Bostic the House was suspended for lunch until 1.45 p.m.

On resumption, Mr. R. A. Thorne, Member for Christ Church South, regretted that the amendment came only because of the CCJ's ruling, which he said had departed from earlier law; he cited Belize's time-limited savings law clause and urged the Attorney-General to review pre-Independence laws. Hon. C. McD. Griffith,

Member for St. John, spoke of forgiveness and of fathers' responsibility for their children. Hon. K. D. M. Humphrey, Member for St. Michael South, quoted Oscar Wilde's *The Ballad of Reading Gaol*, said at least 18 countries had discarded the mandatory death penalty since 2000, and congratulated the Deputy Speaker and Hon. R. St.C. Toppin on 24 years in the House.

On the motion of Lt. Col. the Hon. J. D. Bostic, seconded by Dr. the Hon. W. F. Duguid, further consideration of the Bill was deferred, and the House was adjourned until Tuesday, 18th September, 2018 at 10.00 a.m.